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Labor & Employment Update

Supreme Court Alters Decades of Religious Accommodation Law

The United States Supreme Court has issued its long-awaited decision in Groff v. DeJoy, a case involving an employer's duty to accommodate the religious beliefs and practices of employees. It turned out to be a major decision that wipes out decades of federal district and appellate court case law on religious accommodation, and it does so in a short opinion that offers little for employers to navigate the new landscape.

The Court eliminated the "more than de minimis" case-law rule that had diluted the statutory "undue hardship" rule that technically applied all along. While the Court attached a couple phrases to the reinstated rubric, in the words of the Court, "we think it appropriate to leave the context-specific application" of that rubric to lower courts as they rework the ground that had been tilled with a different plow since the 1970's.

THE BACKGROUND OF THE CASE

The facts of the case are not material to the Supreme Court's ultimate decision. In short, however, Gerald Groff was a mail delivery person in Lancaster County, Pennsylvania, whose religious beliefs prohibited Sunday work. He was accommodated for a while by substitutes who worked in his stead on Sundays, either volunteers or others who were pressed into service for premium pay.

When problems arose with that approach, Mr. Groff transferred to a nearby post office that did not have Sunday deliveries. However, Sunday deliveries later followed him to the new post office, and while the Postal Service tried similar accommodations, the previous problems also followed. Eventually, Mr. Groff resigned when the impasse could not be resolved without discipline, which presumably would have led to his discharge.

THE LOWER COURTS AND PETITION FOR CERTIORARI

Mr. Groff later filed a lawsuit against the Postal Service (Louis DeJoy was the Postmaster General and nominal defendant), alleging a violation of Title VII of the Civil Rights Act of 1964. Title VII proscribes discrimination against employees on account of their religious beliefs or practices, and imposes a duty on employers to reasonably accommodate those beliefs when they conflict with the requirements of an employee's job.

The district court granted summary judgment against Mr. Groff, holding that even if his allegations were true, the law was on the employer's side. That is, allowing the requested accommodation (not being assigned for Sunday work) imposed "more than a de minimis" burden on the employer, so the law does not require it. The district court also held that the inconvenience to Mr. Groff's coworkers was properly part of the calculus of whether the requested accommodation had more than a de minimis impact on operations. The Third Circuit Court of Appeals affirmed in a split decision, and Mr. Groff petitioned the Supreme Court for certiorari.

THE SUPREME COURT DECISION

The Supreme Court unanimously vacated and remanded the Third Circuit's decision, and by extension the district court's grant of summary judgment to the defendant. However, the Court did not provide much in the way of specific guidance for parties and courts in future cases or even for the district court in this case.

Frankly, it is not clear either side in the case can claim "victory" with this decision. Of course, Mr. Groff gets another bite at the apple in his case, but the Court's analysis does not really come down for or against him on remand. In all likelihood, that next opportunity will be in a renewed summary judgment motion by the Postal Service, arguing that summary judgment is still appropriate even with the Supreme Court's correction—and yesterday's decision seemed to go out of its way to avoid opining on that question.

THE OPINION OF THE COURT

Justice Alito wrote for the Court, and the central holding was that the "de minimis" verbiage from the Court's 1977 decision in Trans-World Airlines v. Hardison, which had become the shibboleth of religious accommodation cases for decades, is NOT the proper standard under Title VII. However, while the impact of that judicial acknowledgement is significant for Title VII religion cases generally, that was not much of a decision in the Groff case given that, according to the opinion itself, both sides already agreed on that from the outset.

Moreover, the Court did not overrule or even narrow the Hardison decision or opinion, but explained that it has been misread by subsequent courts. Those courts, Justice Alito wrote, hastily latched on to the de minimis phrase and overlooked the real import of Hardison and the context that gave color to the use of the phrase in that case. The Court did not even dismiss that phrase as "dictum," but simply explained its context.

A few numbers might help to understand the points of emphasis. Justice Alito's opinion covers all of 21 pages. Perhaps more significant, however, it comprised about 7,000 words, and more than 4,100 of those words were devoted to explaining what Hardison really said. That leaves 8 pages and 2900 words to address Mr. Groff's case. This was a sprint amidst the marathons that usually betoken major Supreme Court decisions.

WHAT IS UNDUE HARDSHIP?

The import of the Court's holding and rationale is that the statutory phrase "undue hardship," not the "de minimis" phrase from Hardison, is the standard for determining whether an employer must provide a particular accommodation. The Court did not parse out precisely what that means, saying simply that the de minimis shibboleth "as that phrase is used in common parlance, does not suffice" to reach undue hardship.

The Court expressly declined to adopt the body of case law on "undue hardship" under the Americans With Disabilities Act. Though it did not reject the ADA case law, the Court seemed to go to some lengths to steer clear of using the standard phrase that is employed by courts under the ADA ("significant difficulty or expense"). Instead, the Court focused on the phrases "substantial expenditures" and "substantial additional costs" from the main part of the Hardison decision, which the Court said embodies the intention of the 1977 Court.

IMPACT ON OTHER EMPLOYEES

The other significant issue brought to the Court in this case was whether the impact of a religious accommodation on other employees is an appropriate element of the undue hardship analysis. The Court held that it is, but not in the sense of the personal impact on other employees, but in the sense that the impact on other employees in the context of the workplace is a natural part of the impact on the employer.

The most significant point here, at least as discussed in the Court's opinion, is that the prejudice of other employees against the religious views or practices of the accommodated employee is not an appropriate element of the hardship on the employer. To allow that, the Court held, would cause Title VII to be "at war with itself." In this regard, the Court also reaffirmed the sacrosanct status of bona fide seniority systems as being a near insurmountable obstacle for an individual employee's religious needs if they conflict with that system.

UNANIMITY AND CONCURRENCES

Unanimous decisions from this Court are more common than acknowledged in the popular press, but unanimity in this decision was perhaps the most surprising aspect for employment lawyers. Also surprising, there was not the usual handful of concurring opinions offering this or that slant on the decision. Justice Sotomayor wrote the lone concurrence, joined by Justice Jackson, which weighed in at only three pages and 860 words. However, it did little more than restate the gist of the majority decision.

In short, the Court truly spoke with one voice in this case. Unfortunately, it did not say a lot with that voice.