



News &amp; Types: Client Advisories

# U.S. Supreme Court Raises the Bar: Rejecting Religious Accommodations Likely Unlawful Absent Substantial Increased Cost

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## Executive Summary

- On June 29, 2023, the U.S. Supreme Court unanimously held that the undue hardship defense to granting an employee's religious accommodation request requires demonstrating that it would cause a substantial burden to the employer's business.
- The Supreme Court's decision in *Groff v. DeJoy* clarifies that employers must meet a heightened standard before they can lawfully deny an employee's religious accommodation under Title VII of the Civil Rights Act of 1964 ("Title VII").
- The *Groff* decision effectively rejected past interpretations of the undue hardship defense or that employers need only show that a religious accommodation posed more than a *de minimis* cost to lawfully deny it.

## **PRIOR PRECEDENT**

For close to 50 years, courts have analyzed religious accommodation requests based upon the standard set by *Trans World Airlines Inc. v. Hardison*, 432 U.S. 63 (1977). Hardison held that a religious accommodation creates an "undue hardship" if it causes more than a "*de minimis*" burden on the employer's business. Many employers, in turn, relied on *Hardison* in furtherance of their decision only to provide a minimum level of religious accommodation in the workplace.

## **BACKGROUND AND THE DECISION**

Gerald Groff, an Evangelical Christian and United States Postal Service ("USPS") employee, refused to deliver packages on Sundays in observance of the Sabbath. When Groff was initially hired by USPS in 2012, working on Sundays was not a term of employment, but that changed in 2013 when Sunday deliveries were added. Groff requested that co-workers cover his shift on Sundays due to his religious beliefs. The USPS temporarily accommodated Groff's request, but eventually withdrew the accommodation, arguing that Groff's Sunday absences imposed an undue hardship on his colleagues who, in turn, were forced to work extra shifts and

handle extra mail. Groff persisted in his refusal to work on Sundays. He was issued discipline, later resigned, and ultimately filed a lawsuit against the USPS under Title VII for failing to accommodate his religious beliefs.

The district court granted summary judgment to the USPS. The Third Circuit affirmed, and relying on language in *Hardison*, held that requiring an employer to bear anything “more than a *de minimis* cost” to accommodate an employee’s religious observance “is an undue hardship.” The U.S. Supreme Court granted Groff’s petition to review the legal reasoning espoused in *Hardison*. The Supreme Court ultimately held that “an employer must show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business.” The Court went on to note that courts may review “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.” Additionally, the Court noted that past EEOC guidance has suggested the standard is greater than *de minimis*, as it has cautioned against using administrative costs or the infrequent or temporary payment of premium wages as satisfying undue hardship. Beyond this, the Court did not provide much insight as to what a substantial burden or cost may look like, creating significant uncertainty for these types of cases. This has led many employment law practitioners to surmise that a case-by-case assessment in each religious accommodation lawsuit will be necessary.

### **NOTABLE TAKEAWAYS FOR EMPLOYERS**

After *Groff*, employers who deny religious accommodation requests must be prepared to show that the cost to their business of accommodating said request would be excessive or unjustifiable, and if relying on the impact on other employees, they must also demonstrate how it substantially affects the conduct of the business. The impact on other employees analysis may affect requests for schedule changes, Sabbath observance, or prayer breaks, for instance. One example of where impact on coworkers may affect the conduct of the business is when the accommodation would impose a health or safety risk to coworkers or others.

Employers should conduct a comprehensive analysis each time they receive a religious accommodation request by carefully studying its potential impact on the conduct of the business. It is highly advisable for such analysis to be memorialized in writing and supported by documentary evidence in the event it is later challenged.

Employers should also begin considering training any employees who review religious accommodations and are involved in any way in considering and/or approving religious accommodation requests, including Human Resources professionals, supervisory employees and recruiters, on this new heightened standard and how best to apply it within the context of their unique businesses.

If you have any questions about this article or need any assistance evaluating your company’s policies or practices for assessing religious accommodation requests, please contact Naureen Amjad, Kevin S. Borozan or any other member of Masuda Funai’s Employment, Labor and Benefits Group.