Issue Seven

The Victorious Employer:

EMPLOYMENT AND LABOR NEWS FOR WINNING IN THE WORKPLACE

SCOTUS ENSURES EMPLOYEE RELIGIOUS BELIEFS ARE RESPECTED.

What Does It Mean For Employers?

On June 29, the Supreme Court of the United States (SCOTUS) released an important ruling in *Groff v. Dejoy*, which clarified the responsibilities of employers when it comes to accommodating their employees' religious practices.

The unanimous decision redefined the concept of "undue hardship" and established that Title VII mandates that an employer who denies a religious accommodation must demonstrate that granting such an accommodation would lead to "significant increased costs compared to the operation of its specific business." This ruling is a significant step in ensuring that employees' religious beliefs are respected and that employers are held accountable for accommodating them.

Groff will have serious implications for Nevada employers evaluating how and when to accommodate their employees' religious beliefs and practices.

Facts Of The Case

Gerald Groff is a devout evangelical Christian who firmly believes that Sunday should be a day of worship and rest, rather than a day of "secular labor" and the transportation of "worldly goods." He started working for the United States Postal Service (USPS) in 2012, where he became a rural carrier associate and assisted regular carriers with mail delivery.

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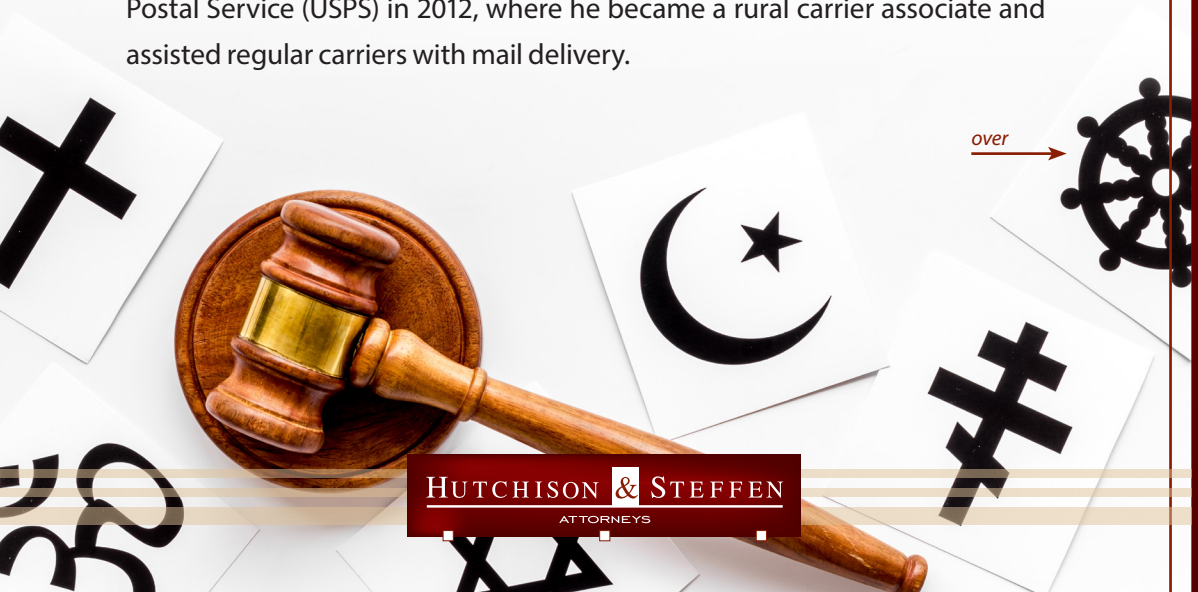

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PARTNER

We are pleased to present Issue Seven of The Victorious Employer, our periodic employment law newsletter. This and future issues will cover a range of topics relevant to those with an interest in employer/employee interactions.

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When he first began his job, Sunday work was not typically required. However, over time, that began to change.

In 2013, USPS made an agreement with Amazon to start delivering packages on Sundays. This was a big deal for customers who needed their orders quickly.

Then, in 2016, USPS signed a memorandum of understanding with the National Rural Letter Carriers' Association that outlined how Sunday and holiday deliveries would be handled. During a two-month peak season, each post office would use its employees to deliver packages. At other times, workers such as Groff would deliver packages from a regional hub, including the Lancaster Annex in Quarryville, Pennsylvania.

