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Faith at Work and the New Sacred Balance: Understanding the More Stringent "Undue Hardship" Standard

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Employers evaluating religious accommodations under Title VII are now required to strike a new balance due to the U.S. Supreme Court's recent clarification of what constitutes an "undue hardship." Employers should promptly reassess the factors they use to weigh the costs of providing religious accommodations in the workplace to avoid being caught off guard.

The Recent Decision: *Groff v. Dejoy*

Employers are not required to provide religious accommodations to employees when doing so would impose an "undue hardship." For nearly 50 years, an "undue hardship" was construed as an effort or cost that was "more than *de minimis*." The Court now calls that interpretation a "mistake" and has recently set forth a new higher standard for employers in ***Groff v. DeJoy***. In a lengthy opinion seeking to "clarify what Title VII requires," the Court announced that a hardship is "undue" when the burden it imposes is "**substantial in the overall context of an employer's business**." This clarification may ultimately tip the scale in favor of granting religious accommodations which may have been denied in the past.

Overview of Title VII and Religious Accommodations

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Under Title VII, an employer is prohibited from discriminating against an employee based on religion. In this context, "religion" includes all aspects of religious observance and practice, as well as belief. Religious accommodations must be provided unless the employer demonstrates that it is unable to reasonably accommodate an employee's or prospective employee's religious observance, practice, or belief without undue hardship on the conduct of the employer's business. According to the EEOC, these protections apply whether the religious observances, practices, or beliefs in question are common or non-traditional, and regardless of whether they are recognized by any organized religion, as long as they are "sincerely held." Examples of religious discrimination include taking adverse action motivated by a desire to avoid accommodating a religious observance, practice, or belief that the employer knew or suspected may be needed and would not pose an undue hardship; and denying a needed reasonable accommodation that would not impose an undue hardship on the conduct of the business.

The Pathway to Considering Religious Accommodations

The process generally starts when an employer is on notice of the need for a religious accommodation—either because an applicant or employee indicated that an accommodation is needed for religious reasons, or because other facts or circumstances provide the employer with enough information to know that there is a conflict between an employee's religious needs and the employer's job requirements. Upon receiving a request, an employer should promptly acknowledge the request and document any details. The next appropriate step, according to the EEOC, is similar to the "interactive process" employers regularly engage in when faced with a request for a disability accommodation. Although this step is not expressly required by Title VII for a religious accommodation request, it is a best practice. After obtaining sufficient information

through discussions with the employee, an employer should then determine whether it can reasonably accommodate the religious need, or if doing so would pose an undue hardship on its business. Where there is more than one possible accommodation, an employer may select from the several possibilities in determining which accommodation to provide, and an employee is not necessarily entitled to the accommodation of their choice. Ultimately, the reasonableness of an accommodation is a fact-specific determination made on a case-by-case basis, and should only be denied where it would pose an undue hardship.

The "New" Meaning of Undue Hardship

For nearly five decades, both the courts and the EEOC construed a hardship as "undue" when the employer would be required **"to bear more than a *de minimis* cost."** The EEOC has historically noted that the "*de minimis* cost" standard for rejecting religious accommodations under Title VII was less stringent compared to the ADA. In *Groff v. DeJoy*, the Court rejected that interpretation, although it was based upon its own longstanding precedent, and reworked the framework for evaluating "undue hardship" under Title VII. The Court reasoned that the term "undue hardship" at a minimum has to be "something hard to bear," meaning something greater than just hardship. Understanding and defining undue hardship in this way, it means something "very different from a burden that is merely more than *de minimis*." The takeaway is that the burden must be "substantial in the overall context of [the] employer's business."

Moving Forward – What May Stay the Same:

Much of the EEOC's guidance, and many of the procedures employers have in place for employees to request a religious accommodation, will be unaffected by the Court's opinion in *Groff.* Employees will still have to place their employer on notice of the need for an accommodation due to a religious practice.

Employers should still gather any additional information they need to make an informed decision. The analysis must still be conducted on a case-by-case basis, although the weight on the scale may now be nudged more in the direction of granting religious accommodations if the burden would not be "substantial."

Moving Forward – What May Be Different:

The Court's decision in *Groff* will certainly impact the final decision of whether to grant or deny a request based on its impact on the Company and its operations, and the weighing of costs versus accommodating. Employers may be required to bear a greater burden when accommodating an employee's religious observances, practices, or beliefs. Exactly how much more of a burden remains to be seen. In *Groff*, the Court declined to adopt the same "undue hardship" test for Title VII as under the ADA, so the boundaries are still nascent and undefined. We do know, based on the Court's analysis, that the test "may" include consideration of the accommodation's effect on co-workers. However, having clarified the appropriate test, the Court left it up to the lower courts to perform the context-specific application of the standard to the cases that come before them.

The recent Covid-19 pandemic has forced many employers to become reacquainted with the requirements and standards that apply when considering a request for a religious accommodation. In 2022 there was a substantial influx of charges of religious discrimination filed with the EEOC, attributable primarily to employer imposed vaccine-requirements. In fact, nearly 20% of all charges of discrimination filed in 2022 were for religious discrimination. Given the clarified standard for undue hardship under Title VII for religious accommodations, employers need to be ready to address an influx of new or renewed requests, as employees test the boundaries of the new standard. For assistance or guidance in navigating the new "undue hardship" standard for

religious accommodations, contact your Akerman labor and employment attorney.
