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Employment Case Law Update: Recent Decisions of Interest to School Personnel

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Roadmap

- Title VII Religious Accommodations
 - *Groff*
 - Early Progeny
- Title VII Ultimate Employment Actions
 - *Hamilton*
 - Early Progeny
- Texas Whistleblower Act

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Title VII Religious Accommodations

- It is unlawful for a public employer to...refuse to hire or to discharge...or otherwise to discriminate against any individual...because of such individual's...religion. 42 U.S.C. §2000e-2.
- 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. 42 U.S.C. §2000e(j).

Title VII Religious Accommodations

- ***Groff v. DeJoy***
 - Postal worker objected to Sunday shifts
 - Unanimous U.S. Supreme Court
 - Clarified “undue hardship” term
 - Not “more than a *de minimis* cost”
 - Substantial increased costs
 - Measured by attributes of the specific business
 - Effect on coworkers may be insufficient
 - Interference with seniority system might suffice
 - Remanded to apply proper undue hardship standard

Title VII Religious Accommodations

- *Hebrew v. TDCJ*

- Correctional officer wanted to wear long hair and beard
- Fifth Circuit
- Followed *Groff's* definition of undue hardship
- Employer must *sua sponte* consider other possible accommodations if request causes undue burden
- Employer did not show undue hardship
 - Unsupported assertions of more than *de minimis* costs, safety and security concerns
 - Did not show that all accommodations would have caused undue hardship

Title VII Religious Accommodations

- *Allen v. Benson*

- UTD employee objected to mandatory Covid-19 testing policy
- Eastern District of Texas
- Followed *Groff's* definition of undue hardship
- Found employee sufficiently plead a failure-to-accommodate claim
- Undue hardship is a fact-intensive inquiry better addressed at summary judgment or trial

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