Religion in Employment: The Rights and Obligations of Employers and Employees

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Religious accommodation in employment is a fascinating and evolving area of law. Following the Supreme Court's 2023 decision in *Groff v. Dejoy*, what exactly is an employer's obligation to accommodate an employee's religious beliefs or practice? What if accommodating those beliefs or practices might offend employees with different beliefs?

To complicate matters more, both established and emerging bodies of law hold that certain employers may themselves have a right to religious expression in the operation of their businesses. What if an employer's religious beliefs clash with those of its employees or even with generally applicable anti-discrimination laws?

This paper aims to examine these difficult questions.

I. Religious Rights of Employees

Title VII contains two protections for the religious rights of employees. First, the statute prohibits discrimination based on religion.[1] Second, the statute requires employers to accommodate employees' religious beliefs and practices, "unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business."[2] The latter requirement—and more specifically, the meaning of "undue hardship"—has been recently addressed by the United States Supreme Court.

A. *Trans World Airlines, Inc. v. Hardison* (1977)

The Supreme Court's first case concerning undue hardship in the context of religious accommodation under Title VII was the 1977 case of *Trans World Airlines, Inc. v. Hardison*.[3] Lower courts interpreted *Hardison* to hold that "undue hardship" meant any effort or cost that is "more than . . . de minimis."[4]

This was generally considered to be a relatively low bar to establishing undue hardship. For instance, in *Bruff v. North Mississippi Health Services*, an employee objected to providing counseling services to homosexual patients and requested to be excused from such duties.[5] The Fifth Circuit found that proposed accommodation would create an undue hardship because other employees would be required to cover the plaintiff's duties.

In *Tagore v. United States*, the plaintiff was a Sikh who worked at a federal building and requested to wear a religious ceremonial blade while at work.[6] The plaintiff proposed three accommodations: (1) wearing a dulled blade; (2) working from home; or (3) working in a different federal building. The court found each of these accommodations would create an undue hardship because (1) the dull blade would require additional security checks; (2) working from home was

[1] 42 U.S.C. § 2000e-2(a).
[2] *Id.* § 2000e(j).
[3] *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977).
[4] *See, e.g.*, *Groff v. Dejoy*, 35 F.4th 162 (3d Cir. 2022).
[5] *Bruff v. N. Miss. Health Servs.*, 244 F.3d 495 (5th Cir. 2001).
[6] *Tagore v. United States*, 735 F.3d 324 (5th Cir. 2013).

not feasible given the plaintiff's duties; and (3) the same security standards prohibiting the possession of blades applied at all federal buildings.

B. *Groff v. Dejoy* (2023)

In 2023, the Supreme Court revisited the undue hardship standard in *Groff v. Dejoy*.[7] In the Supreme Court's view, lower courts had misread *Hardison* by focusing too much on "a single, but oft-quoted, sentence in the opinion of the Court" and missing the broader point of the case.[8]

The Supreme Court stated, "We hold that showing 'more than a de minimis cost,' as 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." The Court instead held that "'undue hardship' is shown when a burden is substantial in the overall context of an employer's business."[9]

The Supreme Court declined to define "substantial" with specificity, but did provide some guidelines. First, "courts must apply the test in a manner that takes 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."[10]

Second, "a coworker's dislike of religious practice and expression in the workplace or the mere fact [of] an accommodation is not cognizable to factor into the undue hardship inquiry."[11] The impact of an accommodation on coworkers is relevant only to the extent that impact would actually affect the conduct of the employer's business. "An employer who fails to provide an accommodation has a defense only if the hardship is 'undue,' and a hardship that is attributable to employee animosity to a particular religion, to religion in general, or to the very notion of accommodating religious practice cannot be considered 'undue.'"[12]

The Court then left it to the lower courts to further refine application of the new "substantial" undue hardship standard: "Having clarified the Title VII undue-hardship standard, we think it appropriate to leave the context-specific application of that clarified standard to the lower courts in the first instance."[13]

C. What's next?

The Supreme Court's holding that, generally, "a coworker's dislike of religious practice and expression in the workplace . . . is not cognizable to factor into the undue hardship inquiry" creates the potential for some uncomfortable situations. Employers are obligated to accommodate religious belief or practice, but they are also obligated to provide workplaces free of unlawful harassment. What happens if one employee's expression of religious beliefs offends others? For

[7] *Groff v. Dejoy*, 143 S. Ct. 2279 (2023)
[8] *Id.* at 2291.
[9] *Id.* at 2294.
[10] *Id.* at 2295 (cleaned up).
[11] *Id.* at 2296 (cleaned up).
[12] *Id.*
[13] *Id.* at 2297.

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