U.S. SUPREME COURT RULING EXPANDS RELIGIOUS PROTECTIONS FOR EMPLOYEES

July 17, 2023

On June 29, 2023, the United States Supreme Court issued a unanimous opinion, with Justice Sotomayor authoring a concurring opinion in which Justice Jackson joined, in the case of *Groff v. DeJoy, Postmaster General*, No. 22-174, slip op. (U.S. June 29, 2023). This case was the first time in nearly fifty years that the Supreme Court explained the contours of its previous case *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977), which, as detailed below, addressed when employers must accommodate an employee's religious practices. The Court's decision in *Groff* rejected the current *de minimis* cost test under which an employer may deny a religious accommodation that imposes more than a *de minimis* cost on the employer and established a much higher threshold for denying requested accommodations.

BACKGROUND

Title VII

When enacted, Title VII of the Civil Rights Act of 1964 made it unlawful for covered employers "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges [of] employment, because of such individual's . . . religion." *Groff*, No. 22-174, slip op. at 4 (quoting 42 U. S. C. §2000e–2(a)(1) (1964 ed.)). By 1968, the EEOC had interpreted this provision to obligate employers "to make reasonable accommodations to the religious needs of employees" when doing so would not impose an "undue hardship on the conduct of the employer's business." *Id.* (quoting 29 CFR § 1605.1 (1968)).

In 1970, the Sixth Circuit was presented with a Sabbath case, *Dewey v. Reynolds Metals Co.*, and held that requiring an employer "to accede or accommodate" religious practice "would raise grave" Establishment Clause questions. *Id.* at 5-6 (quoting 429 F. 2d 324, 334 (6th Cir. 1970)). The Supreme Court affirmed the Sixth Circuit's decision by an evenly divided vote. *Id.* at 6 (citing 402 U. S. 689 (1971)). Following the Supreme Court's decision in *Dewey*, Congress amended Title VII in 1972. As amended, "[t]he term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." *Id.* (quoting 42 U. S. C. §2000e(j) (1970 ed., Supp. II)).

Trans World Airlines, Inc. v. Hardison

In 1977, the Supreme Court considered the 1972 amendment to Title VII in the case of *Hardison*. The case arose when Hardison, a clerk at the Stores Department in the Kansas City base of Trans World Airlines (TWA), which was

responsible for providing aircraft parts and operated "24 hours per day, 365 days per year," began to observe the Sabbath. *Id.* (quoting *Hardison*, 432 U. S. at 66). The problem was temporarily resolved when Hardison switched to working the night shift, but after he transferred to the day shift in another building, he did not have enough seniority to avoid working the Sabbath and was eventually discharged for insubordination. *Id.* (citing *Hardison*, 432 U. S. at 69). Hardison sued TWA and his union. *Id.* at 7. The Eighth Circuit found for Hardison and TWA and the union appealed the case to the Supreme Court arguing that the 1972 amendment to Title VII violated the Establishment Clause particularly because granting an accommodation to Hardison would require overriding the seniority rights granted by a collective bargaining agreement. *Id.* The Supreme Court's decision focused on seniority rights and held that Title VII did not "require an employer and a union who have agreed on a seniority system to deprive senior employees of their seniority rights in order to accommodate a junior employee's religious practices," noting that seniority systems were also afforded special treatment under Title VII. *Id.* at 8-9 (quoting *Hardison*, 432 U. S. at 83 n. 14). The Court did not identify any way in which TWA could accommodate Hardison's request without violating seniority rights. *Id.* at 10 (citing *Hardison*, 432 U. S. at 68, 80). An often-quoted sentence of the Court's opinion in *Hardison* stated: **"[t]o require TWA to bear more than a *de minimis* cost in order to give Hardison Saturdays off is an undue hardship."** *Id.* at 11 (quoting *Hardison*, 432 U. S. at 84).

THE CASE

The current case, *Groff*, was brought by an Evangelical Christian who believed for religious reasons that Sunday should be devoted to worship and rest. *Id.* at 1-2. In 2012, Groff began working for the United States Postal Service (USPS) as a Rural Carrier Associate, which required him to assist rural carriers to deliver mail. *Id.* at 2. At the time, the position did not generally involve Sunday work. *Id.* However, in 2013, USPS entered into an agreement with Amazon to facilitate Sunday deliveries and in 2016, the USPS signed a memorandum of understanding with Groff's union regarding the handling of Sunday and holiday deliveries. *Id.* After the memorandum was signed, Groff was informed that he would be required to work on Sunday. *Id.* Groff then sought and received a transfer to a small rural USPS station that did not then make Sunday deliveries but began to do so by March 2017. *Id.*

