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Snow, Rain, Heat, and Gloom of Night Can't Stop the Postal Service — But Religious Accommodations Might

Labor, Employment & Benefits Legal Update

Upending decades of precedent, the U.S. Supreme Court recently ruled that employers considering employees' requests for religious accommodation must grant these requests unless doing so would result in "substantial increased costs in relation to the conduct of its particular business." Employees seeking religious accommodations from their employers typically request uniform changes for modesty, prayer breaks at certain times of the day, or schedule changes to avoid working on certain days of worship. Here's what this change in federal law means for employers.

Prior Law: Employers Could Deny Employees' Religious Accommodation Requests Posing More Than a Minimal Burden

Title VII of the Civil Rights Act of 1964 requires all employers with at least 15 employees to provide reasonable accommodations to employees whose sincerely held religious beliefs conflict with their job duties, unless the employee's request creates an "undue hardship" for the company.

Drawing on a single line from a 1977 Supreme Court decision, district courts and courts of appeal have long held that an employee's accommodation request may be an "undue hardship" if it presented more than a minimal burden (or "de minimis") on the business. *See Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977). Until recently, this made it relatively easy for employers to point to almost any business reason to deny an employee's accommodation request.

New Law: Employers Must Meet a Higher Burden Before Denying These Requests

Enter Gerald Groff — a mail carrier for the U.S. Postal Service (USPS). Groff is an Evangelical Christian who sought a religious accommodation to avoid working on Sundays so he could devote that time to worship and rest. At first, mail carriers in Groff's region did not deliver mail on Sundays. Eventually, this changed. Groff initially sought and received a transfer to another location that had no Sunday delivery. When this location began Sunday deliveries, Groff and his co-workers were required to take rotating shifts to deliver goods on Sundays. Because Groff declined to work Sundays due to his religious beliefs, USPS made other arrangements, including redistributing Groff's shifts to coworkers, the postmaster, and other regions. During this time, Groff received progressive discipline for failing to work Sundays. Groff resigned and sued the postal service under Title VII.

The district court and Third Circuit Court of Appeals ruled for USPS. Applying the "de minimis" rule extrapolated from *Hardison*, the courts concluded that Groff's accommodation of avoiding Sunday work "imposed on his co-workers, disrupted the workplace and workflow, and diminished employee morale." Because impositions were an "undue hardship" on USPS, the agency had no obligation to provide Groff with his requested accommodation.

The Supreme Court disagreed. "Undue hardship," it concluded, is more than "de minimis." Instead, to prove "undue hardship," the Court held 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."

Result: No Clear "Rule" for What Employers Must Accommodate

Despite issuing this "clarifying decision," the Supreme Court declined to define what constitutes "substantial increased cost," leaving that to lower courts. It did, however, provide a general framework for employers.

- **Employers can consider the possible accommodation's effect on the conduct of the employer's business.** This would exclude generalized morale issues, or a co-worker's dislike of a religious practice or expression in the workplace. However, impacts on co-workers that caused increased business costs could be considered, if substantial.
- **Employers must take a holistic approach to reasonably accommodate an employee's practice of religion.** Employers should not merely assess the reasonableness of particular possible accommodation(s). Instead, employers should explore all possible solutions to providing the accommodation. For example, when determining whether a Sunday work exemption is an "undue" hardship, an employer must consider the various ways to grant that request. One way is to require others to work overtime. However, the Court cautioned that employers must consider other ways, including voluntary shift swapping.
- **Existing EEOC guidance is "sensible" and likely will remain unaffected by *Groff*.** The Court expressed "no reservations" to say that much of the EEOC's guidance in this area, particularly to the extent it favors granting accommodation, will be unaffected. For example, the Court tacitly approved the guidance indicating that temporary costs, voluntary shift swapping, occasional shift swapping, and administrative costs are rarely sufficient to show undue hardship.

The Takeaways for Employers

Moving forward, all employers should:

- **Take all religious accommodation requests seriously.** Even if a proposed accommodation seems insincere or unworkable for your business, employers have an obligation to consider the employee's request and discuss with the employee what the business can and can't do. If you believe the employee is being uncooperative or making unreasonable demands, consult with legal counsel for next steps.
- **Train your managers.** All managers should be trained to recognize when an employee is making a religious accommodation request and your organization's process for responding to such requests.
- **Update your policies and handbooks.** Revisit your employment policies to confirm employees know how to submit an accommodation request.
- **Remember there is no "one size fits all" when it comes to accommodations.** Employers should be prepared to individually consider each accommodation request and tailor their response based on what the employee's religious practice requires, the employee's job-specific position, and current business operational needs and the potential impacts. Similar accommodation requests could result in very different outcomes depending on the employee's job responsibilities and the resources of the particular business. Employers should carefully document their reasons for granting (or denying) an employee's accommodation request. Supervisors and managers should be encouraged to consult with their human resources professionals or legal counsel to evaluate competing requests or whether a particular request creates a "substantial increased cost."

Lane Powell's team of labor and employment attorneys is here to help your organization comply with state and local laws and develop and implement the strategy that supports your business and your employees. For more information, contact [Courtney McFate](mailto:mcfatec@lanepowell.com) (mcfatec@lanepowell.com) or [Brenna McLaughlin](mailto:mclaughlinb@lanepowell.com) (mclaughlinb@lanepowell.com). Keep up-to-date by subscribing to Lane Powell's Legal Updates: lanepowell.com/subscribe.