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FABIAN VANCOTT

e-update

U.S. Supreme Court Rules Employers Must Be Substantially Burdened to Deny Religious Accommodations

Tanner J. Bean

On June 29, 2023, the U.S. Supreme Court ruled in *Groff v. DeJoy* that its foundational religion-in-the-workplace decision, *Trans World Airlines, Inc. v. Hardison* (1977), has been misunderstood for decades. In doing so, it clarified the proper standard for when an employee's request for a religious accommodation becomes an undue hardship an employer does not have to bear.

When the federal nondiscrimination act, Title VII, went into effect in 1964, it barred discrimination based on religion and other characteristics in the workplace. However, it was not until 1972 that Congress amended Title VII to explicitly add a requirement that employers must reasonably accommodate religious practices. When doing so, Congress gave employers an out where accommodating an employee would impose an "undue hardship on the conduct of the employer's business."

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Shortly after that requirement to accommodate was added into Title VII, the Supreme Court decided the *Hardison* case. While the opinion reached other conclusions about when an employer must provide a religious accommodation, it stated that to require the employer in that case "to bear more than a *de minimis* cost in order to give Hardison Saturdays off is an undue hardship." Many courts (and employers which followed their direction) latched onto this statement as the standard for when an employer did not have to provide an accommodation. In other words, anything more than a trivial burden on an employer's business amounted to an undue hardship.

The plaintiff in *Groff*, a rural mailman for USPS, challenged this standard. Among other things, he argued that the ordinary meaning of "undue hardship" must be much more than just a "*de minimis*" burden. To answer Groff's argument, the Supreme Court looked back to its decision in *Hardison*, as well as interpreting the ordinary meaning of "undue hardship." It found, as Groff argued, that "undue hardship" means more. The Court stated that "undue hardship" means "substantial increased costs in relation to the conduct of [an employer's] particular business."

While many employers have regarded the *de minimis* standard as a floor for considering employee religious accommodations, all employers should review their policies and procedures governing religious accommodations.

Considerably more is now required for an employer to demonstrate to a court that it cannot bear the burden an employee's accommodation would impose. But more than ever, courts will evaluate each accommodation request on a case-by-case basis, paying particular attention to the specific situation each request poses.

Fabian VanCott and its Labor & Employment team are ready to advise on the newly applicable substantial burden standard. We look forward to helping your team shape your workforce, adapt your policies and procedures, and guide you when accommodation requests arise.

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ADDITIONAL UPDATES

Strikers Must Take Reasonable Precautions to Protect Employer Property

by Jacqueline M. Rosen

Earlier this month, the Supreme Court in *Glacier Northwest v. Int'l Brotherhood of Teamsters Local Union No. 174* clarified when federal law—including the National Labor Relations Act (NLRA)—preempts state law that applies to labor activity. In that case, the Court was asked to decide when labor activity is covered by the NLRA, in which case preemption applies and prevents state law-based claims.

In Washington State, Union workers who drove concrete mixers waited to go on strike until after trucks were filled with concrete, causing some of the concrete to harden and become spoiled. The employer then sued the Union in state court for trespass to chattels and conversion.

The Supreme Court determined that the employer could indeed sue in state court because the strike was not even arguably protected by the NLRA. When unions fail to take "reasonable precautions" to protect employer property from "foreseeable, aggravated, and imminent danger due to the sudden cessation of work," they are not protected by the NLRA. Because the Union timed the strike to occur only after the wet concrete was batched into trucks, ensuring that it would harden and spoil when the strike occurred, the Court found that the Union failed to take "reasonable precautions."

Although a strike that leads to the loss of perishable goods does not usually constitute a failure to take "reasonable precautions," the Court found that this case was unique because the timing of the strike not only destroyed the cement (a perishable product) but also prompted the creation of that product by timing the strike only after the concrete was batched.

Because of the fact-specific inquiry required to determine when "reasonable precautions" are taken, especially in the context of perishable products, employers should consult with legal counsel when there is a question of whether NLRA rights are involved. Fabian VanCott and its Labor and Employment team have the knowledge and experience to advise on the scope of such NLRA rights.

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