

BEST PRACTICES FOR UPDATING YOUR BUSINESS'S RELIGIOUS NON-DISCRIMINATION POLICIES

On June 29, 2023, the Supreme Court issued a unanimous decision in the First Liberty Institute case *Groff v. DeJoy*. The opinion changes the legal standard that businesses with 15 or more employees must use to evaluate employee requests for religious accommodations at work. Employers should revise their religious accommodation policies, provide training for managers and HR departments, and reevaluate any pending claims for religious accommodations to ensure compliance with federal law.¹

WHAT ARE RELIGIOUS ACCOMMODATIONS AT WORK?

Your employees may request religious accommodations when there is a conflict between a job requirement and their religious beliefs. Employees of faith often request accommodations to be allowed to observe holy days, attend worship services, follow the dress or modesty requirements of their faith, or otherwise not be forced to violate their religious beliefs on the job. Employers should evaluate all such requests in accordance with applicable law.

HOW DID THE LAW CHANGE?

Title VII of the Civil Rights Act, as amended, applies to workplaces across the country that have 15 or more employees. It applies to private businesses as well as government employers.² The law requires employers to give their employees reasonable religious accommodations unless doing so would cause an undue hardship on the business.

Previously, "undue hardship" was defined as anything more than a "de minimis cost." Under the prior standard, employers could deny religious accommodations by pointing to a minimal burden on the business.

Now, the Supreme Court's decision in *Groff v. DeJoy* clarified that employers must provide reasonable religious accommodations unless they can prove that doing so would "result in substantial increased costs in relation to the conduct of its particular business."

This standard is to be evaluated in light of many factors, including the nature, size, and operating cost of the employer, meaning larger employers will more often be required to grant religious accommodations to their employees. The Court also clarified that animosity or hostility toward an employee's religious beliefs cannot provide a defense to a religious accommodation claim.

WHAT DOES THIS LOOK LIKE IN PRACTICE?

The Court's opinion cited examples of actions employers may need to take, the costs of which usually will not justify denying a religious accommodation:

- Accommodate religious exceptions to dress code requirements, which would allow employees to wear headscarves, yarmulkes, and other items for religious purposes
- Cover occasional absences, which would allow employees to observe holy days or attend worship services
- Expend administrative costs in reworking schedules
- Pay infrequent or temporary premium wages for a substitute
- Facilitate or allow voluntary substitutes and swaps among employees

This list is not exhaustive and should be understood as representing the minimum that will be required for most businesses. Each accommodation request should be addressed individually based on its facts. Employers are also required to consider other available options that would resolve the conflict between the job and the employee's religious beliefs, in addition to considering any alternatives suggested by the employee. The best practice is to engage in an interactive dialogue with the employee to find a solution.

WHAT SHOULD MY BUSINESS DO NOW?

1. Revise Employee Handbooks & Religious Accommodation Policies

Update forms and policies for processing religious accommodation requests. Ensure that the "de minimis" or minimal burden test is no longer used and is replaced with a "substantial cost" undue hardship test. It is best practices to make it clear that your company respects religious diversity and endeavors to grant religious accommodation requests where possible.

2. Provide Immediate Non-Discrimination Training for Managers and HR Departments

Anyone at your company who is responsible for handling religious accommodation requests should be made aware of the newly clarified standard for evaluating these requests. New training should be provided as soon as practicable to ensure compliance with the law.

3. Reconsider Any Pending Religious Accommodation Requests & Pending Cases

Because the decision interprets the 1972 amendments of the Civil Rights Act, the clarified undue hardship standard likely applies retroactively. Any pending religious accommodation requests and pending lawsuits should be reevaluated.

First Liberty Institute attorneys represented the plaintiff in the Supreme Court case, *Groff v. DeJoy*. Our attorneys are standing by to assist you with questions about protecting religious liberty in the workplace.

First Liberty is your First Call for legal assistance.

¹ This resource is not intended for faith-based nonprofit organizations, as the law applies differently in that context. For information specific to religious employers, please reach out to our team at [FirstLiberty.org](https://www.FirstLiberty.org).

² Government employees may have additional protections under the First Amendment and the Religious Freedom Restoration Act.