SCOTUS Defines "Undue Hardship," "Reasonable Accommodation" in Religious Context

July 06, 2023

In the *Groff v. DeJoy, Postmaster General* opinion published on June 29, 2023, the Supreme Court gave parameters to the definitions of certain key employment law terms. After nearly 50 years of precedent, the U.S. Supreme Court was presented the opportunity to define the proper test for determining whether an employee's request for an accommodation based upon religious beliefs is reasonable or whether it would present an undue hardship.

In a unanimous 9-0 vote, the Court clarified that undue hardship can only be shown if the burden is *substantial* in the overall context of the employer's business, rejecting the "*de minimus*" standard.

Historical Context

Title VII of the Civil Rights Act of 1964 (Title VII) prohibits discrimination in employment on the basis of religion and requires that reasonable accommodations be made for an employee's religious observance or practices unless such would result in an undue hardship to the employer's business (42 U.S.C. § 2000e(j)). Until the most recent opinion by the United States Supreme Court, there was some disagreement among circuit courts as to how to define "undue hardship," and many lower courts were relying on verbiage from a 1977 Supreme Court decision to determine that a "more than *de minimus*" effort or cost would be an undue burden and thus not required by Title VII of the Civil Rights Act of 1964 (*Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 84 (1977)).

The issue in *Groff* surrounded observance of the Sabbath. As a devout Evangelical Christian, the employee refused to work on Sunday as a mail carrier for the United States Postal Service (USPS). When hired, the employee was not required to work on Sunday, but this changed after the USPS entered into a contractual agreement with Amazon to deliver packages on Sundays. Employees were required to rotate Sunday deliveries, and when the employee refused, other employees were required to cover his shift. Coworkers complained and at least one filed a formal grievance. (*Groff v. DeJoy, Postmaster General,* Slip Op., No. 22-174, p. 3, n.1 (June 29, 2023)). The employee was subjected to progressive discipline until he ultimately resigned in lieu of anticipated termination (*Id.* at 3, n. 2). The Third Circuit relied on the *"de minimus"* standard and determined that exempting the employee from Sunday work created an undue hardship because the exemption "imposed on his co-

workers, disrupted the workplace and workflow, and diminished employee morale," (*Id.* at 3-4; citing *Goff v. DeJoy, Postmaster General,* 35 F. 162, 174-175 (3rd Cir. 2022)).

Consulting the Dictionaries

In its review of the Third Circuit's opinion, the Court considered the plain language of Title VII and the statutory intent of the term "undue hardship." The Court determined that "hardship," at a minimum, means "something hard to bear," and that under any definition is more severe than a "mere burden." By adding the qualifier "undue," the Court determined that Congress intended to raise the requisite burden to one of an "excessive" or "unjustifiable" level (*Id.* at p. 16, citing Random House Dictionary, Webster's Dictionary, and American Heritage Dictionaries). Accordingly, the Court concluded that "undue burden" must refer to something more than a merely "*de minimus"* impact, i.e., "very small or trifling" (At p. 17, citing Black's Law Dictionary). Accordingly, issuing the opinion of the Court, Justice Alito wrote that an employer must show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of the particular business (at p. 18, citing *Hardison* at p. 83, n. 14).

Assessing Accommodations

In making such determinations, employers must first assess an accommodation's effect on the conduct of a business, which includes impacts on coworkers. Impacts on coworkers are only relevant to the extent such affects the conduct of the employer's business. Bias, hostility, or general opposition is insufficient to create an undue burden (*Id.* at pp. 19-20). Second, in addition to assessing the impacts of a requested accommodation, the employer must consider reasonable accommodations. For example, if an employer were to determine that forcing other employees to work overtime would be an undue hardship, consideration of other options, such as voluntary shift swapping, would be required. (*Id.* at p. 20).

Whether or not the fact scenario presented in *Groff* suffices to show an undue burden per the standard established by the Court remains unknown as the case was remanded to the lower court for consideration in light of the established standard.

Employer Takeaway

Any employer with more than 15 employees is required to consider reasonable accommodations when requested for an employee's religious beliefs or practices. This could include time off from work, adjustments to an employee's schedule, or modifications to an employer's dress code. Any such request must be carefully considered, and alternative methods of providing the accommodation must be fully explored. The Supreme Court has made clear that the "undue burden" standard is a high one, and an employer must be able to not only show the significance of the cost and impact of an accommodation in light of the overall context of the business, but also must be able to show that alternative means for providing the accommodation were considered. This will be a very fact specific analysis to be made on a case-by-case basis, and it would be prudent for employers to seek legal assistance prior to denying a religious accommodation request.

McGlinchey’s Labor and Employment team continues to closely monitor emerging issues and legislative and judicial updates impacting businesses nationwide. Stay tuned for further updates regarding recent Supreme Court decisions of interest to employers and management.

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