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

Client Advisories

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The United States Supreme Court issued a major decision at the end of its 2022/2023 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 on a day of religious observation. Going forward, employers will now face a bigger hurdle before they can force employees to work what is typically a weekend day, when most religious observances take place.

In the Groff case, a federal postal worker was being required to work Sundays, as part of changes imposed by the United States Postal Service, due to increased competition from a variety of delivery services. Mr. Groff claimed that this violated his right to exercise his religion, and therefore a violation of federal civil rights laws prohibiting religious discrimination in the workplace. The Postal Service denied his accommodation requests, claiming it would be an undue burden to allow him Sundays off, given the need for Sunday work, which was required of all similar postal carriers, and the employee resigned under protest. The case wound its way through the federal courts and reached the U.S. Supreme Court this last Term. The Supreme Court sided with the employee.

Under federal law, employers have always had to make reasonable accommodations of an employee's religion, unless it would create an "undue hardship" on the business. Most employers are familiar with undue hardships and how difficult they can be to prove when an employee is medically unable to work (which are analyzed under the ADA, the Americans with Disabilities Act). But, with religious accommodations, Courts had been more forgiving --- prior to this Groff decision, employers could more easily require its employees to work on days of religious observation. That was because of a prior Supreme Court decision in 1977, Trans World Airlines, Inc. v. Hardison, which had suggested employers could turn down religious accommodation requests, as long as the burden on the employer was above *de minimis*. So, employers -- before June 29th -- felt safer to deny a religious

accommodation for a day off if the time off would impact overall costs (such as 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 substantial increased costs from the religious accommodation. The end result is that the approach is similar to the ADA approach -- employers now can only deny the accommodation if it results in "substantial additional costs" or "substantial expenditures."

The Court did not delve into how this would apply in specific contexts. But the Court gave some hints. That is, the Court indicated that "all relevant factors" must be considered, but that this would include examining the nature, size and operations of the business. Under that language, it seems 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. In addition, the Court also appeared to reject the notion that employee morale can be a factor in the undue hardship analysis. Although the Court said that part of the analysis can include a look at the impact of the accommodation on coworkers, the Court emphasized that the impact on coworkers can only be considered to the extent that it impacts the business itself, such as onerous work hours for coworkers. General resentment or animus of coworkers was called out by the Court as not a sufficient reason to deny the accommodation.

This decision can have significant implications for businesses that operate on weekends, which are the traditional days of religious observation. Employers must not reject accommodation requests as a blanket rule, and must instead assess the impact on the business and whether other alternatives exist, such as swapping shifts or adjusting work hours. The Court also did not address other open issues or alternatives, such as whether an employee must be given off the entire day 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 let an employer demand written proof of attending religious services, absent obvious evidence of fraud.

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 now 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 ycave@archerlaw.com or 856-673-7154.

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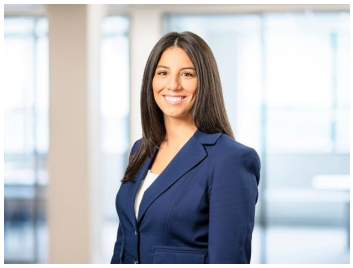

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