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Daniel Aquino outside the Lloyd D. George US Courthouse.

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Costs are Key: Religious Accommodations in the Workplace after *Groff v. DeJoy*

By Daniel Aquino

Title VII of the Civil Rights Act of 1964 prohibits religious discrimination in the workplace. Covered employers are required to reasonably accommodate an employee's religious belief, observance, and practice, unless doing so would create an "undue hardship on the conduct of the employer's business." 42 USC § 2000e(j). In June 2023, the Supreme Court of the United States clarified the "undue hardship" standard in *Groff v. DeJoy*, effectively upending nearly 50 years of precedent. 600 U.S. 447 (2023). Prior to *Groff*, courts applied a "*de minimis*" standard under which an employer could rely on a minor increase in cost or operational difficulty as an "undue hardship" to justify denial of a religious accommodation. *Groff* replaced the "*de minimis*" standard with a more stringent inquiry that requires employers to prove "the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business." *Id.* at 470 (emphasis added).

Post-*Groff*, cost analysis must support undue hardship

While the jurisprudence surrounding *Groff* continues to develop, the following three decisions help clarify an employer's duty when evaluating a religious exemption request. Specifically, an employer should not assume it can demonstrate an undue hardship simply by citing general-

While the jurisprudence surrounding Groff continues to develop, the following three [court] decisions help clarify an employer's duty when evaluating a religious exemption request.

ly to an operational disruption, a generalized increase in costs, or even a safety threat. Rather, an employer's consideration of a religious accommodation request, in any context, must include an evaluation of the specific financial costs associated with granting the exemption. The employer should then evaluate whether such costs are a burden that is substantial in the overall context of the employer's entire business.

- In *Bordeaux v. Lions Gate Ent., Inc.*, No. 2:22-CV-04244-SVW-PLA, 703 F. Supp. 3d 1117, 2023 WL 8108655 (C.D. Cal. Nov. 21, 2023), a production company employer argued that providing an actress a religious exemption to a COVID vaccine policy constituted an undue hardship. Due to local laws, granting the accommodation would have required an entire film crew to adopt social dis-

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tancing protocols, including separate transportation, separate hair and makeup personnel, separate costume personnel, and separate changing rooms. The employer calculated these costs to exceed \$300,000. The court found these costs sufficient under *Groff's* stricter standard, relying heavily on the specified costs to show an undue hardship. *Bordeaux*, 703 F. Supp. 3d at 1127 – 1128, 2023 WL 8108655 at *16 (confirming that “*Groff* requires financial analysis.”)

- In *Smith v. Atlantic City*, No. 1:19-CV-6865, 703 F. Supp. 3d 511, 2023 WL 8253025 (D. N.J. Nov. 28, 2023), a firefighter working primarily as an air mask technician requested a religious exemption to a beard-grooming policy. Given that the policy ensured that respiratory masks created a tight seal from smoke, the court found that granting the exemption would create a significant safety risk, both to the plaintiff and other firefighters who might need to rescue him if his mask failed. Notably, even where the safety risk constituted an obvious undue hardship, the court grounded its discussion in financial analysis as required by *Groff*. *Smith*, 703

F. Supp. 3d at 519, 2023 WL 8253025 at *9 (“The [c]ourt is hard-pressed to imagine a circumstance that would create a greater undue burden—*or a higher cost*—on a fire department than the potential risk of injury or loss of life.”) (emphasis added).

- Finally, in *Hebrew v. Texas Department of Criminal Justice*, 80 F.4th 717 (5th Cir. 2023), the court considered a prison guard’s request for a religious exemption from a beard-grooming policy. The employer claimed a beard could hide contraband or be grabbed by a prisoner in an attack. While the court questioned the factual authenticity of these considerations, it emphasized that the prison failed to identify the *actual costs* of granting the accommodation, precluding a finding of undue hardship under *Groff*. *Id.* at 722-23 (“TDCJ nowhere identifies any *actual costs* it will face—much less ‘substantial increased costs’ affecting its entire business . . . TDCJ simply identifies its security and safety concerns without regard to *costs*.”) (emphasis added).

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Title VII's fundamental framework for religious accommodations remains unchanged

The Supreme Court of the United States described its opinion in *Groff* as a mere clarification to Title VII jurisprudence. *See Groff*, 600 U.S. at 471 (“We have no reservations in saying that a good deal of the EEOC’s guidance in this area is sensible and will, in all likelihood, be unaffected by our clarifying decision today.”) Thus, while the post-*Groff* jurisprudence demonstrates employers’ increased burden to demonstrate undue hardship, employers should not interpret these decisions to effectively mandate granting all religious accommodations. For example, it remains the case that employers are not required to allow an employee to express religious beliefs in a manner that discriminates against or harasses other employees. *See Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 607-08 (9th Cir. 2004). Such disruptions would still constitute an un-


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due hardship, though *Groff* would require an employer to specifically address the financial costs of such disruptions.

Further, *Groff* did not alter the threshold analysis of whether an employee's request for accommodation is religious in nature. Title VII continues to protect an employee's religious beliefs, but does not protect social, political, or economic beliefs, nor personal preferences. Likewise, while an employee's stated religious belief is assumed to be sincerely held, employers remain permitted to make limited factual inquiries where there is an objective basis for questioning the sincerity of that belief.

Most importantly, the post-*Groff* jurisprudence makes clear that employers should still analyze requests for religious accommodations on a case-by-case basis and carefully evaluate potential accommodations. Common religious accommodations may include exceptions to company policy (e.g., a dress code exemption to permit employees to wear religious attire) and modified work schedules or leave to permit observance of religious practices. Such religious accommodations must be provided to an employee unless the accommodation constitutes an undue hardship, as clarified by *Groff*. **e**



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