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LEGAL NEWS FOR YOUR BUSINESS

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Employment Alert

UPDATED STANDARDS FOR RELIGIOUS ACCOMMODATIONS

On June 29, 2023, the Supreme Court issued a decision in *Groff v. DeJoy* ("***Groff***"), clarifying employers' burden to show that a religious accommodation creates an "undue hardship." Before the decision, an accommodation could cause an undue hardship if it imposed anything more than a *de minimis* – trifling or minor – cost to the employer. The Supreme Court ruled that the standard was too low, stating employers must now show granting an accommodation would result in "substantial increased costs."

In *Groff*, the Supreme Court reviewed a case in which a postal worker alleged the United States Postal Service failed to accommodate his request to observe Sabbath on Sundays. Groff, an evangelical Christian, began working in 2012 for USPS, which at that time did not deliver packages on Sundays. Later, however, USPS began to facilitate Sunday deliveries for Amazon, causing Groff to transfer to a rural location to avoid the requirement. When that location began making Sunday deliveries as well, Groff refused to work on Sundays and received progressive discipline before resigning in 2019. Groff sued USPS under Title VII, claiming that USPS could have accommodated his religious practice. USPS claimed that exempting Groff from Sunday work imposed a burden on his coworkers, disrupted the workplace, and diminished employee morale. The district court and Third Circuit ruled in favor of USPS, and the case was appealed to the Supreme Court.

The Supreme Court, however, stated that the *de minimis* standard was never meant to be the governing threshold for undue hardship, and viewed *Groff* as an opportunity to clarify that standard. Rather than agreeing that employers may refuse an accommodation due to a *de minimis* hardship, the employer must show that an accommodation would result in "substantial increased costs." Additionally, it determined that employers may not rule out an accommodation due solely to its impact on employees – any impact must also translate to an impact on the conduct of an employer's business. Specifically, the Supreme Court also outlined that accommodations do not impact the conduct of business when there is an undue hardship due to (1) employee animosity toward religion, a particular religion, or

religious accommodations, or (2) additional labor needed to coordinate voluntary shift swaps. Further, the Court reminded employers that even if a requested accommodation causes an undue hardship, the burden rests on the employer to discuss alternatives.

Following this decision, employers should take greater care when analyzing religious accommodation requests. The *Groff* decision creates a stricter standard for employers to deny religious accommodations, so employers should be prepared to show how a potential accommodation would cause an undue hardship that would impact the conduct of their business and create substantial costs. Additionally, other state and local courts may also impose even stricter standards. Employers should review their policies regarding religious accommodations and take care to comply with all federal, state, and local requirements.

If you have any questions about employer obligations regarding religious accommodations, please reach out to any member of Gardner Skelton's employment team.

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STATUS OF AFFIRMATIVE ACTION IN EMPLOYMENT

Affirmative action and race-conscious decision making have been recent topics of discussion following the Supreme Court's June ruling that affirmative action and race-conscious decision making in education are violations of the Equal Protection Clause of the Constitution. While the decision will have a major impact on higher education, the effects do not yet extend to employers' diversity efforts.

Although affirmative action is a broad concept that covers many situations, including education and employment, the Supreme Court's decision only applies to college admissions. The Equal Opportunity Employment Commission ("EEOC") addressed the ruling, stating that the decision "does not address employer efforts to foster diverse and inclusive work forces." Additionally, the decision considered the affirmative action programs in the context of a zero-sum environment, in which race factors could be construed as a "plus" or "minus" for a particular applicant. On the other hand, the goal of most employers' DEI and voluntary affirmative action programs are not to discriminate based on race, but to embrace and encourage equal opportunities for employees of all races and ethnicities and decrease bias in decision making. Further, federal contractors are still required to have affirmative action plans, as outlined in Executive Order 11246.

While the current ruling only applies to higher education, it is possible that lower courts will choose to apply the analysis to other contexts, including employment. However, any implications would take time to take effect, and would likely also face significant litigation. Employers should monitor relevant laws and regulations and review their DEI and affirmative action policies and programs to ensure current compliance and prepare for any future changes.

If you have questions about DEI or affirmative action programs, please reach out to any member of Gardner Skelton's employment or HR consulting team.

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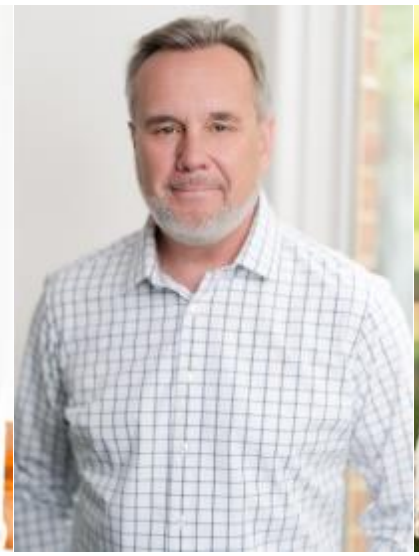

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