THE EMPLOYER'S ADVISORY

A PERIODICAL HIGHLIGHTING
CURRENT EMPLOYMENT-LAW ISSUES

JULY | PREPARED BY THE LAW FIRM OF BECHTEL & SANTO | 2023

Vol. 30, No. 5

Supreme Court Issues Ruling in *Groff v. DeJoy* Changing the Standard for Religious Accommodation

On June 29, 2023, the United States Supreme Court issued a new ruling that changes how courts will interpret religious accommodation claims under Title VII, which is the federal law that concerns, in part, requiring employers to provide for religious accommodations for its employees unless the accommodation would pose an undue hardship on the employer.

In *Groff v. DeJoy,* the Supreme Court reviewed a religious accommodation claim in which Gerald E. Groff, an Evangelical Christian, requested Sundays off from his employer, the United States Postal Service. Previously, courts addressing this issue under Title VII looked at whether the employee's requested accommodation required the employer to "bear more than a de minimis cost" to accommodate the employee, which is often referred to as the "de minimis test." This test is different from the reasonable-accommodation requirement under the Americans with Disabilities Act ("ADA") where the employer must prove that the requested accommodation requires proof of "significant difficulty or expense," which has been viewed as a much higher standard than the Title VII standard.

In *Groff*, the Supreme Court determined that the "de minimis" test that has been used since 1997 was not consistent with Title VII. So, the Supreme Court developed a new standard which falls somewhere between Title VII's old "de minimis" standard and the ADA's "significant difficulty or expense" standard. The new Title VII standard requires employers to establish that the religious accommodation "would result in substantial increased costs in relation to the conduct of its particular business."

The *Groff* ruling alters decades of cases that determined that an employer does not have to provide religious accommodation to an employee if the accommodation requires more than a "de minimis" hardship on an employer.

The Previous Standard

Prior to the decision in *Groff*, employers relied on the decision in *Trans World Airlines v. Hardison* when making decisions on religious accommodation requests. In *Hardison*, the Court indicated that requiring an employer to bear more than a "de minimis" cost to provide religious accommodation was considered an undue hardship under Title VII. Many courts have since followed this reasoning.

The New Standard under *Groff*

In its decision in *Groff*, the Supreme Court reviewed this "de minimis" standard and found it to not be aligned within the meaning of Title VII. The Court indicated a concern that individuals of religious minority groups were being eliminated from active participation in the workforce due to the "de

The Employer's Advisory is published periodically by Bechtel & Santo, PLLC, located at 205 N 4th St, Grand Junction, CO 81501.

minimis" standard. With this concern in mind the Court decided "undue hardship" for religious accommodation request is shown when the accommodation creates a burden that is substantial in the overall context of an employer's business. Meaning that the new standard requires a showing of "substantial" hardship to the employer.

What does this mean moving forward?

The decision in *Groff* means that moving forward businesses and HR professionals will need to take a more active approach in assessing religious accommodation requests. Accordingly, the first thing an employer must do is respond to all requests for religious accommodation (regardless of how the employer may feel about the request). The response must include an interactive process similar to what you would do with an ADA accommodation request.

In this interactive process, the employer should discuss various options with the employee to determine what the accommodation is and how it can be carried out. Cost to the employer alone may no longer be sufficient to deny a request, unless the employer can prove that the cost is "substantial." The Supreme Court provided examples of accommodations that an employer may consider that would not be an undue hardship. For example, the Supreme Court indicated employers should consider voluntary shift swapping programs for employees that request specific days off for religious purposes. But the Court found temporary costs (such as overtime) and additional administrative costs, would no longer suffice to claim an undue hardship when reviewing a religious accommodation request. This means that having to pay other overtime to other employees to cover a shift every now and then would also be an accommodation that should be considered unless doing so would be considered a substantial cost to that particular business. Accordingly, the interactive process with employees should really examine what the employer is actually able to do to fulfill the accommodation request of the employee and should only be denied when there is a significant burden to the employer.

It is important to note that this decision was a unanimous decision of the Court, with Justices Sotomayor and Jackson concurring. Given that a unanimous decision in the Supreme Court is in itself rare these days, it is fair to say that this holding is the new rule that will likely continue for some time.

Please contact Bechtel & Santo with questions if you have any questions on religious accommodation requests moving forward.

UPCOMING SEMINAR

On July 19, 2023, The Employer's Advisory will present an efficient 90-minute presentation on these new bills and what steps employers should undertake. The presentation will be held by the Western Colorado Human Resources Association and co-sponsored by Mesa County Chambers of Commerce. Please check the WCHRA website for more information regarding this presentation. Hope to see you there!!!

Bechtel & Santo will also present a day-long employment-law/HR seminar for the Durango Area Human Resources Managers on August 16, 2023. See https://dahrm.org/ for more information. Hope to see you there.

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