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SCOTUS Changes "Undue Hardship" rule in Title VII

BY CLARK B. WILL

In a unanimous opinion, in *Groff v. Dejoy*, the U.S. Supreme Court clarified its definition of what constitutes an "undue hardship" to allow an employer to deny an accommodation request for religious practices under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e—2(a)(1). In a previous ruling in *Trans World Airlines, Inc. v. Hardison*, the Court held that Title VII did not require an employer to grant an employee's requested Title VII religious accommodation to not work on Sunday even though the employee's religion prohibited work on the Sabbath. In reversing the court below, the Court held that to "require [the employer] to bear more than a de minimis cost in order to give [the employee] Saturdays off is an undue hardship."

In *Groff*, the plaintiff, a former postal worker in rural Pennsylvania and an Evangelical Christian, objected to working on Sunday. After receiving 'progressive discipline' for refusing to work on Sundays, Mr. Groff finally resigned and sued the United States Postal Service (USPS) under Title VII for refusing to accommodate his 'Sunday Sabbath practice.' The trial court granted summary judgment for USPS, and the Third Circuit affirmed. In reversing the courts below, the Supreme Court held that "showing 'more than *de minimis* cost' does not suffice to establish 'undue hardship' under Title VII." The Court explained that when determining "undue hardship" "courts must apply the test in a manner that takes into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, 'size and operating cost of [an] employer.'" Further, the Court explained, "[a]n employer who fails to provide an accommodation has a defense only if the hardship is 'undue'.... Title VII requires that an employer reasonably accommodate an employee's practice of religion, not merely that it assess the reasonableness of a particular possible accommodation or accommodations."

In *Hebrew v. Texas Department of Criminal Justice*, the Fifth Circuit had the opportunity to apply *Groff*. The plaintiff was "a devout follower of the Hebrew Nation religion" and had taken the vow of a Nazarite, which forbade cutting his hair or beard. After being told by the Texas Department of Criminal Justice (TDCJ) that he must cut his hair and beard for security and safety reasons, he was fired. He filed a *pro se* suit for religious discrimination and failure to accommodate under Title VII. The TDCJ moved for summary judgment. The trial court found that the plaintiff had established a *prima facie* case of religious discrimination, but nevertheless that the TDCJ's motivation for firing him was nondiscriminatory in that it was to promote the safety of its employees and the security of its prisons. The trial court ultimately rejected the plaintiff's claim that the TDCJ failed to accommodate his religious practice, noting the TDCJ would have to bear more than a *de minimis* cost "because coworkers would have to 'perform extra work to accommodate' [the plaintiff]'s religious practice."

The Fifth Circuit disagreed and reversed the district court, noting that "Title VII imposes on employers both a negative duty not to discriminate and a positive duty to accommodate." In citing *Groff*, the Fifth Circuit stated that "if a requested accommodation poses an undue hardship, the employer must *sua sponte* consider other possible accommodations.... Only after thorough consideration of other options may the employer deny the employee's request for accommodation." The Fifth Circuit further addressed that the employer and not the employee bears the burden of proof. In arriving at its decision, the Fifth Circuit held that the TDCJ failed to meet its burden under Title VII for at least four reasons: (1) the TDCJ relied on the *de minimis* standard in *Hardison*; (2) the TDCJ "nowhere identifies any actual costs" that it would face to accommodate *Hebrew*; (3) additional work for its other employees does *not* show undue hardship; and, (4) the TDCJ failed to present any evidence that it considered other possible accommodations.

The moral of the story is simple. To prevail on an undue hardship defense on a Title VII religious accommodation or discrimination action, an employer should be prepared to show (1) the actual costs to accommodate would be unduly excessive; and (2) that the employer considered other reasonable accommodations and was unable to reasonably accommodate the employee. In harmony with *Groff* and *Hebrew*, the hardship must be actual and articulated, not merely theoretical or perceived. **HN**

Clark B. Will, sole member of Clark B. Will, P.C., and a member of Kilgore & Kilgore, PLLC, can be reached at cbw@kilgorelaw.com.