JULY 6, 2023 | DISCRIMINATION, HARASSMENT & RETALIATION

The Supreme Court Just Changed the Undue Hardship Religious Accommodation Test

The Title VII prohibitions on employment discrimination extend to employers who refuse to accommodate employees with sincerely held religious beliefs or practices. Previously, employers could only deny religious accommodations if the accommodation would impose an undue hardship or more than a minimal burden on the operation of the business. The undue hardship standard was initially developed in a 1977 case called *Trans World Airlines, Inc. v. Hardison* (1977). In that case, the Court held that an employer must allow religious accommodation unless doing so would impose an undue hardship. Notably, the Court defined an undue hardship as any accommodation that would cause more than a *de minimis* cost for the employer. Examples of instances that were more than *de minimis* or would qualify as undue hardships included: violating a seniority system; causing a lack of necessary staffing; jeopardizing security or health; or costing the employer more than a minimal amount.

The *de minimis* cost standard was relied upon by lower courts and the EEOC for almost 50 years. However, last week, the Supreme Court replaced the *de minimis* standard in *Groff v. DeJoy*. In *Groff*, the Court held that Title VII requires an employer that denies a religious accommodation to show that the burden of granting an accommodation would result in ***substantially increased costs*** concerning the conduct of its particular business. The Court reasoned that because in *Hardison*, the Court repeatedly referred to "substantial" burdens, an "'undue hardship' is shown when a burden is substantial in the overall context of an employer's business." The Court stated that this more demanding standard is also more consistent with the text of the phrase "undue hardship." It stated that a hardship "is more severe than a mere burden," and must be excessive or unjustifiable.

The facts of *Groff* are straightforward. Groff, an Evangelical mail delivery employee, observed Sunday as the Sabbath. When his employer, USPS, agreed to allow deliveries on Sundays, Groff was eventually required to work on Sundays. Groff ultimately refused and was subjected to progressive discipline before ultimately resigning. The Third Circuit ruled against Groff, basing its decision on its belief that accommodating Groff's practice of refraining from work on Sundays would cause USPS to suffer undue hardship, as the costs imposed were more than *de minimis* because they "imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale." As part of its ruling, the Court sent the case back to the Third Circuit to apply the new substantial burden standard, and because as a result, the Third Circuit could have overlooked other possible accommodations, such as "the cost of incentive pay, or the administrative costs of coordination with other nearby stations with a broader set of employees."

As a result of this decision, employers who are confronted with religious accommodation requests should carefully analyze what accommodations they consider providing to their employees. We at Conn Maciel Carey LLP are here to help, so please do not hesitate to reach out with questions.