

## SCOTUS: Denial of Religious Accommodation Requires More Than De Minimis Cost to Employers



Arielle Eisenberg

Member

aeisenberg@cozen.com  
Phone: (786) 871-3953  
Fax: (305) 704-5955

### Related Practice Areas

- Labor & Employment

Employers faced with an employee's request for a religious accommodation may no longer use a *de minimis* increase in cost as a defense for not providing such an accommodation. For the first time since its decision in *Trans World Airlines, Inc. v. Hardison* 50 years ago, the U.S. Supreme Court has provided guidance on what constitutes an undue burden in the context of a religious accommodation under Title VII of the Civil Rights Act. In *Hardison*, the Court determined that a religious accommodation that required more than a *de minimis* cost was an undue burden to employers. Now, however, the Court has revisited that holding in *Groff v. DeJoy, Postmaster General*, and held that for a religious accommodation to be considered an undue burden, an employer must show that it would result in a substantial increase in cost in relation to its business. In coming to its holding, the Court emphasized the language in Title VII, which states that an accommodation should not impose an **undue** hardship, as opposed to just a burden.

Gerald Groff, a former employee of the U.S. Postal Service (USPS), did not work Sunday shifts due to his religious beliefs. This was not a problem, as the USPS did not work on Sundays until the USPS entered into an agreement with Amazon to provide Sunday deliveries. Groff transferred to a smaller, rural USPS station that did not provide Sunday service as a means of accommodating his religious practices. Shortly thereafter, Groff's new location began to provide Sunday delivery in accordance with USPS's agreement with Amazon. Groff refused to work on Sunday, and his duties were distributed to other employees, all while Groff received discipline for failing to work on Sundays. Groff filed suit against USPS under Title VII, claiming that USPS could have accommodated his Sunday Sabbath without undue hardship.

The Court reexamined the history of Title VII and its hallmark case, *Hardison*, and came to the conclusion that an undue hardship requires a substantial burden "in the overall context of an employer's business," creating a fact-specific inquiry to determine whether a religious accommodation is an undue burden on an employer. The latter part of this analysis requires courts to take into account all relevant factors, including the particular accommodation, the practicality of providing such an accommodation, and the operating cost of the employer. The Court explicitly states that its clarification in *Groff* may not lead to any change in the Equal Employment Opportunity Commission's guidance that "no undue hardship is imposed by temporary costs, voluntary shift swapping, or administrative costs." The Court largely leaves the reasonableness of an accommodation up to the lower courts, requiring a fact-intensive analysis, but does unequivocally state that employee animosity to a particular religion, to religion in general, or to the very notion of accommodating religious practice cannot be considered undue. Notably, the Court declined to extend the more employee-friendly undue hardship analysis of the Americans with Disabilities Act to religious accommodations, leaving employers and courts somewhere between a *de minimis* cost and the "significant difficulty and expense" of the ADA when it comes to religious accommodations.

---