When Groff would not work on Sundays, peak season deliveries that would have been performed by Groff were carried out by the rest of the station's staff, including the postmaster who did not usually deliver mail. *Id.* at 2-3. Other months, Groff's Sunday assignments were redistributed to other carriers assigned to the regional hub. *Id.* at 3. During this time, Groff continued to receive progressive discipline for refusing to work on Sundays and in January 2019, he resigned. *Id.* Groff then sued under Title VII asserting that USPS could have accommodated this Sabbath practice "without undue hardship on the conduct of [USPS's] business." *Id.* (quoting 42 U.S.C. §2000e(j)). The District Court granted summary judgment to USPS and the Third Circuit affirmed stating that it was bound by the ruling in *Hardison* and "that requiring an employer 'to bear more than a de minimis cost' to provide a religious accommodation is an undue hardship." *Id.* (quoting *Groff v. DeJoy, Postmaster General*, 35 F. 4th 162, 174 n. 18 (3d Cir. 2022)). The Third Circuit found that exempting Groff from Sunday work had "imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale." *Id.* at 3-4 (quoting *Groff*, 35 F. 4th at 175). The Supreme Court granted certiorari in the case.

In considering Groff's appeal, the Court noted that while lower courts had latched on to "*de minimis*" as the governing standard in religious accommodation cases, *Hardison*'s reference to "*de minimis*" was a fleeting reference undercut by

conflicting language in the opinion. *Id.* at 12. The Court also pointed out that the EEOC had accepted that *Hardison* requires "more than a *de minimis* cost" test. *Id.* at 13.

The Court also analyzed the language of Title VII's text, finding that the key statutory term was "undue hardship." *Id.* at 16. Citing dictionary definitions, the Court found that:

> [U]nder any definition, a hardship is more severe than a mere burden. So even if Title VII said only that an employer need not be made to suffer a "hardship," an employer could not escape liability simply by showing that an accommodation would impose some sort of additional costs. Those costs would have to rise to the level of hardship, and adding the modifier "undue" means that the requisite burden, privation, or adversity must rise to an "excessive" or "unjustifiable level."

Id.

Understanding "undue hardship" in this way, the Court found that "it means something very different from a burden that is merely more than *de minimis*, i.e., something that is 'very small or trifling.'" *Id.* at 17. "So considering ordinary meaning while taking *Hardison* as a given, we are pointed toward something closer to *Hardison*'s references to '**substantial additional costs**' or '**substantial expenditures**.'" *Id.* (quoting *Hardison*, 432 U.S. at 83 n. 14).

Thus, the Supreme Court held:

> [S]howing "more than a de minimis cost," as that phrase is used in common parlance, does not suffice to establish "undue hardship" under Title VII. Hardison cannot be reduced to that one phrase. In describing an employer's "undue hardship" defense, Hardison referred repeatedly to "substantial" burdens, and that formulation better explains the decision. **We therefore, like the parties, understand Hardison to mean that "undue hardship" is shown when a burden is substantial in the overall context of an employer's business.** See Tr. of Oral Arg. 61–62 (argument of Solicitor General). This fact-specific inquiry comports with both *Hardison* and the meaning of "undue hardship" in ordinary speech.

Id. at 15-16.

The Court also emphasized that "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.'" *Id.* at 18 (citing Brief for United States 40). However, the Court declined both Groff's request to instruct lower courts to "draw upon decades of ADA caselaw" in deciding religious accommodation cases and the Government's request to "opine that the EEOC's construction of *Hardison* has been basically correct." *Id.* Nonetheless, the Court stated that it had "no reservation in saying that a good deal of the EEOC's guidance in this area is sensible and will, in all likelihood, be unaffected by our clarifying decision today." *Id.* at 19.

Lastly, the Court stated that not all impacts on coworkers are relevant – only those that affect the employer's business. *Id.* at 19-20. Coworkers' dislike of religious practices or expression in the workplace or the mere fact of accommodations does not factor into the undue hardship inquiry. *Id.* at 20. The Court also emphasized that "Title VII requires that an employer reasonably accommodate an employee's practice of religion, not merely that it assess the reasonableness of a

particular possible accommodation or accommodations." *Id.* For example, when "[f]aced with an accommodation request like Groff's, it would not be enough for an employer to conclude that forcing other employees to work overtime would constitute an undue hardship. Consideration of other options, such as voluntary shift swapping, would also be necessary." *Id.*

CONCLUSION

In sum, to comply with the *Groff* decision going forward, employers now will need to show that a burden is "substantial in the overall context of an employer's business" to properly refuse an employee's religious accommodation request based upon the employee's sincerely held religious belief(s). Unless granting an accommodation will lead to "substantial increased costs" and/or significant operational disruption in relation to the business, it may be difficult to meet this standard. We anticipate employers will receive more requests for accommodation based upon employees' religious beliefs and recommend updating company policies to ensure effective and compliant processes are used to evaluate such requests.

If you have any questions or need further guidance regarding providing religious accommodations, please contact a member of Hancock Daniel's Labor & Employment team.