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Locke Lord QuickStudy: U.S. Supreme Court Clarifies Undue ?Hardship Standard for Religious Accommodation ?Requests

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In *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977), the U.S. Supreme Court held that "[t]o require [an employer] to bear more than a *de minimis* cost in order to" grant an employee a religious accommodation under Title VII of the Civil Rights of 1964 "is an undue hardship." In *Hardison*, the employee requested time off to observe the Sabbath day. Explaining that the employee's requested time off would result in "unequal treatment of employees on the basis of their religion," the Supreme Court concluded that Title VII does not "require an employer to discriminate against some employees in order to enable others to observe their Sabbath."

In the 45 years following the Supreme Court's *Hardison* decision, lower courts and employers have broadly interpreted *Hardison*'s *de minimis* language to mean that employers may deny Title VII religious accommodation requests if such accommodations would result in anything more than a *de minimis* burden. On June 29, 2023, in *Groff v. DeJoy, Postmaster General*, the Supreme Court unanimously held that courts (and employers) have consistently misapplied this standard to Title VII religious accommodation requests.

***Groff v. DeJoy* Decision:**

In *Groff*, the Supreme Court was presented with its "first opportunity in nearly 50 years to explain the contours of *Hardison*" and the *de minimis* standard. Groff – an Evangelical Christian postman – requested an exemption from the requirement to work on Sundays to fulfill Amazon deliveries. After Groff refused to work Sundays, the United States Postal Service (USPS) redistributed his job duties to other employees and disciplined Groff. Eventually, Groff resigned his employment and filed suit against USPS.

The Third Circuit affirmed the District Court's summary judgment ruling in favor of USPS, holding that Groff's requested accommodation resulted in more than a *de minimis* cost to USPS. Specifically, the Third Circuit held that Groff's request to not work Sundays "imposed [a burden] on his coworkers, disrupted the workplace and workflow, and diminished employee morale." The Supreme Court disagreed.

Justice Alito authored the unanimous opinion, and noted that both parties in the case "agree that the *de minimis* reading of *Hardison* is a mistake." Although lower courts have viewed *Hardison*'s *de minimis* language as the "authoritative interpretation of the statutory term, 'undue hardship,'" the Supreme Court explained "it is

doubtful that it was meant to take on that large role." Indeed, an employer merely demonstrating more than a *de minimis* cost is insufficient to establish an undue hardship under Title VII. Rather, the appropriate standard for an undue hardship is "when a burden is substantial in the overall context of an employer's business." Although this standard seems similar to the "significant difficulty or expense" undue hardship analysis for disability accommodations under the Americans with Disabilities Act (ADA), the Supreme Court rejected that standard for religious accommodations under Title VII.

In *Groff*, the Supreme Court made clear that it was not overruling *Hardison* and only clarifying the standard for an undue hardship under Title VII. Accordingly, the Supreme Court remanded the case for further proceedings, but made no conclusions as to whether USPS would prevail.

The "Correct" Undue Hardship Standard:

According to the Supreme Court, under the "correct" undue hardship standard, courts and employers must "take into account all relevant factors in the case at hand" when evaluating a request for a religious accommodation. Importantly, other employees' "dislike of," or "animosity to a particular religion," religious practice or accommodation cannot be weighed in an employer's undue hardship analysis. In *Groff*, the Supreme Court also emphasized that "forcing other employees to work overtime" is insufficient, on its own, to demonstrate an undue hardship.

Under Title VII, employers must consider a variety of potential religious accommodations such as voluntary shift swapping. However, potential factors that could contribute to an undue hardship finding include the cost of incentive pay and administrative costs associated with obtaining replacement employees. The Supreme Court explained that while undue hardship does not mean a "significant difficulty or expense," employers must ultimately consider whether "a burden is substantial in the overall context of an employer's business."

Practical Implications for Employers:

Prior to the *Groff* decision, employers and lower courts frequently "latched on to" the *de minimis* standard when considering religious accommodation requests. For example, employers often cited the *de minimis* standard when considering employees' requests for religious exemptions to mandatory COVID-19 or influenza vaccine policies. Indeed, many of these religious accommodation cases and charges of discrimination remain pending across the country. Although the U.S. Equal Employment Opportunity Commission has historically advocated for a higher burden in its guidance than the *Hardison de minimis* standard, the *Groff* ruling will undoubtedly impact agency actions moving forward.

Accordingly, employers should review and update existing policies regarding receiving and analyzing religious accommodation requests. In addition, employers should take this opportunity to train managers and leaders on the "correct" undue hardship standard under Title VII. When faced with religious accommodation requests – like disability accommodation requests under the ADA – employers should implement an individualized analysis and consider all relevant factors.

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