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Legal Sidebar

Groff v. DeJoy: Supreme Court Clarifies Employment Protections for Religious Workers

July 5, 2023

When an employee's sincere religious observances or practices conflict with workplace requirements, Title VII of the Civil Rights Act of 1964 (Title VII) requires the employer to provide a reasonable accommodation unless doing so would impose an "undue hardship on the conduct of the employer's business." In 1977, the Supreme Court appeared to indicate in *Trans World Airlines, Inc. v. Hardison* that an accommodation creates an undue hardship when it imposes "more than a *de minimis* cost." Some members of the Supreme Court, other federal judges, the executive branch, and commentators subsequently critiqued *Hardison* as wrongly interpreting Title VII's text and inadequately protecting workers' religious rights, particularly those of workers practicing minority faiths. In *Groff v. DeJoy*, a unanimous Court reevaluated its precedent and announced a new rule: to deny a religious accommodation, an employer must show that the burden of accommodation "is substantial in the overall context of an employer's business."

A previous Sidebar discussed the legal background and previewed the issues in *Groff*. Now that the Court has clarified its interpretation of Title VII, Congress may wish to consider the implications of the Court's decision and whether further legislative action is appropriate to balance the rights of religious employees and the burdens placed on their employers and coworkers.

Background

Title VII prohibits employers with at least 15 employees from discriminating against employees and applicants on the basis of religion, as well as race, color, sex, and national origin. (Along with private employers, Title VII applies to most federal executive employers, and the Congressional Accountability Act applies it to most federal legislative employers.) Religious discrimination includes the failure to reasonably accommodate an employee or job applicant's religious observance or practice, unless the employer can show that accommodation imposes an "undue hardship on the conduct of the employer's business." An accommodation is a change in the employer's policies, practices, or the work environment to allow an employee to engage in a religious practice or observance. Congress did not define "undue

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LSB10999

hardship" or "conduct of the business" in Title VII. It has not amended this portion of the statute since it enacted the religious accommodation provision in 1972.

Before *Groff*, the Supreme Court addressed the Title VII undue hardship standard once. In *Hardison*, the Court considered whether Title VII ever requires employers to violate collective bargaining agreements as part of an accommodation. Acknowledging that Title VII broadly allows an employer to implement seniority or merit systems so long as the employer has no discriminatory motive for doing so, the Court in *Hardison* held that violating a collectively bargained seniority system would be an undue hardship. Although the Court devoted less analysis to when financial costs cause undue hardship, it also stated that requiring the employer in the case to "bear more than a *de minimis* cost" in making a religious accommodation would create an undue hardship. The Court accepted findings that the employer in *Hardison* would have to incur "*substantial* costs" to accommodate the plaintiff (emphasis added).

The *Hardison* majority reasoned that the accommodation the plaintiff requested—to be excused from working during his Saturday Sabbath—would have distributed the benefit of preferred shifts on the basis of religion, an outcome the Court characterized as itself discriminatory: any accommodation would have come "at the expense of others who had strong, but perhaps nonreligious, reasons for not working on weekends." "Title VII does not contemplate such unequal treatment," the Court concluded.

Like *Hardison*, *Groff* involved an employee seeking to be excused from shifts during his Sabbath. Plaintiff Gerald Groff worked as a rural carrier associate for the U.S. Postal Service, a position responsible for covering for absent employees. In 2017, the Postal Service began requiring Groff to work certain Sundays in accordance with a memorandum of understanding (MOU) with Groff's union. Groff observes a Sunday Sabbath. As a result, he missed over 20 Sunday shifts, was disciplined, and resigned in 2019.

Groff sued, alleging that the Postal Service violated Title VII by failing to accommodate him. The district court and Third Circuit ruled for the Postal Service. The lower courts found that exempting Groff from Sunday work caused an undue hardship, because doing so violated the MOU and unfairly burdened other employees. The courts indicated that Groff's absences forced the station postmaster to deliver mail and that other employees had quit, transferred, or filed a union grievance as a result of the situation.

