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The Supreme Court's New Test for Determining Undue Hardship for Religious Accommodation Requests—A "Substantial" Change

By Lauren Smith

In an Opinion dated June 29, 2023, the United States Supreme Court unanimously created a new, more difficult standard for employers to apply in weighing the burden a worker's religious accommodation request would impose on its business. In *Groff v. DeJoy*, 2023 WL 4239256, a former United States Postal Worker requested not to work on Sundays based upon his religious practices. When he was subsequently disciplined, Groff resigned and filed a lawsuit. The District Court and Third Circuit Court of Appeals ruled in favor of the employer based upon the United States Supreme Court's decision in *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 53 L.Ed.2d 113, 97 S.Ct. 2264 (1977), which held that requiring an employer "to bear more than a de minimis cost" in order to accommodate an employee's religious belief is an "undue hardship" under Title VII of the Civil Rights Act.

The *Hardison* Court additionally held that, when determining whether an employer would experience undue hardship to accommodate religious beliefs, the employer should consider the particular accommodations requested, along with the request's practical impact in light of the nature, size and operating cost of the employer. Importantly, the *Hardison* Court did not adopt the definition of "undue hardship" as defined by the Americans with Disabilities Act ("ADA"), which defined "undue hardship" as an "action requiring significant difficulty or expense" and provided factors for courts to consider in making that determination.

The Court ultimately sided with Groff, overruling the holdings of the lower courts. In its Opinion, the Court maintained that it was not overturning *Hardison*, but indicated that Title VII required an employer denying a religious accommodation to show that the burden of granting it would result in *substantia*l increased costs in relation to the conduct of its particular business. The Court concluded that *Hardison* was always intended to require businesses to show a "substantial" burden when declining a religious accommodation, but that, despite this, lower courts have improperly applied the "minimal" language in the opinion as the governing standard.

Thus, while the Court maintained that it had not created a new standard for employers to determine whether an undue hardship would result following a religious accommodations request, the *Groff* Opinion effectively imposed a new, "substantial" burden test to such claims.

What does this mean for employers? Following the Court's decision in *Groff*, employers should review their process for making decisions regarding religious accommodation requests and should analyze an employee's request under the stricter lens as set forth in *Groff*. Particularly, the employer should consider not just whether it will be inconvenienced by the request, but whether the request will have a substantial negative impact on the employer's operations and costs. For guidance, please contact your Roetzel attorney.

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