Religion and Work: The Devil is in the Details

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Sheri L. Giger, Esq.

Ogletree Deakins

Nicholas W. Kennedy, Esq.

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Groff v. DeJoy – the postal worker religious accommodation case

- Groff worked in mail delivery job with USPS and is an Evangelical Christian
  - Generally no Sunday work
  - Then USPS facilitated Sunday deliveries for Amazon
  - To avoid working on Sundays, Groff transfers to a rural route with no Sunday deliveries
  - But deliveries began at that station
- Groff remains unwilling to work Sundays
- USPS redistributes Groff's Sunday deliveries to other staff
- Groff receives progressive discipline for failing to work on Sundays
- Groff eventually resigns
- Groff sues – asserts his employer could have accommodated w/o undue hardship

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Groff v. DeJoy (continued)

- Title VII requires an employer to reasonably accommodate the sincerely held religious beliefs of an employee where it can do so "without undue hardship on the conduct of its business."
- District Court (Eastern District) grants summary judgment for USPS
- Third Circuit affirms
  - Bases on *Trans World Airlines v. Hardison* de minimis language
  - Requiring an employer to bear more than a de minimis cost to provide a religious accommodation is an undue hardship
  - De minimis cost standard met here – exempting Groff from Sunday work had imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale – noted the low standard

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Groff v. DeJoy (continued)

- Supreme Court: “This case represents the Court’s first opportunity in nearly 50 years to explain the contours of *Hardison*.”
- Hardison worked in an “essential role” by providing parts needed to repair and maintain aircraft
- He had a religious conversion and began missing work on Sundays, which was resolved
- Hardison transferred to another position where he lacked seniority to avoid Sunday work, and he was fired for insubordination
- Eight Circuit found reasonable accommodations were available

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Groff v. DeJoy (continued)

- The Supreme Court states the principle issue in *Hardison* was whether Title VII requires an employer and a union who have agreed on a seniority system to deprive senior employees of seniority rights in order to accommodate a junior employee's religious practices
- "To require TWA to bear more than a **de minimis** cost in order to give Hardison Saturdays off is an undue hardship."
- In responding to Justice Marshall's dissent, the Court described the governing standard "quite differently" stating 3 times that an accommodation is not required when it entails **substantial costs or expenditures**
- Lower courts latched on to the de minimis language
- Court noted that this has been used to deny even minor accommodations

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Groff v. DeJoy (continued)

- In *Groff*, the Court states that *Hardison* does not compel courts to read the “more than de minimis” standard literally or in a manner that undermines *Hardison’s* references to substantial cost
- Showing more than a de minimis cost, as that that phrase is used in common parlance, does not suffice to establish undue hardship under Title VII.
- *Hardison* cannot be reduced to that one phrase.
- *Hardison* contains repeatedly references to “substantial burdens”
- Undue hardship is shown when a burden is substantial in the overall context of an employer’s business

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Groff v. DeJoy (continued)

- The Court thinks it is enough to say that what an employer must show is that the burden of granting an accommodation would result in **substantial increased costs in relation to the conduct of its particular business**
- Courts must apply the test to take 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 costs of an employer

Groff v. DeJoy (continued)

- Court in *Groff* clarified “recurring issues”
- Impacts on coworkers are relevant only to the extent those impacts go on to affect the conduct of the business
- A hardship that is attributable to employee animosity to a particular religion, to religion in general, or to the notion of accommodating a religious practice, cannot be considered “undue” and bias or hostility to a religious practice or accommodation cannot supply a defense
- **Title VII requires an employer to reasonably accommodate an employee’s practice of religion, not merely assess the reasonableness of a particular possible accommodation**
- An employer must do more than conclude that forcing other employees to work overtime would constitute an undue hardship

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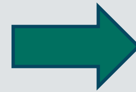
Groff v. DeJoy (continued)

- Undue hardship – the **new** standard:
  - “Substantial increased costs in relation to the conduct of [an employer’s] particular business.”
  - “Undue” means that the burden must rise to an “’excessive’ or ‘unjustifiable’ level.”
  - Case-by-case analysis, focusing on “overall context of the employer’s business,” and accounting for the nature, size, and operating costs of the employer.
  - Impacts on coworkers?

Groff v. DeJoy (continued)

Bad News

Practical impact is a heightened (but amorphous) burden to show undue hardship.



Good News

A "clarification." Most EEOC guidance remains intact.

Court did not adopt ADA undue hardship standard.

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Devore v. Univ. of Kentucky

- Failure to accommodate religious belief in context of COVID vaccine or testing policy
- The court found undue hardship on the following facts (and granted SJ to the employer) in light of *Groff*
  - Devore was the Director of a 3-person department (Office for Policy Studies on Violence Against Women)
  - Devore was the face of the department and the job required daily interaction with faculty, staff, and students, so remote work not an accommodation as it would "remove the office's campus presence"
  - Because she was the only administrative employee, the University could not accommodate be shift-swapping
  - Hiring a part-time person would not replace her 40-hour week presence

Substantial burden was established

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E.D. Kentucky, 2023 WL 6150773 (Sept. 20, 2023)

Hebrew v. Texas Dept. of Criminal Justice

- Hebrew alleged religious discrimination and failure to accommodate based on religion when he was terminated after he refused to cut his hair and beard (based on grooming policy and related to potential safety/security issues) which would have violated his religious vows
- The court found the employer failed to accommodate, and issue was whether undue hardship existed, discussing *Groff.* What was NOT undue hardship:
  - Employer did not identify actual costs it will face affecting its entire business if it granted this one accommodation
  - Security and safety issues were simply identified without regard to costs (let alone substantial increased costs)
  - Possible additional work for Hebrew's coworkers is insufficient to show undue hardship
  - Employer presented no evidence that it considered other possible accommodations, but simply rejected the accommodation request without a thorough review of "any and all alternatives"

Summary judgment for employer was reversed and remanded for proceedings consistent with the opinion (and *Groff*)

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Fifth Circuit, 80 F.4th 717 (Sept. 15, 2023)

Impact on EEOC Guidance?

