

Supreme Court considers employer duty to accommodate employee's religious practices

By Dan Eaton

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How far must an employer go to accommodate an employee's religious practices under federal law? Is it enough for the employer to show that accommodating the employee will result in anything more than minimal cost or operational disruption? Must an employer demonstrate, instead, that accommodating the employee will cause significant difficulty or expense?

These questions were the focus of nearly two hours of oral argument at the U.S. Supreme Court last month in a case former postal carrier Gerald Groff brought against Louis DeJoy as U.S. Postmaster General.

Groff, an evangelical Christian, resigned when the postmaster at the rural Pennsylvania post office where he worked refused to excuse him from delivering packages for Amazon.com on Sundays, his Sabbath day.

The U.S. Court of Appeals for the 3rd Circuit upheld summary dismissal of Groff's claim because accommodating his unwillingness to work Sundays would have imposed much more than a minimal burden on his employer and coworkers.

The law of religious accommodation in the workplace

Title VII, the federal workplace anti-discrimination law, requires an employer "to reasonably accommodate the religious practices of an employee or prospective employee, unless the employer demonstrates that accommodation would result in undue hardship." Title VII does not define "undue hardship."

In 1977, the U.S. Supreme Court ruled that an employer need not accommodate an employee's religious practice if the employer demonstrates that doing so would impose more than a *de minimis*, meaning trivial, cost on the employer or coworkers.

California's Fair Employment & Housing Act, by contrast, explicitly requires an employer claiming that accommodating an employee's religious beliefs or practices would cause an undue hardship to show any reasonably available accommodation would impose "significant difficulty or expense" on the business. Unlike federal law, California law applies the same "undue hardship" standard to accommodating religious practices as it applies to accommodating disabilities.

Competing arguments

Groff's lawyer Aaron Streett urged the justices to adopt California's undue hardship test for whether an employer has sufficiently accommodated an employee's religious practices under federal law and overrule the 1977 test, which he contended doesn't sufficiently protect devout employees. The same undue hardship test, he said, should apply to religious accommodation under federal law as to disability accommodation.



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Streett urged the justices to reject the government's position that any loss of efficiency or regular and ongoing premium payment to coworkers to cover shifts of observant colleagues like Groff constitutes a sufficient undue hardship.

U.S. Solicitor General Elizabeth Prelogar urged the court to retain its existing interpretation of undue hardship and the 45+ years of lower court precedent that has applied that interpretation, rather than "destabilizing this area of the law" by announcing a new standard.

Prelogar identified three recurring categories of religious accommodation requests: (1) scheduling changes, where courts applying existing law have required employers to consider flexible work schedules, or offer voluntary job swaps or lateral job transfers that would avoid the religious conflict; (2) dress and grooming practices, with courts generally requiring accommodation unless there is a legitimate safety concern; and (3) religious expression in the workplace, with courts generally recognizing undue hardship only, according to Prelogar, for speech amounting to harassment of coworkers or customers.

Likely outcome

Most of the justices indicated by their questioning dissatisfaction with allowing employers to avoid accommodating religiously observant employees if the employer could demonstrate anything more than a trivial burden to their operations or bottom line. Prelogar said she would welcome a ruling clarifying that "the '*de minimis*' language" in the 1977 case "should not be taken literally to mean every dollar above a trifle is immunizing the employers from liability."

The high court's ruling, expected in June, may go further than that. The court probably will make an employer's duty to accommodate its employees' religious practices under Title VII closer to the facially more demanding duty employers have under California law. But it is unclear what practical difference a revised accommodation standard will make. Lower courts applying federal law will have to apply any modified test to future cases with unknowable factual variations. The devil driving the outcome of those future cases will be in the details.

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