The Court's Decision

In a unanimous opinion authored by Justice Samuel Alito, the Court in *Groff* disavowed *Hardison*'s language suggesting an employer can avoid accommodating a religious employee by showing anything more than a trivial burden. (Justice Sonia Sotomayor explained in a short concurrence that the Court's decision interpreted *Hardison* in light of the full context of that case, rather than overruled it.) Title VII focuses on "hardship," the *Groff* Court emphasized, a word choice that does not mean any mere burden. The Court reasoned that the fact that any hardship must be "undue" under Title VII further indicated Congress's intent that employers may have to bear meaningful costs to accommodate a religious employee. Title VII, the Court held, therefore requires an employer seeking to deny an accommodation to demonstrate that the accommodation will substantially increase costs to its business.

Groff offered limited guidance on how to apply this new test. The Court instructed lower courts to adopt a case-by-case approach: courts are to assess in a "common-sense manner" the "practical impact" of a particular accommodation in light of all the facts at hand, such as the size and nature of the employer's business. The Court also clarified that employers may take into account the burdens an accommodation imposes on other employees, as long as those burdens affect the employer's operations, a point emphasized in Justice Sotomayor's concurrence. Employers may not, however, justify a refusal to accommodate based on other employees' hostility toward religion or religious accommodations, in general or in the particular case.

The Court otherwise declined requests from both Groff and the United States to say more about an employer's obligations. Groff had urged the Court to interpret Title VII to align with the Americans with Disabilities Act (ADA) and to instruct lower courts to look to ADA caselaw in Title VII matters. The ADA requires employers to reasonably accommodate workers with disabilities absent "undue hardship" and statutorily defines undue hardship as "significant difficulty or expense," listing relevant criteria courts and employers should consider. The United States, for its part, urged the Court to expressly affirm the Equal Employment Opportunity Commission's Title VII religious accommodation regulations. These regulations, the United States argued, offer substantially more protection to religious employees than a superficial reading of the term "*de minimis* costs" would suggest. The regulations, for example, state that the EEOC interprets "undue hardship" in light of the facts of *Hardison* to mean the "regular payment of premium wages," not any minor, one-time cost.

The Court in *Groff* rebuffed both entreaties. It signaled approval of the EEOC's approach, calling the EEOC's guidance generally "sensible" but refusing to formally endorse any or all of it. The Court did not opine on the relationship between Title VII and the ADA.

Implications and Considerations for Congress

The Court's decision in *Groff* clarifies the strength of protections for religious employees under Title VII. *Groff* makes clear that employers cannot avoid accommodating employees' religious practices by citing any cost above the trivial. Employers must also consider the various options at their disposal to provide an accommodation; they cannot conclude that one form of accommodation poses an undue hardship and refuse to look at alternatives.

Groff largely leaves application of the new standard to the lower courts to develop on a case-by-case basis. While the Court declined to apply substantive ADA law to Title VII, courts analyzing ADA accommodation claims similarly adopt a case-by-case approach, regularly observing that these matters are fact specific. Congress may wish to remain cognizant of how the lower courts apply Title VII in light of *Groff* to determine whether it may want to respond to any developments in the case law.

The Court in *Groff* did not elaborate on when burdens an accommodation imposes on other employees qualify as an undue hardship that relieves an employer of its duty to accommodate, except to state that coworker complaints borne of religious animus will not suffice. As reviewed in a previous Sidebar, Title VII also prohibits discrimination against employees who are *not* religious. The Court did not address when, for example, an accommodation allocating less desirable work (such as weekend shifts) to nonreligious employees might infringe their rights. Nor did the Court clarify whether employers may deny accommodations that could potentially offend or upset coworkers, such as allowing an employee to proselytize.

Some Justices at oral argument alluded to the potential for a large number of Title VII religious accommodation claimants. The Court did not address how employers should handle situations where they receive several similar accommodation requests. Title VII does not specify how employers should handle situations where they could accommodate some requesters, but not all.

Congress may wish to consider these or other issues in future legislation. Since *Hardison*, Members have introduced a variety of bills proposing to amend Title VII's religious accommodation provision. Such bills have, for example, defined "undue hardship" to mean "significant difficulty or expense." Bills have also addressed specific accommodations, such as time off for religious observance, religious dress, and variances from seniority systems. A bill from a prior Congress proposed including the number of potential claimants as a factor bearing on when an accommodation poses an undue hardship. None of these amendments has passed. Congress could consider whether it wants to say more on how employers and

courts should balance the rights of religious employees and the burdens that religious accommodations could impose on their employers and coworkers.

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