

Labor and Employment Law Update

U.S. Supreme Court Issues Three Important Employment Law Decisions

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Ending its 2022 term, the U.S. Supreme Court issued the three long awaited employment law decisions that impact all employment settings.

1. In *Groff v. DeJoy, Postmaster General*; Decision No. 22-174 (06/29/2023), the U.S. Supreme Court clarified an employer's burden when denying an employee's request for a religious accommodation. While previous court direction may have suggested an employer could satisfy the burden for denying a request if it showed "more than a de minimus cost", the Court clarified that in order to satisfy an "undue hardship" under Title VII, an employer denying a request for a religious accommodation must demonstrate that the burden in granting an accommodation would result in "substantial increased costs in relation to the conduct of the particular business".

In this case a postal worker requested to be off of work on Sundays as a day of rest and worship pursuant to his religious beliefs. While Sunday work historically was not an issue, this changed with the growth of delivery services such as Amazon. Groff first transferred to a rural route that did not have Sunday delivery, but eventually Sunday delivery became part of the rural route as well. The Postal Service first attempted to redistribute Groff's Sunday deliveries to other employees. As that scheduling became more difficult with the impact on other employees, Groff received progressive discipline for refusing Sunday assignments and he eventually resigned.

Groff sued under Title VII of the Civil Rights Act of 1964. The lower Court of Appeals held for the Postal Service under the standard that "requiring an employer to bear more than a de minimus cost" to provide a religious accommodation is an undue hardship. The Court based its reasoning on the Supreme Court's prior decision in *Trans World Airlines v. Hardison*, 432 U.S. 63 (1977), wherein the Court upheld the Airline's denial of request to be off of work on the Sabbath as such accommodation would require violating the seniority terms of a collective bargaining agreement. Although primarily related to the balance between religious accommodation and the terms of the collective bargaining agreement, the decision in *Hardison* included a sentence that said, "To require TWA to bear more than a de minimus cost in order to give Hardison Saturdays off is an undue hardship". That sentence has created debate

over the appropriate burden for employers when denying a request for a religious accommodation.

The Court clarified that burden in this recent *Groff* decision. Again, the Court clarified that in order to satisfy an “undue hardship” under Title VII, an employer denying a request for a religious accommodation must demonstrate that the burden in granting an accommodation would result in “substantial increased costs in relation to the conduct of the particular business”.

What does this mean for your business?

- Simply showing more than a de minimus cost will not be sufficient. The cost must now be “substantial”.
- While impact on other employees is relevant, those impacts are only relevant to the extent they go on to affect the conduct of the business.
- Requiring other employees to work overtime may not be sufficient to establish an undue hardship. Consideration of other options will be necessary.
- Consider that this clarified standard for denying a request for religious accommodation (a showing of substantial increased costs in relation to the conduct of the particular business), although different, is closer to the standard when evaluating an accommodation under the Americans with Disabilities Act (Significant difficulty or expense).

2. In *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, Decision No. 20-1199 (June 29, 2023), the U.S. Supreme Court held that the admissions process used by Harvard College and the University of North Carolina violated the Equal Protection Clause of the 14th Amendment to the U.S. Constitution due to the degree that each admissions process used race as a factor in admissions consideration. Each failed to satisfy the very limited test of “strict scrutiny” which asks first whether the racial classification is used to “further compelling governmental interests,” and second whether the government’s use of race is “narrowly tailored,” i.e., “necessary,” to achieve that interest.

The Fourteenth Amendment provides that no State shall “deny to any person... the equal protection of the laws.” As such, the prohibitions primarily relate to actions of the government and therefore public sector employers. At the same time, since private sector employers are covered under Title VII and the Wisconsin Fair Employment Act, which prohibits discrimination on the basis of race, the Court decision is very instructive with a strong message regarding the limitations placed on decisions which are made in any part based upon race.

What does this mean for your business?

- Diversity, Inclusion and Equity remain important goals for employers. At the same time, such important goals cannot cross into aspects that create discrimination on the basis of protected employment categories, such as race.
- While this case focused on the Equal Protection Clause of the Fourteenth Amendment, there will be greater scrutiny of any employer process that provides additional credit based upon a protected category. Employers should review any policy, form or process that does that and consult their legal counsel to make sure such policy, form or process follows the law.

3. *303 Creative LLC v. Elenis Decison*. No. 21-476 (June 30, 2023) the U.S. Supreme Court held that a Colorado Statute that prohibited a business from discriminating against customers based on certain protected categories violated the business owner's rights protected by the First Amendment.

The State of Colorado's Anti-Discrimination Act prohibits all "public accommodations" from denying "the full and equal enjoyment" of its goods and services to any customer based on race, creed, disability, sexual orientation, or other statutorily enumerated trait. The business owner, 303 Creative, filed an injunction to prevent the State from forcing her to create websites celebrating marriage that defy her belief that marriage should be reserved to unions between one man and one woman. While Creative 303 would work with all people regardless of classifications such as race, creed, sexual orientation, etc. in creating graphic design and websites, the owner would not provide content that contradicted her personal held belief that marriage is between one man and one woman. The lower courts found in support of the Colorado statute denying 303 Creative's request for injunction. The Supreme Court disagreed.

In finding the statute violated the business owner's first amendment rights, the Court noted:

The First Amendment's protections belong to all, not just to speakers whose motives the government finds worthy. In this case, Colorado seeks to force an individual to speak in ways that align with its views but defy her conscience about a matter of major significance. In the past, other States ... have similarly tested the First Amendment's boundaries by seeking to compel speech they thought vital at the time. But abiding the Constitution's commitment to the freedom of speech means all will encounter ideas that are "misguided, or even hurtful." Consistent with the First Amendment, the Nation's answer is tolerance, not coercion. The First Amendment envisions the United States as a rich and complex place where all persons are free to think and speak as they wish, not as the government demands. Colorado cannot deny that promise consistent with the First Amendment. (Cites omitted).

What does this mean for your business?

- Similar direction from the Court regarding the right to association in joining or not joining unions, the Court again places strong protection in First Amendment rights as balances against state interests.
- While this case related to a state statute directed at business operations, employers must be mindful of employee First Amendment rights as applied to the workplace.

If you have any questions on these decisions, please contact the author or any member of our [Labor and Employment Section](#).