Insights, News & Events

3 TAKEAWAYS FOR EMPLOYERS AS SCOTUS AGREES TO REVIEW RELIGIOUS ACCOMMODATIONS TEST

Insights
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Will the Supreme Court make it more difficult for employers to deny religious accommodation requests even if they are burdensome for the business? Recently, the Justices agreed to decide a case brought by a mail carrier who was disciplined by the U.S. Postal Service for refusing to work on Sundays. The USPS said a blanket Sundays-off accommodation would place too heavy a burden on his coworkers — who would need to cover more weekend delivery demands — and the appellate court agreed, siding with USPS. The mail carrier, however, asked SCOTUS to overturn the ruling, and in doing so, reverse a decades-old precedent. The ultimate ruling in this case could have a significant impact on your operations. Therefore, you should stay informed on this case and consider these three important issues while we wait for SCOTUS to reach a decision in *Groff v. DeJoy*.

1. Reviewing Requests for Religious Accommodations

Gerald Groff, a rural mail carrier for USPS, observes the Sabbath every Sunday. Although he was initially able to avoid working Sundays, the USPS increasingly scheduled Groff for Sunday shifts as demand for weekend deliveries increased. When he refused to work Sunday shifts, USPS disciplined him. Ultimately, Groff quit and filed a lawsuit claiming that USPS violated Title VII of the Civil Rights Act of 1964 by failing to provide him religious accommodation.

Under Title VII, covered employers with at least 15 employees must provide reasonable accommodation to employees when they have sincerely held religious beliefs,

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practices, or observances that conflict with work requirements, *unless the accommodation would create an undue hardship*.

Although USPS has a large workforce, it had few mail carriers where Groff worked in rural Central Pennsylvania. Thus, USPS argues that allowing him to take every Sunday off would create an undue hardship in part because of the burden that it would put on other employees. But what exactly is an undue hardship?

2. Determining Whether an "Undue Hardship" Exists

The case focuses on SCOTUS precedent from 1977 stating that an "undue hardship" occurs when an accommodation requires an employer to "bear more than a *de minimis* cost."

USPS argues that permitting Groff Sundays off created morale and scheduling problems and "resentment towards management." Additionally, USPS said one employee who was forced to cover Sunday shifts filed a union grievance claiming that USPS's Sundays-off arrangement with Groff violated a memorandum of understanding addressing Sunday and holiday delivery work.

The 3rd U.S. Circuit Court of Appeals sided with USPS and observed that the hardship in this case "far surpasses a *de minimis* burden."

Groff, however, is challenging the Supreme Court's decades-old precedent. He argues that "undue hardship" suggests that "an employer must incur *significant* costs or difficulty before it is excused from offering an accommodation," which is more in line with the undue hardship test used for accommodating disabilities in cases arising under the Americans with Disabilities Act. He also claims that the *de minimis* test "effectively nullifies the statute's promise of a workplace free from religious discrimination."

3. Weighing the Impact on Coworkers

Further, Groff argues that coworker "inconvenience" does not create undue hardship for employers. He claims that "an accommodation's effect on a co-worker may lead to an undue hardship on the employer," but "an impact on co-workers — without proof of harm to the business — should not suffice to establish undue hardship under Title VII."

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When siding with USPS, however, the 3rd Circuit provided examples of undue hardship including "negative impacts on the employer's operations, such as on productivity or quality, personnel and overtime costs, increased workload on other employees, and reduced employee morale."

The appellate court noted that "poor morale among the workforce and disruption of workflow" are circumstances that "could affect an employer's business and could constitute undue hardship."

What Should You Do for Now?

The Justices accepted the case on January 13 but have not set a date for oral argument. The Supreme Court term begins on the first Monday in October each year and generally runs until late June or early July. Thus, the Court is expected to hear arguments in the next few months and issue an opinion by the end of its term in June. It is possible, however, that the Court pushes this case into its next term. If that happens, employers will need to wait until the end of 2023 or early 2024 to have resolution of the matter.

In the meantime, covered employers should review accommodation policies and practices. When an employee requests religious accommodation, covered employers should engage in a good faith interactive process with the requesting employee, consider the request and possible accommodations, and consider whether accommodation might cause the employer undue hardship. Examples of reasonable accommodations might include:

- schedule or shift changes;
- exceptions to dress and grooming standards,
- job reassignment;
- remote work arrangements;
- paid or unpaid time off;
- prayer breaks; and
- private spaces for religious observances.

Employers do not need to grant accommodation that causes undue hardship. The Equal Employment Opportunity Commission (EEOC) — the agency that enforces Title VII —

has said an accommodation may cause an undue hardship under the current standard if it:

- is costly;
- compromises workplace safety;
- decreases workplace efficiency;
- infringes on the rights of other employees; or
- requires other employees to do more than their share of potentially hazardous or burdensome work.

At least for now, an undue hardship based on cost requires more than a *de minimis* — or minimal — cost to the employer. Covered employers should consult and coordinate with labor and employment counsel to determine if requested religious accommodation causes undue hardship. And, of course, keep an eye on *Groff v. DeJoy* to see if SCOTUS changes the current standard because employer policies and practices may need revision to stay compliant.

Conclusion

We will continue to monitor developments related to this case and provide updates (and predictions) after oral argument, so make sure you subscribe to Fisher Phillips' Insight System to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney or the authors of this Insight.