

The logo for VORYS, featuring the word "VORYS" in a bold, white, sans-serif font. The letters are widely spaced, and the "V" and "Y" have a distinctive shape with a small gap at the top and bottom respectively.

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# Practical Guidance: Religious Accommodations

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# Topics for Today

- **Religious Accommodations: A Brief History Lesson**
  - The "De Minimis" Standard.
- **New Supreme Court Standard**
  - New test less "pro-employer" than former one
  - What's the practical impact?
- **Practical Approach**
  - Real-World Hypotheticals

# Religious Accommodations: A History Lesson

- **Title VII: 1964**
  - Employers cannot discriminate on the basis of religion
- **Title VII Amendment, 1972**
  - "Religion" in Title VII includes all aspects of belief, observance, and practice
  - An employer must "reasonably accommodate" such observances and practices *if* it can do so "without undue hardship on the conduct of its business"
- ***Trans World Airlines, Inc. v. Hardison, 432 U.S. 63 (1977)***
  - "De minimis" undue hardship standard – much more employer friendly than other types of accommodation standards
  - Employer not required to excuse employee from working on the Sabbath because "[t]o require [the employer] to bear more than a de minimis cost in order to give [the employee] Saturdays off is an undue hardship"

# Religious Accommodations: A History Lesson (cont'd)

- Per *TWA* case, Employer satisfied its burden of "more than *de minimis*" fairly easily – inconvenience or rule variations often enough – examples:
  - Denying Sikh employee a restaurant management position due to beard and headwear
  - Firing airline employee who wore a turban in violation of "headgear" rule for ticket agents; employee had refused transfer to position where customers could not see him (or his turban)
  - Denying Muslim employee's request to have meal break at sunset rather than at standard scheduled time; the employer argued that individualized break times would hurt morale by conflicting with co-workers' preferred time.

# *Groff v. DeJoy*, 600 U.S. 447 (2023)

- Gerald Groff, former USPS worker and Christian.
- Groff said his religious beliefs prohibited him from working on Sundays, in observance of the Sabbath.
- USPS offered to find employees to swap shifts with him, but on numerous occasions, no co-worker would swap, and Groff did not work.
- When Groff refused to work on Sunday the Postal Service disciplined him, prompting Groff to resign.

# Groff v. DeJoy, 600 U.S. 447 (2023)

- Supreme Court unanimously held that to deny a sincere religious accommodation request under Title VII, employers must show that the burden of granting it **"would result in substantial increased costs in relation to the conduct of its particular business."**
- Significantly expands the former "undue hardship" test.
  - "Hardship" is more than de minimis "burden"
  - "Hardship" must rise to an "excessive" or "unjustifiable" level.
- Additionally, if an employer determines that a requested accommodation poses an undue hardship, the employer must consider other possible accommodations, even if other accommodations have not been requested.

# New Standard, 2023: *Groff v. DeJoy*

- "De Minimis" test replaced by "**substantial increased costs in relation to the conduct of the particular business**"
  - Key Terms:
    - "Substantial increased costs"
    - "the conduct of the particular business"
  - The case was sent back to lower court to apply this standard.

# New Meaning of "Undue Hardship"

- Not "undue hardship" – ??
  - Temporary costs
  - Voluntary shift swapping
  - Administrative costs
  - Bias or hostility from customers or other employees
- Yes "undue hardship" – ??
  - Paying OT to one employee so that another could permanently be off for weekly religious observance



# Religious Accommodations vs. ADA Accommodations

Religious Accommodations	Disability Accommodations
Employer must accommodate sincerely held religious belief/practice unless doing so would impose an “undue hardship on the conduct of the employer’s business.”	Employer must provide a "reasonable accommodation" to an employee with a disability if it would not impose an "undue hardship" on employer’s business operations.
Undue Hardship = "Substantial increased costs in relation to the conduct of the particular business."	Undue Hardship = "An action involving <u>significant</u> difficulty or expense."
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.	Employer must engage in "interactive process“ in good faith with employee, and the two will work together to determine a possible reasonable accommodation.