Groff found himself in a difficult situation when he was informed that he would be required to work on Sundays. He was not willing to do so, and requested a transfer to Holtwood, a small USPS station that did not make Sunday deliveries at the time. However, this changed when Amazon deliveries began at the station in March 2017.

Despite Groff's reluctance to work on Sundays, USPS found other ways to ensure that Sunday deliveries were carried out. During peak season, the rest of the Holtwood staff – including the postmaster – delivered mail, while in other months, Groff's assignments were redistributed to other carriers.

Unfortunately, Groff continued to receive disciplinary action for refusing to work on Sundays, which ultimately led to his resignation in January 2019. Groff sued USPS under Title VII of the Civil Rights Act of 1964, claiming USPS failed to reasonably accommodate his religion because the shift swaps did not fully eliminate the conflict. The district court concluded the requested accommodation would pose an undue hardship on USPS and granted summary judgment for USPS. The U.S. Court of Appeals for the Third Circuit affirmed.

SCOTUS was asked to carefully consider the question of whether the "more-than-de-minimis-cost" (minimal) test for refusing Title VII religious accommodations should be disapproved.

While USPS argued that this test was necessary to prevent undue burden on employers, Groff argued that the test unfairly placed the burden on employees to prove that their religious beliefs were sincere.

SCOTUS's Decision And Reasoning

SCOTUS made its decision based on a textualist approach to the question presented under Title VII, and clarified that its intention was to provide clarity rather than overturn prior precedent. The justices also stated that the text of Title VII requires a higher standard than de minimis for undue hardship.

The historical standard for religious accommodations draws from Title VII of the 1964 Civil Rights Act, which requires employers to show that an employee's request for religious accommodations would create an "undue hardship" in order to deny it. But the Supreme Court undercut this standard in 1997 when it ruled in Trans World Airlines v. Hardison that employers needed to prove they face more than a "de minimis" cost to deny a religious accommodation.

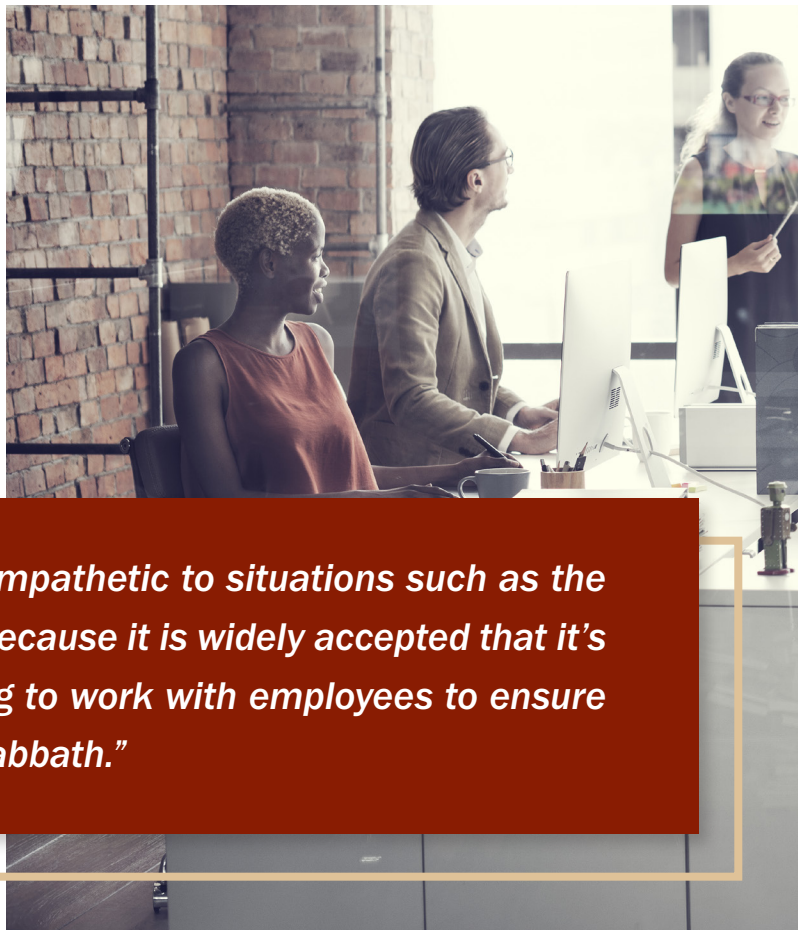
SCOTUS clarified the text of Title VII and the standard for undue hardship. They emphasized that the use of the term "undue" indicates a burden greater than a mere inconvenience or trifling hardship. Rather, the burden must be substantial and excessive in relation to the employer's business.

