# QUICK NOTE FOR EMPLOYERS REGARDING RELIGIOUS ACCOMMODATION

By Maureen Duffy and Henry Nibbelin

**In case you missed it, on the last Thursday in June, the U.S. Supreme Court made it clear in *Groff v. Dejoy* there is to be a new test to determine whether an employer may deny an employee's religious accommodation request under Title VII of the Civil Rights Act of 1964 ("Title VII"). Unusually for this Court, it ruled unanimously that an accommodation may no longer be rejected if it creates more than a "de minimis" cost. Instead, employers must show that the burden of granting a religious accommodation would result in "substantial increased costs in relation to the conduct of its business."**

**What Does "Substantial Increased Costs" Mean?**

This is to be determined. The Supreme Court provided minimal guidance on how employers meet the "substantial increased costs" standard. It will be up to the lower courts to determine how to apply this new standard on a case-by-case basis.

**What Does *Groff v. Dejoy* Mean for California Employers?**

In the least, a review of current accommodation policies and practices, and possibly some slight tweaks in both areas. In part, this is because many California employers already must comply with California's Fair Employment and Housing Act ("FEHA") along with Title VII. As such, the *Groff* decision does not fundamentally change California employers' religious accommodation obligations. The FEHA standard for religious accommodations is considered a higher standard than the "more than *de minimis* cost" test as it requires covered California employers to provide reasonable accommodations for religious observances, dress, and grooming practices, unless providing such accommodations would create an "undue hardship" for the employer.

Under FEHA, an "undue hardship" is an action requiring "significant difficulty or expense." (Cal. Gov't Code § 12940(u).) Multiple factors are taken into consideration to determine whether an undue hardship exists, including the nature and cost of the accommodation needed as well as the overall financial resources of the company.

Notably, because "undue hardship" is defined differently under Title VII than it is under FEHA, California employers are advised to not define "undue hardship" in their accommodation policies, *but they should always reference it*.

**What Does *Groff v. Dejoy* Mean for Employers Outside of California?**

Depending upon the state, notable changes may be required with regards to an employer's accommodation policies and practices. Although more clarification is needed, the *Groff* decision does clarify some nuances surrounding religious accommodation, including that an employer may *not* deny an accommodation request merely based on a co-worker's dislike of religious practice or expression in the workplace. A religious accommodation that is burdensome to the employee's co-worker is also not sufficient to create an undue hardship for the employer. Instead, the employer must show that the employee's religious accommodation impacts "the conduct of the employer's business."

If you have any questions regarding this ruling or need assistance with reviewing your company's policies on religious accommodations, reach out to Donahue Fitzgerald's Employment Attorneys.

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