# Potential Third Rail: Is It Even a Sincerely Held Religious Belief?

- Title VII only protects "sincerely held religious beliefs"
- No accommodation analysis is required if that first element is absent.
- Would employer ever want to go down that path – and if so, how?
- Is there an actual conflict between the belief and the work rule?

# Broad Definition of "Religion"

- Title VII: "Religion includes all aspects of religious observance and practice, as well as belief."
- EEOC GUIDELINES:
  - Religion includes moral beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious belief.
  - But social, political, or economic philosophies, as well as mere personal preferences, are not "religious" beliefs protected by Title VII.

# Religious Accommodation: Hypothetical 1

- You have a part-time employee who has worked for you for six (6) years. Throughout her employment she has always worked Monday-Thursday 8:00 AM to 4:00 PM. She comes to you and states that she is interested in applying for a full-time management role. All management roles require open availability, and each manager is expected to work two (2) weekends (Saturday and Sunday) each month. You inform her of these requirements and she, for the first time, tells you that she is a Seventh Day Adventist and observes the Sabbath from sunset on Friday to sunset on Saturday.
  - What do you do?
  - Do you consider this a request for accommodation?
    - If so, what are your next steps?
      - What steps do you take to determine whether accommodating her request would place an undue burden on the business?
    - If not, why not?

# Hypothetical 1 (cont.)

- What if the employee asks if she is eligible to apply for the role despite that she is unavailable to work Saturday?
  - Do you provide an answer?
    - If so, what do you say?
  - After your conversation with the employee, what do you do next?
- Now imagine that the employee has, on occasion, switched shifts with her coworker and worked on Saturdays. She has also in the past attended company-sponsored happy hours which typically occur on Friday evenings.
  - Does this change how you handle the conversation?
    - If so, why?
    - If not, why not?

# Religious Accommodation: Hypothetical 2

- You have a group of long-time employees who work on a manufacturing line together. Because these employees work in close proximity to one another in an enclosed space, your Company has required that these employees receive a flu shot each fall for the last 10 years. All of the employees have always complied with this requirement. Recently, several employees were infected with a virus, which disrupted the manufacturing process for several days. Following this issue, the Company made the decision to require that, in addition to the flu shot, the employees would now also be required to receive the RSV vaccine, and updated COVID-19 vaccines as they become available. One of the employees on the line, Employee A, comes to you and tells you that he has a religious objection to the COVID-19 vaccine and tells you that he will not take the vaccine under any circumstances because it is untested and unsafe.
  - What do you do?
    - Do you ask about the employee's religious beliefs?
      - If so, what questions do you ask?
    - In determining whether the employee's beliefs are religious in nature, do you consider the fact that the employee takes other vaccines?

## Hypothetical 2 (cont.)

- Do you consider this a request for an accommodation?
  - If so, what are your next steps?
    - What steps do you take to determine whether accommodating her request would place an undue burden on the business?
      - What alternatives to the vaccine might be available as an accommodation?
  - If not, why not?
- Now imagine that another employee on the line, Employee B, comes to you and tells you that Employee A has been outspoken to the other employees that they will not get the COVID-19 vaccine. Employee B tells you that they do not feel comfortable working near Employee A if Employee A refuses to get vaccinated.
  - What do you do?
  - Does this impact your analysis of whether accommodating Employee A would pose an undue burden on the Company?

# Religious Accommodation: Hypothetical 3

- You have recently hired a new employee, J, to work as a production employee in a manufacturing environment. The company is a continuous 24/7 operation and utilizes two 12-hour shifts each day. The company operates on a tight production schedule, and any disruption to workflow could potentially impact productivity and output. Before the start of his first shift, J approaches you and—for the first time—tells you that he is Muslim and requests to be allowed to pray during his shifts. J states that he will need to take three 10-minute breaks during each shift to pray. He also requests that you designate a private space in the facility for this purpose.
  - What do you do?
  - How do you go about determining whether the breaks can be accommodated?
    - Who do you speak to?
    - What questions do you ask?
  - Are there other potential accommodations available?
    - If so, what alternative accommodations might you propose?



# Questions? Comments?





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Thank You