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Employment Counseling & Litigation

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U.S. Supreme Court Makes It Harder for Employers to Deny Religious Accommodation Requests

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While last week's U.S. Supreme Court decision on affirmative action in the educational setting garnered substantial attention, another decision issued by the Court that same day also warrants discussion. In *Groff v. DeJoy*, the Court examined the legal standard for employers to accommodate an employee's request for a religious accommodation under Title VII of the Civil Rights Act of 1964. In doing so, the Court confirmed that to decline an employee's request for religious accommodation, an employer must prove that the burden of granting the request would be "substantial in the overall context of [the] employer's business" rather than simply "more than a *de minimis* cost," as had been the relied-upon legal standard for many decades.

Background

Title VII requires covered employers to reasonably accommodate the religious practices of their employees unless doing so would impose an undue hardship on the conduct of the employer's business.

In *Groff*, an Evangelical Christian employee of the United States Postal Service (USPS) brought suit under Title VII, asserting that the USPS could have accommodated his Sunday Sabbath practice without undue hardship on the conduct of its business. When the employee began his employment, he was not required to work on Sundays, but this changed when the USPS began making Amazon deliveries. Some of the employee's Sunday shifts were covered by other employees, but he received progressive discipline for failing to work scheduled Sundays and ultimately resigned from his employment.

The lower courts sided with the USPS, with the U.S. Court of Appeals for the Third Circuit concluding that the USPS had far surpassed the threshold of establishing that the requested accommodation (excusing the employee from any Sunday work) would require it to bear more than a *de minimis* cost. In particular, the appeals court found that exempting the employee from Sunday work "imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale[.]"

The Decision

Last week, in "brushing away" the "erroneous" interpretation of prior precedent, the Supreme Court held that showing "more than a *de minimis* cost" does not suffice to establish undue hardship under Title VII. Instead, the Court explained that "undue hardship" is shown when a burden is substantial in the overall context of an employer's business. According to the Court, "courts must apply the test in a manner that takes into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, size and operating cost of an employer."

The Court emphasized that what is "most important" is that undue hardship in Title VII "means what it says," and courts should resolve whether a hardship would be substantial in the context of an employer's business in a "common-sense manner." The Court further opined that 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."

Having articulated the Title VII undue hardship standard, the Court remanded the case to the lower court to determine whether the USPS could meet its burden to prove that excusing the employee from working on Sundays would cause undue hardship. Accordingly, the USPS still could prevail on the merits of the *Groff* case. Nonetheless, there is sure to be uncertainty in years to come as employers and courts grapple with assessing factual accommodation scenarios in light of this standard.

Takeaways

While the Court has taken the position that its decision comports with both its prior precedent and the meaning of "undue hardship" in ordinary speech, it is widely considered a change to how employers have been approaching reasonable religious accommodations for more than 40 years. In its decision, the Court made clear that employers will have a higher threshold than they have had historically in rejecting an employee's request for a religious accommodation. Employers should consider the impact this decision will have on their operations, policies, planning, training, and responses to religious accommodation requests.

Lowenstein Sandler's Employment Counseling & Litigation practice group would be pleased to answer any questions employers may have on this topic.

Contacts

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