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GROFF V. DEJOY: Supreme Court Clarifies "Undue Hardship" for Religious Accommodations

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On June 29, 2023, the U.S. Supreme Court deviated from nearly 50 years of precedent set by *Trans World Airlines, Inc. v. Hardison*.

In the unanimous decision of *Groff v. DeJoy*, the Court clarified the standard for "undue hardship" in religious accommodation claims and upended the previous framework by now requiring an employer that denies a religious accommodation to show that the burden of granting it would result in substantial increased costs in relation to the conduct of its business.

Background

Since its inception, Title VII of the Civil Rights Act of 1964 (the "Act") has made it unlawful for covered employers to discriminate against any individual on the basis of his or her religion. Employers cannot fail or refuse to hire or to discharge any individual on this basis, and cannot discriminate against an individual with respect to his or her compensation, terms, conditions, or privileges of employment.

All private and public sector employers with 15 or more employees are covered employers under the Act. *However, please note that even employers with less than 15 employees may still be obligated to follow anti-discriminatory measures through other laws*.

The Equal Employment Opportunity Commission (EEOC), which is the agency responsible for enforcing the Act, has interpreted this provision to mean that covered employers are obligated "to make reasonable accommodations to the religious needs of employees" so long as it does not cause "an undue hardship on the conduct of the employer's business."

Without a statutory definition of "undue hardship," courts have relied on the framework of the Supreme Court decision in *Hardison* for the last 46 years to determine a meaning for the term. The Court has previously offered conflicting definitions, which *Groff* has now clarified. Previously, lower courts have latched onto the first definition as provided in *Hardison*, that an "undue hardship" means an employer must "bear more than a *de minimis* cost." A "*de minimis* cost" is one that is so very small or trifling that it is not even worth noticing. However, the Court has also stated that an accommodation is not required when it entails *substantial* costs or expenditures. The term "substantial" differs greatly from "*de minimis.*" A substantial cost is one being significant or large and having substance. This need for clarification was addressed in *Groff*, resulting in a new established definition of "undue hardship."

Supreme Court Decision

In *Groff*, the plaintiff was an Evangelical Christian employed by the United States Postal Service (USPS) who requested not to work on Sundays due to his religious beliefs. In order to avoid working on Sundays, Groff

transferred to a rural USPS facility that did not make Sunday deliveries. When that location began making Sunday deliveries, Groff was unwilling to work on Sundays and received progressive discipline until he eventually resigned. USPS argued that accommodating his request not to work on Sundays would require them to "bear more than *de minimis* cost" and would therefore amount to an undue hardship, per the long-standing rationale in *Hardison.*

The Court in *Groff* held that showing "more than a *de minimis cost*" is not enough to establish undue hardship under Title VII. Instead, the Court preferred the second definition which provides that undue hardship is shown when a burden is "substantial in the overall context of an employer's business."

However, the Court did not stop there. The key term found in the statute is "undue hardship." The Court emphasized that "hardship" is something that causes suffering, privation, or adversity—it is more severe than a mere burden. The word "undue" means that such suffering, privation, or adversity must rise to an excessive or unjustifiable level. Taking the literal meaning of the term, the Court adopted this new standard, which dictates that courts should resolve whether a hardship would be substantial in the context of an employer's business in determining if it rises to the level of being "undue." The Court further stated that "an employer who fails to provide an accommodation has a defense **only** if the hardship is 'undue,' and a hardship that is attributable to employee animosity to a particular religion, to religion in general, or to the very notion of accommodating religious practice cannot be considered 'undue.'"

Effect on Employers

While the Court clarified the meaning of "undue hardship," it still left employers without clear guidance as to when exactly a request for religious accommodation may be denied. The Court left this issue for the lower courts to determine on a case-by-case basis.

However, the Court provided a number of points that employers should keep in mind:

- The EEOC's guidance on this issue is sensible and will, in all likelihood, be unaffected by the Court's clarifying decision in *Groff.*
- Employers should continue to look to the EEOC for guidance—particularly in its explanation as to why temporary costs, voluntary shift swapping, occasional shift swapping, or administrative costs do not constitute undue hardship.
- Title VII requires undue hardship on the *conduct* of the employer's business. As such, not all impacts on other employees are relevant, but only those that also affect the conduct of the business.
- When faced with a religious accommodation request, the possibility of having other employees work overtime to cover for the requesting employee would not be enough for an employer to conclude that it would cause an undue hardship.

If you have questions or concerns about Title VII and religious accommodations, please contact your **Knox Law attorney**, our **Labor & Employment group**, or call us at 814-459-2800.



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