Supreme Court Clarifies Employer Test for Religious Accommodations

For almost 50 years, employers (and courts) considering requests for religious accommodation have evaluated whether the requested accommodation imposed more than a *de minimis* burden on the organization. If so, the accommodation constituted an undue hardship and could be denied. But on June 29, 2023, the United States Supreme Court unanimously ruled that undue hardship in the context of religious accommodation claims means "substantial increased costs in relation to the conduct of [the employer's] particular business."

In Groff v. DeJoy, the Supreme Court had its first chance in almost 50 years to address the standard that should be applied under Title VII of the Civil Rights Act when determining whether a request for a religious accommodation places an undue hardship upon the employer's business. Since 1977, many lower courts have applied the *de minimis* test to determine if the undue hardship burden is satisfied when analyzing a request for a religious accommodation. The Supreme Court noted that the *de minimis* standard has "emboldened employers to deny reasonable accommodation requests." Given that a *de minimis* burden can be met by the smallest inconveniences, almost any undue hardship imposed by a religious accommodation on an employer has historically satisfied the *de minimis* test.

Writing for the Court, Justice Samuel Alito clarified that the proper standard for showing undue hardship requires the employer to demonstrate that the burden is "substantial in the overall context of an employer's business." A hardship "is more severe than a mere burden." And if the hardship is "undue," it must be "excessive" or "unjustifiable", which is something "very different from a burden that is merely more than de minimis, i.e., something that is 'very small or trifling.'"

This is, and has always been, a fact-specific inquiry that is unique to each individual and business. The test must be applied — by employers and courts — "in a manner that takes into account all relevant factors in the case at hand, including particular accommodations at issue and their practical impact in light of the nature, size, and operating cost of [an] employer."

Employers will note that the new religious accommodation standard is similar to, but does not mirror, the definition of undue hardship under the Americans with Disabilities Act, which that Act defines as "action requiring significant difficulty or expense."

This opinion, and the newly reformulated undue hardship test, will likely result in a rash of religious accommodation requests, and employers and employees will struggle to find the new boundary set by the substantial burden test. Employers should carefully consider such requests and contact legal counsel when evaluating whether the undue hardship standard is met in each particular circumstance.

For more information about Title VII compliance, please contact Justin Furrow or Kathleen Siciliano.