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WHEN CAN YOU DENY A RELIGIOUS ACCOMMODATION? 6 PRACTICAL STEPS FOR EMPLOYERS AS GUIDANCE EVOLVES

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When Can You Deny a Religious Accommodation? 6 Practical Steps for Employers as Guidance Evolves

Many employers have seen an uptick in religious accommodation requests over the last three years following a Supreme Court decision making it harder for employers to deny them. Employers have wrestled with applying the new standard as dozens of courts have weighed in on their actions and the EEOC has made it a priority to protect workers from religious bias and harassment. We'll tell you how these evaluations have evolved in recent years, as well as six practical steps to help you stay compliant.

When Can an Employer Deny a Religious Accommodation?

Under federal law, an employer with at least 15 employees needs to reasonably accommodate its employee's religious observance or practice unless it would cause undue hardship on the business. Three years ago, in *Groff v. DeJoy*, the Supreme Court clarified that "undue hardship" means a burden that is "substantial in the overall context of an employer's business." To avoid liability, an employer cannot merely show that a religious accommodation would impose "some sort of additional costs," SCOTUS said.

Rather, the employer must demonstrate that the resulting cost is substantial enough to cause hardship. Moreover, the cost has to be "in relation to the conduct" of the employer's "particular business." And SCOTUS suggested that "no

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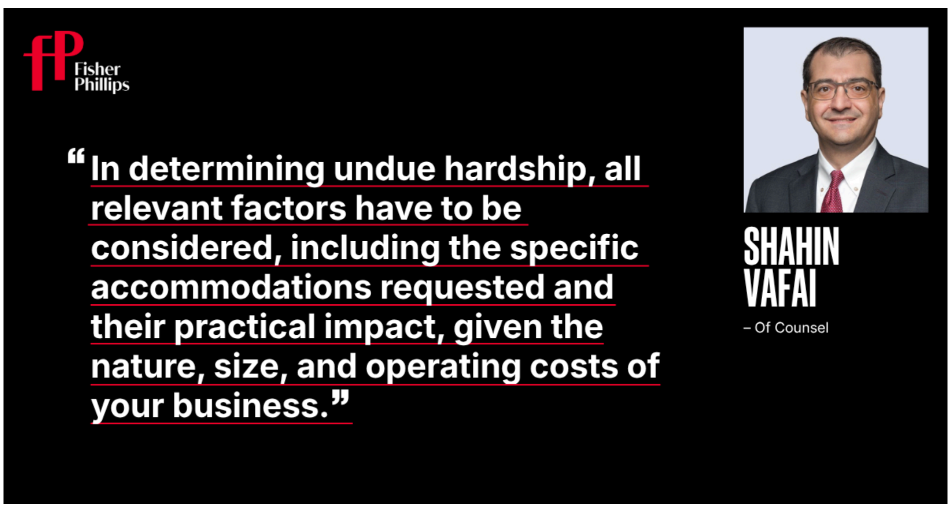
Employment Discrimination and Harassment undue hardship is imposed by temporary costs, voluntary shift swapping, occasional shift swapping, or administrative costs."

In determining undue hardship, all relevant factors have to be considered, including the specific accommodations requested and their practical impact, given the nature, size, and operating costs of your business.

> **Key Point:** In practical terms, this means a small added cost or inconvenience is not enough to deny a religious accommodation request. You'll need to show it would cause a significant burden to your particular business and circumstances. So, for example, an accommodation may be substantial for an employer with 20 employees but not for one with 2,000 employees.



Broad Principles Related to Undue Hardship

In the years since *Groff*, federal appeals courts have weighed in and a few broad principles have taken shape:

- Courts may evaluate both economic and non-economic costs when determining whether an undue hardship exists. For example, an employer can consider health, safety, or other types of costs.
- While a merely conceivable or hypothetical risk of an undue hardship is not enough, a realistic risk will suffice even if it hasn't yet occurred.
- Employers are judged based on their own business and circumstances, not generally based on what other employers might do.

- Courts should assess the undue hardship of a particular religious accommodation based on the impact it would have if granted to all similarly situated employees.

- An employer may not deny an accommodation request simply because co-workers dislike the employee's religious practice or expression.

4 Specific Considerations When Showing Undue Hardship

These are the key considerations, according to federal appeals courts, when determining whether a religious accommodation request would create an undue hardship for the employer:

1. Substantial Costs Are the Most Direct Evidence

Naturally, the most direct way an employer can show an undue hardship is through clear evidence of substantially increased costs. For example:

- One appellate court found that an employer had met its burden of showing that the employee's proposed remote work accommodation would result in substantially increased costs, as the employer would have to hire another person to cover the employee's necessary in-person duties.

