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U.S. Supreme Court Issues Major Decision on Religious Accommodations and Forcing Employees to Work on Days of Observance

The United States Supreme Court issued a major decision at the end of its 2022/23 term which will have far-reaching implications on any employer who tries to force employees to work on their day of religious observation (whether the Sabbath or otherwise). On June 29, 2023, in a rare unanimous decision, in Groff v. DeJoy, the U.S. Supreme Court set a new higher bar before an employer can force an employee to work, despite his/her objections that working that day would violate their religious observations. Going forward, employers must meet a heavier burden in order to force employees to work what are typically a weekend day, when most religious observances take place.

The Court's analysis started with the accepted standard. That is, under Title VII of the Civil Rights Act, an employer has to make reasonable accommodations of an employee's religion, unless it poses what is known as an "undue hardship" on the employer. Unlike in the world of the Americans with Disabilities Act (ADA), where employers have long understood that undue hardships are difficult to prove, with Title VII religious accommodations, the threshold to show an undue hardship was often viewed as somewhat lower. That, is, prior to this Groff decision, employers could more easily require its employees to work on days of religious observation, because of a prior Supreme Court decision in 1977. In that case, Trans World Airlines, Inc. v. Hardison, the Court had applied the typical analysis of Title VII, but also stated that an "undue hardship" was an effort or cost that is "more than … de minimis." Since 1977, many courts have viewed that language as suggesting that as long as an employer could show that accommodating an employee's need for time off due to religion was something above de minimis, then the employer did not have to grant the accommodation. So, for example, employers -- before last week -- felt safer to deny a religious accommodation for a day off if the time off would impact overall costs (such as regular increased overtime) or even (at times) employee morale.

However, the Groff decision has significantly changed that view. The Court highlighted and rejected the Trans World Airlines "more than de minimis" approach. Instead, the Court held that a showing of "undue hardship" requires an employer to "show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business." To reach its decision, the Court took up the meanings of the statutory terms "undue" and "hardship". While "a hardship is more severe than a mere burden," the Court reasoned that when the term "undue" is added to "hardship", the requisite burden "must rise to an 'excessive' or 'unjustifiable' level." So, as with the ADA, the Court now requires not just a showing of something other than minimal effect; employers now need to show that the religious accommodation will result in "substantial additional costs" or "substantial expenditures". Although the Court declined to expand upon the context-specific application of its clarification (which it left to the lower courts), the Court indicated that "all relevant factors" must be considered, such as "the particular accommodation at issue and its practical impact in light of the nature, size, and operating cost of [the] employer."

The Court did not provide specific examples. But, under the analysis, it certainly is clear that some added costs, such as paying another employee overtime to fill the vacant position on a weekend, would not be an undue hardship in most circumstances. The Court also referenced administrative or labor costs of coordinating voluntary shift swaps as "too insubstantial" to be considered "undue".

In addition, the Court also seemingly rejected the notion that employee morale can be a factor in the undue hardship analysis. To be clear, the Court noted that part of the undue hardship analysis can include considering the impact of the accommodation on coworkers. But, the Court emphasized that the impact on coworkers can only be considered to the extent that it impacts the conduct of the business. So, in theory (not directly addressed by the Court), there may be situations, such as a small employer or a large percentage of workers needing the same accommodation, where the impact on coworkers can rise to the level of an undue hardship. Yet, any general distaste among coworkers is certainly not sufficient. As Justice Sotomayor's concurring opinion (joined by Justice Jackson) noted, "'conduct of a business' plainly includes the management and performance of the business's employees[.]" There are certain effects on coworkers, however, that the Court called out as not constituting undue hardship, such as animus towards a religion but even animus towards a religious accommodation.

Lastly, in any case, it is not enough for an employer to simply assess the reasonableness of an accommodation. The employer must also consider other options. Using Groff's accommodation request as an example, the Court said it would not be enough to conclude that forcing other employees to work overtime would be an undue hardship, but that it would be necessary to consider other options such as shift swapping.

This decision can have significant implications for businesses that operate on weekends, which are the traditional days of religious observation. The Court did not address other open issues or alternatives, such as whether an entire day must be accommodated, or how an employer can address whether a religious belief is sincerely-held. Unlike ADA accommodations, where medical notes can be required, nothing in the law would seem to allow the requirement of written proof for religious accommodations. Any employer faced with a request for a religious accommodation, especially a day off, should reexamine its current practices and assess whether the accommodation is required.

If you have any questions about this important decision, or religious accommodations in general, please feel free to contact Yvette Cave, a member of Archer's Labor and Employment Group, at 856-673-7154 or ycave@archerlaw.com.