



Employment Law Note

JULY 2023

U.S. Supreme Court Makes It Easier for Employees to Seek Religious Accommodations



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In its June 29, 2023, unanimous decision in *Groff v. DeJoy*, the United States Supreme Court made it easier for employees to seek religious accommodations from their employers. The Court said an employer can only deny an employee's request for religious accommodation if the employer can demonstrate that the requested accommodation would result in substantial increased costs for the employer. Before the *Groff* decision, to lawfully deny an employee's request for a religious accommodation, the employer needed to show only that the requested accommodation would impose more than a *de minimis*—or minimal—burden on the employer. Thus, the Court's decision in *Groff* creates a much higher standard from what was previously the law.

Background

Under Title VII, employers must reasonably accommodate all aspects of an employee's religious observance or practice that can be accommodated without creating an undue hardship for the business. Since the Supreme Court's decision in *TWA v. Hardison*, 432 U.S. 63 (1977), lower courts have analyzed undue hardship by determining whether an employer would be required to "bear no more than a *de minimis* cost" if it granted an employee's religious accommodation request. If more than a *de minimis* cost was required, then the employer did not have to provide religious accommodation as it would be considered an "undue burden."

In *Groff v. DeJoy*, a former postal worker sued the United States Postal Service (USPS) for failing to accommodate

his religious practice not to work on Sundays. USPS tried to find other postal workers to cover Groff's Sunday shifts, but, because of a shortage of rural postal workers, it was unable to do so. For this reason, when Groff requested that USPS exempt him from Sunday work, USPS denied the request stating that his requested accommodation would lead to undue hardship for USPS. After Groff failed to report to work for his assigned Sunday shifts, he began receiving progressive discipline for his absences. Groff ultimately resigned and sued USPS under Title VII.

USPS argued that it could not accommodate Groff's religious practices without bearing an undue hardship. A majority of the U.S. Court of Appeals for the Third Circuit agreed with USPS, finding that it was bound by the *de minimis* precedent in *Hardison* and that Groff's exemption from Sunday work "imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale."

The U.S. Supreme Court accepted review to address the *de minimis* standard. In its decision, the Supreme Court "clarified" its ruling in *Hardison*, indicating a higher standard than *de minimis* for undue hardship. The Court declined to determine what set of facts would meet this new test and remanded the case back to the lower court to decide.

Evaluating whether an employer should grant a religious reasonable accommodation request

While the Supreme Court left "the context-specific application of [the] clarified standard to the lower

courts," it did indicate that courts must apply the test to take into account "all relevant factors...including the particular accommodations at issue and their practical impact in light of the nature, size, and operating cost of an employer."

That said, it is clear that the new test will be a fact-intensive endeavor for lower courts to sort out and will likely vary depending on the size of the company and the ability to continue operations with a person absent, in addition to the actual costs imposed by allowing the accommodation.

What remains unchanged is an employer's obligation to engage in an interactive process with employees who request religious accommodations, similar to that applicable to requests by employees for disability-related accommodation requests.

In order to prepare for a likely slew of religious accommodation requests that may come following the *Groff* decision, employers should provide additional training for employees who are tasked with reviewing, assessing and responding to these requests to ensure compliance with Title VII requirements.

What is Washington's standard for "undue hardship"?

In September 2022, in a divided panel decision in *Suarez v. State*, the Washington Court of Appeals for Division III similarly clarified what "undue hardship" means under the Washington Law Against Discrimination (WLAD) when an employer receives and assesses a religious accommodation request from an employee.

In *Suarez*, a nurse who observed Saturdays as the Sabbath and celebrated seven religious holidays throughout the year sued her employer, the Yakima School District, alleging failure to accommodate because she was not given a schedule with Saturdays off and her requests to take leave on some holidays were denied. The trial court dismissed the nurse's claim, but the Court of Appeals reversed finding that the record reflected sufficient evidence to raise at least a prima facie case of discrimination where, among other things, the school district had not presented enough evidence that any cost was more than *de minimis*.

In its approximately 32-page opinion, the Court of Appeals signaled a more rigorous test that should be applied, stating that an undue hardship is "an action requiring significant difficulty or expense to the employer." The court went on to provide additional guidance—looking to the ten factors outlined in WAC 82-56-020 adopted by the Washington State Office of Financial Management—including the nature of the employee's work, the financial resources of the company, the financial impact of the requested absence, and the number and structure of the staff employed by the company.

The Washington Supreme Court recently accepted review of *Suarez v. State* and will hear the case in the fall or winter of 2023. The U.S. Supreme Court's decision in *Groff v. DeJoy* will likely be addressed by Washington's highest court to bring harmony to the test under WLAD and under Title VII.

Sebris Busto James is available to assist in strategizing on best business practices and procedures to ensure compliance with the federal and state standards for undue hardship.

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