- Yet another court found that an employer showed evidence of undue hardship when faced with a religious accommodation request by firefighters who did not get the COVID-19 vaccination. The employer had reasonable concerns about losing a lucrative contract to provide emergency medical services, since the client required proof of vaccination by on-site contractors.

- In that same case, the employer successfully argued that if it did not require firefighters to get vaccinated against COVID-19, it also faced potential liability as a result of any firefighter transmitting the illness to a patient, given that the employer's insurance policy excluded liability for communicable diseases.

2. Employers Are Not Required to Violate Federal or State Law

A handful of federal appellate decisions have recognized that an employer can show undue hardship if granting a religious accommodation would require them to violate the law. Employers have successfully advanced this argument in COVID-19 cases where, for example, they were covered by laws mandating employee vaccination.

Key Point: As one appellate court put it, an employer is not required to accommodate an employee if doing so "would place it on the razor's edge of legal liability."

3. Courts Will Consider Employee Safety and Other Non-Economic Factors

Employers may be able to establish undue hardship through a wide range of rationales that may not always be strictly tied to costs. For example, federal anti-discrimination law does not require you to prioritize an employee's religious accommodation request over the safety of other employees. So, a safety risk to fellow employees could constitute an undue hardship justifying denial of the accommodation. Nevertheless, one appellate court did require the employer who was concerned about the safety of others to tie it to increased costs. Check with your attorney if you are concerned about safety risks.

4. EEOC Guidance Matters

In *Groff*, the Supreme Court observed that "a good deal of the EEOC's guidance in this area is sensible and will, in all likelihood, be unaffected" by the *Groff* decision. In light of this observation, many federal appellate courts have considered the EEOC's guidance when weighing religious accommodation issues. You should also note that the EEOC has recently made religious accommodation an enforcement priority, which makes it more important than ever to ensure you have a comprehensive and compliant plan for handling accommodation requests.

Further Reading: We flagged this EEOC shift when Andrea Lucas was named Chair. Our analysis of her early priorities noted she was already vowing to focus on "protecting workers from religious bias and harassment," and a companion Insight that same week warned employers that religious accommodation requests might need to be considered anew. Those warnings became policy once the agency regained its full quorum in late 2025 and specifically named expanded religious rights enforcement among the top developments. Indeed, in June the EEOC released a new National Enforcement Plan that specifically highlighted claims involving the application or scope of the Supreme Court's *Groff* decision.

How Do You Prove Undue Hardship?

Recent federal appeals court rulings have provided lessons for employers on establishing an undue hardship defense:

- The defense is fact-intensive and context-dependent, so you cannot simply offer broad generalities.
- Be sure to detail how the requested religious accommodation substantially burdens your business.
- Think carefully about the burden, gather evidence to support it, and appropriately document it.
- Be consistent. For example, you may undermine your undue hardship argument by denying a religious head covering while allowing baseball caps, or by barring a male employee from wearing long hair for safety reasons while allowing female employees to do so.

Employers have sometimes lost religious accommodation cases not because their undue hardship rationales were faulty but because they failed to provide sufficient evidence to justify the rationales. In addition to presenting evidence through witnesses, you may need to offer expert testimony to demonstrate the undue hardship.

6 Practical Steps for Employers

What practical lessons do the Supreme Court's *Groff* ruling, subsequent appeals court decisions, and EEOC guidance offer? Here are six takeaways for employers faced with religious accommodation claims that may cause an undue hardship:

1. Consider the Costs: Temporary costs, shift swapping, or routine administrative expenses generally are not enough on their own to show undue hardship.

2. Determine the Broader Impact: Consider what the impact would be if the same accommodation were granted to all similarly situated employees.

3. Review EEOC Guidance: The agency offers examples of potential accommodations.

4. Assess Non-Economic Burdens: Consider whether the accommodation would create substantial non-economic burdens in addition to any financial costs.

5. Document the Burden: Identify the specific burden, gather facts supporting your determination, and document why it creates a hardship.

6. Be Consistent: Make sure your undue hardship determination is consistent with your other practices.

Conclusion

We will continue to monitor developments and provide updates as warranted. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information direct to your inbox. If you have questions, contact your Fisher Phillips attorney or the author of this Insight.

