

SUPREME COURT MAKES IT MORE DIFFICULT FOR EMPLOYERS TO DENY RELIGIOUS ACCOMMODATIONS: YOUR 6-STEP ACTION PLAN

Insights
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Employers now have a higher hurdle to clear when determining whether an employee's religious accommodation request would cause an undue burden on their business. A mail carrier argued that it was too easy for his employer to reject his request for Sundays off under a decades-old legal test that gave employers considerable leeway. As [we predicted earlier this month](#), SCOTUS just clarified a higher standard under federal law than the lower courts applied. In a unanimous decision today, the Court said federal anti-discrimination law 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." Here's what you need to know about the ruling and your 6-step action plan to ensure compliance with the clarified standard.

How Did We Get Here?

Under Title VII of the Civil Rights Act, covered employers with at least 15 employees must provide reasonable accommodation to employees when they have sincerely held religious beliefs, practices, or observances that conflict with work requirements – *unless the accommodation would create an undue hardship*. But what exactly is an undue hardship?

[Groff v. DeJoy](#) focuses on the interpretation of SCOTUS precedent from 1977 finding that an "undue hardship" occurs when an accommodation requires an employer to "bear more than a *de minimis* cost."

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Gerald Groff, a rural mail carrier for USPS, observes the Sabbath every Sunday. Although he initially avoided working Sundays, his employer increasingly scheduled him for Sunday shifts as demand increased. When he refused to work on Sundays, USPS disciplined him. Ultimately, Groff quit and filed a lawsuit claiming that his employer violated Title VII by failing to provide him religious accommodation.

USPS argued 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 the 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, challenged the Supreme Court’s decades-old precedent. He argued 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 claimed that the *de minimis* test “effectively nullifies the statute’s promise of a workplace free from religious discrimination.”

How Did SCOTUS Rule?

While the Justices did not go so far as to scrap the Court’s precedent and fully adopt Groff’s position, they did clarify a higher standard than the “*de minimis*” test that lower courts generally apply.

SCOTUS held that showing “more than a *de minimis* cost” does not suffice to establish “undue hardship” under Title VII. Indeed, the Court said that its 1977 precedent cannot be reduced to that one phrase. The unanimous Court noted that the opinion referred repeatedly to “substantial” burdens, which to the Justices better explains the earlier decision.

“We think it is enough to say that an employer must show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business,” Justice Alito wrote for the Court.



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Alito added that “courts must apply the test in a manner that takes into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, size, and operating cost of an employer.”

SCOTUS vacated and remanded the case back to the lower courts to apply the clarified standard to the specific facts of the case. This means it’s still possible for USPS to prevail, but the lower courts will need to evaluate whether the burden of granting the accommodation would result in substantial increased costs.

What Impact Will the Ruling Have on EEOC Guidance?

The Court said today’s ruling should result in few, if any, changes to the U.S. Equal Employment Opportunity Commission’s (EEOC’s) guidance explaining why no undue hardship is imposed by temporary costs, voluntary shift swapping, occasional shift swapping, or administrative costs.

“We have no reservations in saying that a good deal of the EEOC’s guidance in this area is sensible and will, in all likelihood, be unaffected by our clarifying decision today,” Alito wrote. “After all, as a public advocate for employee rights, much of the EEOC’s guidance has focused on what should be accommodated.”

What 6 Compliance Steps Should You Consider Taking Now?

In light of the clarified, heightened standard, you should consider adopting this six-step action plan to ensure compliance:

- 1. Train your managers** to be attuned to an expected increase in religious accommodation requests you’ll see in the immediate aftermath of this decision – **and train your HR staff** to adjust their policies in responding to these requests. Specifically, we expect to see employers face increased requests for scheduling changes, time off, prayer breaks, job reassignments, modifications to dress codes and grooming policies, and designations of private locations in the workplace for religious observances.
- 2. Adjust any policies, practices, and written materials** you have in place that lay out your approach to religious

accommodation requests to adapt to the clarified standard. Some key elements to build best practices include:

- Engage in a cooperative and interactive dialogue with employees when they present a request for a religious accommodation. Some employers use a written form to gather information from the employee in these circumstances.
- Once you grant an accommodation request, your work isn't over. Follow up with the employee at regular intervals to ensure the accommodation is working out for them – and their supervisor to determine if adjustments need to be made.
- If you deny a request, provide written reasoning for the decision so your position is clear. Some courts or agency investigators may not look favorably on cursory rejections that don't provide context or reasoning.
- Now, more than ever, documentation will be key. Reinforce with your managerial and HR staff the importance of closely documenting all communications and decisions made related to religious accommodation requests every step of the way.

3. Coordinate with your legal counsel to get a sense for the type of evidence of significant cost or difficulty you'll need to observe in your particular organization in order to deny a religious accommodation request under the new federal standard. Factors that would most likely be taken under consideration include:

- your financial resources;
- the nature and cost of the requested accommodation;
- the number of workers at your organization;
- the impact of the requested accommodation on your employees;
- the potential safety implications; and
- the nature of your operations.

4. **Identify any recent religious accommodations** you have granted – or rejected – and determine (with the help of legal counsel) whether you need to adjust any decisions you have made given the new standard now in place.
5. **Have a proactive plan** for addressing any workplace resentment and disruption that could arise from granting religious accommodations to some employees – while being careful to protect those employees receiving accommodations from retaliation. This includes fostering a culture of respect and inclusivity as part of your DEI initiatives to minimize conflicts and provide support for those of all religious faiths in your organization.
6. **Be sure you take state and local laws into account** that create even greater obligations for employers in the field of religious accommodations. This decision only impacts federal law and doesn't lower the bar for any local laws that offer your employees even stronger protections.

Conclusion

We will continue to monitor developments in this area and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information. If you have questions, contact your Fisher Phillips attorney or the authors of this Insight.