

## **Alert** | Labor & Employment



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### **The Devil’s in the Details: Employee Religious Accommodation Requests After Supreme Court’s Decision in *Groff v. DeJoy***

Now that the U.S. Supreme Court’s 2022-2023 term has ended and the dust has (somewhat) settled, employers are no doubt assessing the impact the Court’s **decision** in *Groff v. DeJoy*, No. 22-174 (June 29, 2023) will have on employees’ religious accommodation requests. The Court did not change the standard by which to assess accommodation requests but rather clarified the employer’s burden when denying a particular request as an undue hardship. Accordingly, the standard remains “undue hardship,” but an employer must now demonstrate it will suffer more than just a minor or “*de minimus*” hardship should it grant a religious accommodation request.

Before *Groff*, employers could deny an employee’s religious accommodation request simply by demonstrating the accommodation would burden the employer. The burden did not have to be heavy. For example, if an employee asked for a shift change to avoid working on a holy day or an exception to the dress code policy due to required religious clothing, employers simply had to demonstrate that accommodating such request would cost some minor amount of money or unfairly impose upon other employees. After *Groff*, should an employer deny an accommodation request, the heightened standard requires evidence that “the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business.”

In *Groff*, the plaintiff mail carrier for the U.S. Postal Service (USPS) was an Evangelical Christian. He did not want to work on Sundays and, when he first started work at USPS, his job did not require Sunday work. Several years later, however, USPS entered a contract that required deliveries to be made on Sundays. At first, Groff avoided the requirement by transferring to a facility that did not participate in Sunday deliveries. When his facility began requiring Sunday deliveries, USPS used other mail carriers to perform the deliveries, including carriers from different facilities. Eventually, others were unavailable, and Groff was asked to perform Sunday work. When he refused, he was subject to discipline. He then resigned and sued USPS for failure to accommodate his religious beliefs.

The district court granted summary judgment to USPS, and the Third Circuit affirmed based on the Supreme Court's decision in *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977). Specifically, the Third Circuit found that USPS established accommodating Groff would cause it undue hardship because USPS established that exempting Groff from Sunday work "imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale." The Supreme Court disagreed.

Under the heightened standard set forth in *Groff*, employers still must look at each accommodation request on a case-by-case basis, but now must be more careful in their consideration. Employers must engage in a detailed analysis of whether the request will result in a "substantial increased cost in relation to the conduct of its particular business," based on factors such as employer size and operating costs. As for the religious accommodation request's effect on other employees, it must be shown to affect them in the "conduct" of their employer's business. And while the Court in *Groff* does not delineate the parameters of "undue hardship," it clarifies that its meaning is closer to *Hardison's* references to "substantial additional costs" or "substantial expenditures," rather than "*de minimus*."

*Groff* dictates that employers can no longer deny religious accommodation requests based on minor cost or inconvenience to the business. Instead, employers must conduct a detailed inquiry into the true burden of granting such a request and attempt to accommodate whenever possible based on a careful analysis of the facts. Employers should also document their analysis to demonstrate how they arrived at their decision to grant or deny an employee's religious accommodation request.

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