Lower courts had wrongly placed emphasis on the de minimis standard, which is not in line with the original intent of Title VII or the court's decision in Hardison. Employers must now demonstrate that the burden of granting an accommodation would result in a substantial increase in cost in relation to their business to establish an undue hardship defense.

Political Reaction To The Decision

Despite the unanimous ruling by SCOTUS, some liberal legal experts have argued that expanding religious accommodations for employees causes harmful unintended consequences. This concern arises out of distrust for the goals and objectives of the so-called "Christian conservative legal movement" to protect the sincerely held religious beliefs of pharmacists who object to filling prescriptions for contraception, teachers who hold a traditional view of gender and gender identity, and individuals who express their faith in the workplace.

Most employers are sympathetic to situations such as the one presented in Groff because it is widely



> ***"Most employers are sympathetic to situations such as the one presented in Groff because it is widely accepted that it's generally not a bad thing to work with employees to ensure they can observe their Sabbath."***

accepted that it's generally not a bad thing to work with employees to ensure they can observe their Sabbath. However, Justice Samuel Alito's opinion for the court has opened up a can of worms, according to some critics, since it's not exactly clear how to handle cases that are more controversial.

For example, some religious workers have claimed that they have the right to proselytize in the workplace, or to speak out against diversity and inclusion initiatives (and even the behavior of their colleagues). Additionally, critics of the court's decision point to instances where employees have refused to work with women or have intentionally referred to their co-workers using the wrong gender.

It's concerning to some court observers that the situation in Groff could potentially fuel an anti-vaccine campaign. It's also troubling to some court experts that it is possible that a potential consequence of this decision is that co-workers and managers of individuals asserting religious accommodations may be negatively affected by accommodations for beliefs that promote sexist behavior and preventable illnesses.

Even as the rights of religious employees expand, critics claim that another conservative strategy for pushing back on so-called "woke" corporations seeks to allow employers to impose their religious views on employees and customers who don't share them.

While the foregoing concerns raised by critics of SCOTUS's unanimous decision present tricky situations that will require careful consideration by our courts in the future, it is important not to give in to these critics' anxieties and overreaction to a decision that was clearly intended to treat Title VII protections of religious liberty the same as protections for race, gender, disability, etc.

Indeed, Justice Sonia Sotomayor went out of her way to quell the foregoing concerns when she wrote in her concurring opinion, joined by Justice Ketanji Brown Jackson: "To be sure, some effects on

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co-workers will not constitute 'undue hardship' under Title VII. For example, animus toward a protected group is not a cognizable 'hardship' under any anti-discrimination statute."

What Does This Decision Mean For Nevada Employers?

