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U.S. Courts Redefine Religious Rights in the Workplace

The U.S. Supreme Court Increases the Burden to Deny a Religious Accommodation Because of Undue Hardship

In *Groff v. DeJoy*, an opinion issued on June 29, 2023, the U.S. Supreme Court increased the burden for employers to demonstrate an “undue burden” in religious accommodation cases. In a unanimous decision, the Supreme Court “clarified” the long-standing precedent of *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977), which, until now, seemingly allowed employers to reject accommodations for religious requests under Title VII of the Civil Rights Act of 1964 if the request resulted in more than a *de minimis* burden to the employer. Now, to deny reasonable requests for religious accommodations, employers will have to “show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business.”

Factual and Procedural Background

Groff v. DeJoy was brought by an evangelical Christian postal worker who refused to work on Sundays and claimed his religious freedom was violated by the United States Postal Service (USPS) after he was disciplined for missing Sunday shifts. Although the USPS attempted to cover Groff’s assigned Sunday shifts, this was not always possible, and Groff received “progressive discipline for failing to work on Sundays.” Groff resigned his position and then sued under Title VII, alleging religious discrimination and, specifically, that the USPS could have accommodated his Sunday Sabbath requests “without undue hardship on the conduct of [USPS’s] business.”

The Supreme Court’s Decision

Justice Samuel Alito delivered the unanimous Opinion of the Court by noting this was “the Court’s first opportunity in nearly 50 years to explain the contours of *Hardison*” and the “*de minimis*” standard. Amid much explanation, the Supreme Court declined to reduce the *Hardison* decision “to that one phrase” (i.e., *de minimis*) because the *Hardison* opinion also repeatedly referenced “substantial burdens,” which is a phrase the Court determined “better explains the decision.”

Although the Court did not adopt the Americans with Disabilities Act standard of “undue hardship” for religious accommodations, as urged by Groff, it noted that a *burden must* be “substantial in the overall context of an employer’s business” to constitute an “undue hardship.” Moreover, impact on coworkers can be considered, but such impact is relevant *only* when it affects “the conduct of the business.” To deny a request for a reasonable religious accommodation, Justice Alito wrote, “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.”

Application of the Decision in the Workplace

In applying the new *Groff* standard, courts must take “into account all relevant factors in the case at hand, including the particular accommodation request at issue and its practical impact in light of the nature, ‘size and operating cost of [an] employer.’” How this standard will be applied in the courts and where the line will be drawn is left to be seen. In the meantime, employers should undertake a fact-specific inquiry when it comes to religious requests and consider the particularities of the request at hand, the nature of the business, and whether an accommodation would result in “substantial increased costs,” not minor costs or inconveniences.

The Fifth Circuit Permits Certain Employers to Escape Liability for LGBTQ+ Discrimination

In a decision released in late June 2023, the Fifth Circuit Court of Appeals found in *Braidwood Mgmt, Inc. v. EEOC* that the Religious Freedom Restoration Act (RFRA) could exempt certain religious employers from the anti-discrimination provisions of Title VII as they relate to LGBTQ+ status.

Factual and Procedural Background

Intentionally Christian-operated health-care provider Braidwood Management Inc. and Bear Creek Bible Church, which brought the case, claimed that Title VII, as interpreted by *Bostock v. Clayton County* (which extended protection under Title VII to members of the LGBTQ+ community), as well as subsequent EEOC guidance and enforcement efforts, violate their religious liberty by preventing them from operating in accordance with their religious beliefs regarding homosexuality. Braidwood did not permit individuals to engage in “sexually immoral or gender non-conforming” behavior or engage in homosexual marriage. Bear Creek had a policy of not hiring “practicing homosexuals, bisexuals, crossdressers, or transgender or gender non-conforming individuals.”

The Court’s Decision

Amidst some complicated procedural questions related to class actions and standing, the Court held the RFRA “requires that Braidwood, on an individual level, be exempted from Title VII because compliance with Title VII post-*Bostock* would substantially burden its ability to operate per its religious beliefs about homosexual and transgender conduct.” The RFRA prohibits the federal government from burdening a person’s free exercise of religion, even if that burden stems from a neutral, generally applicable law. Churches, like Bear Creek, and other nonprofits can similarly escape liability under the religious organization exemption of Title VII, according to the Court.

The Fifth Circuit did reverse and vacate two proposed classes of religious employers in its decision: 1) every employer that opposes homosexual and transgender behavior for sincerely held religious beliefs and 2) every employer that opposes homosexual and

transgender behavior for a mix of religious and non-religious reasons. In doing so, the Fifth Circuit limited its decision to the claims brought solely by Braidwood and Bear Creek, finding the class definitions to be too “broad and ill-defined to reach the thresholds of class certification.”

Application of the Decision in the Workplace

The Fifth Circuit Court’s decision is likely the first in a long line of cases that will flesh out the line between religious liberty and protection from discrimination and harassment. One of the largest questions left open is to what extent a private, for-profit business may be considered a religious employer protected by the RFRA, and whether an employer can establish seemingly discriminatory “sex-neutral” codes of conduct – at least in the Fifth Circuit.

Employers are advised to be thoughtful when crafting policies and making decisions about accommodation requests and requirements. It is likely that the courts will continue to address religion in the workplace to define these new standards. FBT attorneys will continue to send updates on how those decisions may impact your policies.

If you have any questions about this article or other labor law issues, please contact the authors or any attorney in Frost Brown Todd’s [Labor and Employment](#) practice group.

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