The Court in *Groff* stated that a good deal of the EEOC's guidance in this area is sensible and will likely be unaffected.

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Religious Discrimination

Notice Concerning the Undue Hardship Standard in Title VII Religious Accommodation Cases.

The Supreme Court's decision in *Groff v. DeJoy*, 143 S. Ct. 2279 (2023) clarified that "showing 'more than a *de minimis* cost'…does not suffice to establish undue hardship under Title VII." Instead, the Supreme Court held that "undue hardship is shown when a burden is substantial in the overall context of an employer's business," "tak[ing] 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." *Groff* supersedes any contrary information on EEOC webpages and in EEOC documents.

Religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism,

Translate this Page

15 or more employees

Time Limits

180 days to file a charge

Emerging Best Practices?

- Increased analysis for employers - implement a process of reviewing religious accommodation requests and highly fact-specific
- ADA standards were not adopted in *Groff*, but similar themes noted in *Groff*, such as looking at all of the facts, case-by-case basis, alternative accommodations, to name a few
- Cost analysis is key – what is too costly or burdensome?
- "Substantial cost" will continue to evolve in the courts, but now is in relation to the conduct of the business and impacts on coworkers to be considered to the extent those impacts affect the conduct of the employer's business.
- The Supreme Court left it to the trial courts to apply the new standard on a case-by-case basis.

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303 Creative LLC v. Elenis

- Facts: Graphic designer brought pre-enforcement challenge to the Colorado Anti-Discrimination Act out of fear that she would be forced to create wedding websites for same-sex couples as part of her business expansion.
- Holding: State law cannot require the designer to create website content that communicates a message against her religious beliefs.
- Note: Public accommodations case, not employment; <u>but</u> religious-based objections occur in multiple contexts.

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303 Creative LLC + Employment =?

- Dissent by Sotomayor, J.:
  - "[T]he act of discrimination has never constituted protected expression under the First Amendment. Our Constitution contains no right to refuse service to a disfavored group."
  - "The Supreme Court of the United States declares that a particular kind of business, though open to the public, has a constitutional right to refuse to serve members of a protected class."
  - "The decision threatens to balkanize the market and to allow the exclusion of other groups from many services. A website designer could equally refuse to create a wedding website for an interracial couple."

303 Creative LLC + Employment =?

- Majority by Gorsuch, J.:
  - "The dissent even suggests that our decision today is akin to endorsing a 'separate but equal' regime that would allow law firms to refuse women admission into partnership, restaurants to deny service to Black Americans, or businesses seeking employees to post something like a 'White Applicants Only' sign…Pure fiction all."
  - "[C]ontext matters and that very different considerations come into play when a law is used to force individuals to toe the government's preferred line when speaking (or associating to express themselves) on matters of significance."

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303 Creative LLC + Employment =?

- *McMahon v. World Vision, Inc.* W.D. Wash. 2023
  - Facts: WV, a Christian charity, rescinded a candidate's job offer once their same-sex marriage was discovered.
  - Plaintiff: Unlike *303 Creative*, an application of Title VII/WLAD to employment discrimination does not compel WV to speak a message with which it disagrees.
  - Defendant: WV is a religious entity that expresses its beliefs in opposition to same-sex marriage. An application of Title VII/WLAD would compel an act of expression contrary to WV's religious beliefs, in violation of its expressive association rights under the First Amendment.

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Bostock + Religion =?

- Recognized the following protections:
  - 42 U.S.C.S. § 2000e-1
  - Ministerial Exception
  - RFRA
  - Church Autonomy*
- "[H]ow these doctrines protecting religious liberty interact with Title VII are questions for future cases."

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Bostock + Religion =?

- 42 U.S.C.S. § 2000e-1: "[S]hall not apply to an employer with respect to…a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion."
- Trending argument: Title VII's religious exemptions create an exemption to all forms of discrimination under Title VII, not just religious discrimination claims, so long as the employment decision was "rooted in religious belief."
- Counter: Religious institutions may employ those with similar faiths, but they may not discriminate against other protected classes.

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Bostock + Religion =?

- Ministerial exception: "Under this rule, courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020)
- Fact-specific analysis

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Bostock + Religion =?

- Religious Freedom Restoration Act: Government is only allowed to burden a person's exercise of religion "if it demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(b)
- Trending argument: RFRA applies in disputes between private parties.
- Counter: RFRA only applies where the government is a party.

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Bostock + Religion =?

- Church Autonomy/trending argument: This doctrine provides broader protections to religious employers than the ministerial exception. If an employment decision is "rooted in religious belief," then hands off by the courts.
- Counter: The ministerial exception is the limits of church autonomy.
- Counter: Church autonomy is not impaired when dealing with facial discrimination. *See McMahon v. World Vision.*

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Discussion & Questions

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