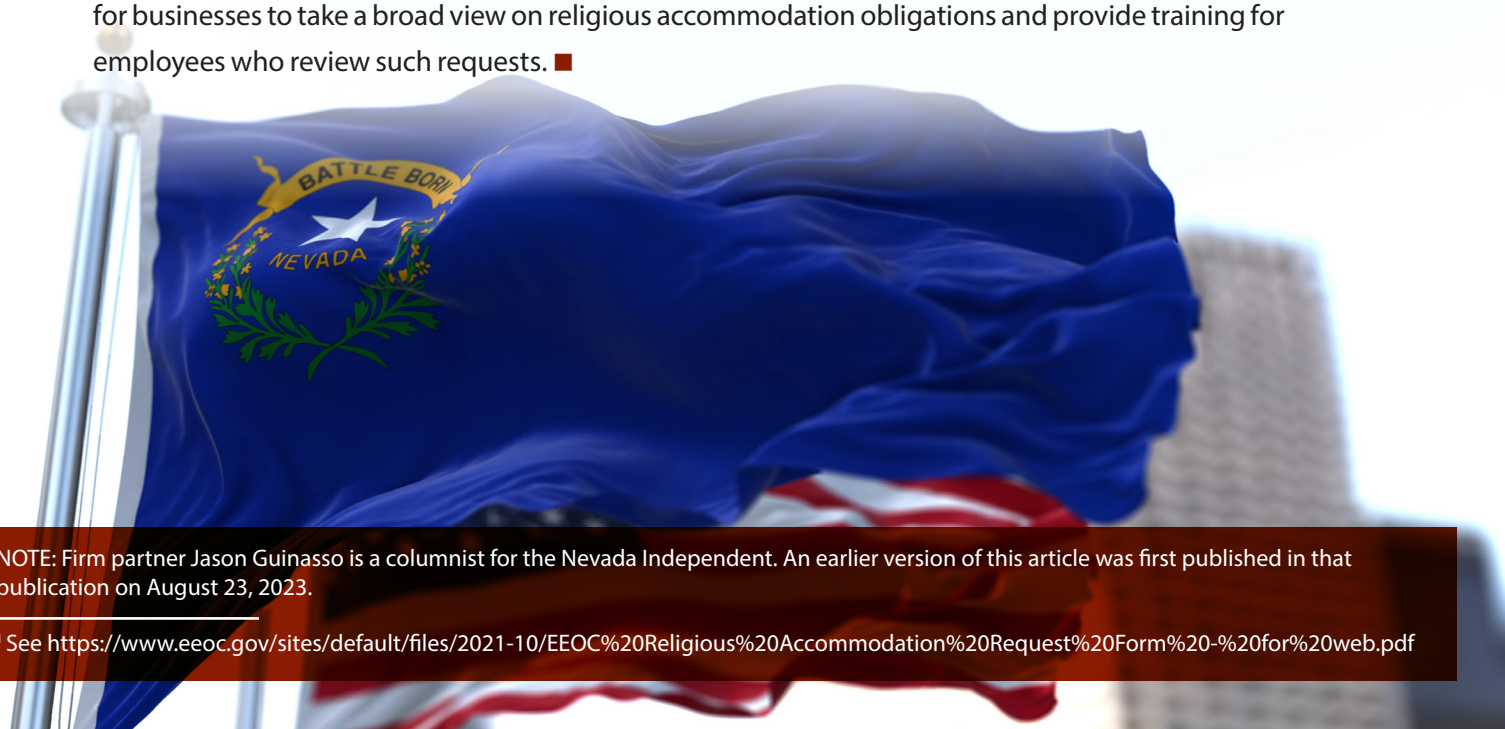
Under the *Groff v. DeJoy* ruling, religious discrimination is now on par with other forms of discrimination under Title VII. Therefore, Nevada employers are required to accommodate employees' religious practices unless doing so would result in undue hardship.

This means that an employer must:

1. Take an active approach in assessing religious accommodation requests. (The Equal Employment Opportunity Commission has made an accommodation request form available to assist employers.[1])
2. Establish clear policies and procedures for employees to request religious accommodations, including an interactive process similar to that of an ADA accommodation request.
3. Discuss different accommodation options with the employee and determine how they can be implemented.
4. Deny a requested accommodation only if it would significantly burden business operations.
5. When denying a requested accommodation, document the facts establishing that the costs of the accommodation would be excessively high or unjustifiable. Additionally, document the facts establishing that granting the accommodation would result in a substantial increase in costs in relation to the conduct of its business.

The Groff decision will likely lead to increased religious accommodation lawsuits, so every Nevada employer should be prepared and proactive.

It's essential for Nevada employers to understand that not accommodating religious practices can have serious legal consequences. Failure to do so can lead to expensive litigation, which is why it's crucial for businesses to take a broad view on religious accommodation obligations and provide training for employees who review such requests. ■



NOTE: Firm partner Jason Guinasso is a columnist for the Nevada Independent. An earlier version of this article was first published in that publication on August 23, 2023.

[1] See https://www.eeoc.gov/sites/default/files/2021-10/EEOC%20Religious%20Accommodation%20Request%20Form%20-%20for%20web.pdf

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