

Supreme Court Clarifies Standard for Religious Accommodations

Alert

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For nearly 50 years, the U.S. Supreme Court's decision in *Trans World Airlines, Inc. v. Hardison* has been the seminal authority interpreting the requirements Title VII places on employers faced with employee requests for religious accommodation. In its *Groff v. DeJoy* opinion released June 29, 2023, the Supreme Court revisited *Hardison* and provided clarification regarding what standard must be met for a religious accommodation request to be denied.

Title VII of the Civil Rights Act of 1964 requires employers to accommodate religious practices of their employees if certain criteria are met, and so long as accommodating the religious practice would not impose an "undue hardship on the conduct of the employer's business." In *Hardison*, the Court reasoned that requiring the employer to "bear more than a *de minimis* cost" would present an undue hardship. Based on this language in *Hardison*, both lower courts and the Equal Employment Opportunity Commission (EEOC) (29 CFR 1605.2(e)(1)) have prescribed this "more than a *de minimis* cost" test as the governing standard for determining whether a requested accommodation would pose an undue burden on an employer's business.

In *Groff*, a unanimous decision, the Supreme Court held that showing "more than a *de minimis* cost" does not suffice to establish undue hardship under Title VII. Put differently, the burden caused by a requested accommodation must be more than "very small or trifling." Instead, the Court stated that a religious accommodation request poses an undue hardship when granting the accommodation "would result in substantial increased costs in relation to the conduct of its particular business."

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Employers should monitor the impacts of the *Groff* opinion going forward. Notably, the Court declined to adopt the Americans with Disabilities Act's (ADA) test for determining an undue hardship, and the Court made clear that lower courts should not look to ADA case law to interpret Title VII matters involving the determination of undue hardship. The Court recognized that much of the EEOC's current guidance regarding religious accommodations under Title VII is sensible and will likely "be unaffected by our clarifying decision today." However, the Court declined to ratify the whole of the EEOC's interpretation regarding the undue hardship analysis, and instead, the Supreme Court's decision left the context-specific application of the clarified undue hardship standard to the lower courts.

Practically speaking, the *Groff* opinion did not alter or overturn *Hardison*, and *Hardison*'s conclusion that the deprivation of coworkers' bargained-for seniority rights constitutes an undue hardship remains good law. However, the *Groff* decision detailed which impacts on coworkers may be considered in the undue hardship inquiry and confirmed that only those coworker impacts that affect the conduct of the employer's business may be considered in the undue hardship analysis. This, along with the *Groff* decision's emphasis on the costs to an employer, may alter the analysis of whether a requested religious accommodation poses an undue burden in some instances.

NEXT STEPS FOR EMPLOYERS

In light of the Supreme Court's clarification of the standards for evaluating religious accommodation requests, employers should consider taking the following steps:

- Update religious accommodation policies to remove any reference to the *de minimis* standard and focus the policy on whether the requested accommodation would result in substantial increased costs in relation to the conduct of your particular business.
- Train HR teams, managers and supervisors on how to evaluate religious accommodation requests in the future given the Supreme Court's modified guidance.

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