NEWS

Supreme Court Fortifies Standard for Religious Accommodations

Employers will need to prove religious accommodations inflict substantial costs before denying them

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The U.S. Supreme Court has ruled that employers can only deny an employee's request for a religious accommodation under federal law if they can prove it would result in substantial increased costs for the business.

In a unanimous **decision - (https://www.supremecourt.gov/opinions/22pdf/22-174_k536.pdf)** on June 29 in ***Groff v. DeJoy*** **- (https://edit.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/pages/supreme-court-sabbath-observance.aspx)**, the court emphasized that the hardship must be a substantial—rather than minimal—cost for an employer to deny an accommodation request. It sent the case back to lower courts for further review.

"A good deal of the Equal Employment Opportunity Commission's guidance in this area is sensible and will likely be unaffected by the court's clarifying decision," Justice Samuel Alito wrote in the opinion.

Nevertheless, "this is a very significant result, as this is the first time in more than four decades that the Supreme Court has addressed the issue of accommodation of religious beliefs in the workplace," said Joseph Beachboard, an attorney with Beachboard Consulting Group in Los Angeles. "Religious discrimination claims are one of the hottest growth areas in employment law today."

Background

Under Title VII of the Civil Rights Act of 1964, employers must reasonably accommodate all aspects of an employee's religious observance or practice that can be accommodated without creating an undue hardship for the business.

The court's decision on June 29 went further than the long-standing interpretation of the *Hardison* decision, which said an employer didn't have to provide a religious accommodation if it would impose more than a de minimis burden on the business, meaning more than a trivial cost.

Gerald Groff, a former postal worker, sued the U.S. Postal Service (USPS) for failing to accommodate his religious practice. Groff is an evangelical Christian who observes a Sunday Sabbath, meaning he doesn't work on that day. USPS does not deliver mail on Sundays, but it does have a contract to deliver packages for Amazon that includes

Sunday deliveries. USPS sought co-workers to voluntarily cover Groff's Sunday shifts, and it imposed progressive discipline for Groff's absences. Eventually, Groff resigned.

The U.S. District Court for the Eastern District of Pennsylvania held that exempting Groff from Sunday deliveries caused undue hardship because it negatively impacted Groff's co-workers, who had to fill in for him, and may also require the USPS to violate a collectively bargained agreement. The 3rd U.S. Circuit Court of Appeals agreed and ruled that the accommodation created an undue hardship because it disrupted workflow and diminished employee morale.

"Faced with an accommodation request like Groff's, an employer must do more than conclude that forcing other employees to work overtime would constitute an undue hardship. Consideration of other options would also be necessary," Alito wrote. Other options could include shift swapping, paying incentives to pick up Sunday shifts or coordinating with nearby postal facilities to pull from a broader set of workers.

The new ruling sets "a much higher bar and will make it more difficult for employers to say no to a request for an accommodation for religious reasons," said Tracey Diamond, an attorney with Troutman Pepper in Princeton, N.J.

Now employers "clearly face a more onerous test if their denial of a religious accommodation is challenged in the courts," Beachboard said. The new ruling "does direct the lower courts to evaluate the practical impact of an accommodation on the conduct of the employer's business, based on the nature, size and operating cost of that organization."

The case shows that "hardship means more than a mere inconvenience, and undue hardship means significantly more," said Robin Shea, an attorney with Constangy, Brooks, Smith & Prophete in Winston-Salem, N.C. "A court will find undue hardship only if the accommodation would result in substantial increased costs in relation to the conduct of the particular business. As a practical matter, this means that larger employers may have a

difficult time prevailing on an undue-hardship defense because they can presumably absorb more of the cost of accommodation."

The hardship cannot stem from religious intolerance. "A hardship that is attributable to employee animosity to a particular religion, to religion in general, or to the very notion of accommodating religious practice, cannot be considered undue. Bias or hostility to a religious practice or accommodation cannot supply a defense," Alito wrote.

Workplace Accommodations

A Sabbath accommodation could apply to a number of faiths. For example, Seventh-day Adventists, Orthodox Jews and members of the Church of Jesus Christ of Latter-day Saints are generally not permitted to work on the day they observe the Sabbath.

Examples of religious accommodations include scheduling changes, voluntary shift substitutions, job reassignments, modifying the company dress code or grooming policy, or designating a private location in the workplace where a religious observance can occur. Using paid vacation or unpaid leave could be an accommodation for observing the Sabbath.

Going forward, "employers must recognize that much more will now be expected of them, and those that fail to adjust may find themselves involved in expensive litigation. For most employers, that will result in taking a broad view on religious accommodation obligations to avoid being the defendant that clarifies the law in this area," Beachboard said.

Businesses should "immediately provide training for any employees who review religious accommodations, including HR and in-house counsel, on how to apply the new standard to requests for religious accommodation," said Dawn Solowey, an attorney with Seyfarth in Boston. The *Groff* decision "will embolden the plaintiffs' bar and religious rights groups. Expect to see more religious accommodation lawsuits in its wake."