

What obligations do employers have in responding to employees' objections to vaccine mandates following the Supreme Court's decision in *Groff v. DeJoy*?

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Winter weather brings renewed attention to seasonal vaccines—and to employers' interest in encouraging employees to remain healthy and productive, including potentially through efforts to require or incentivize workers to be vaccinated. While not as widespread today as they were during the pandemic, such rules and incentives trigger legal obligations to provide reasonable accommodations to employees who assert that vaccinations contravene a sincerely held religious belief or are inadvisable—even harmful—given a pre-existing disability.

This article explains the current legal landscape employers face in evaluating requests for accommodations on the basis of religion or disability. It begins by explaining the recently announced standards for assessing requests for religious accommodations and summarizing the longstanding standards for assessing requests for disability-related accommodations. This article then surveys three recent court decisions applying accommodation standards in cases involving vaccines, explaining the legal standards applied by the deciding courts; and concludes with best practices for employers evaluating requests for religious and disability accommodations in light of current law, both in the context of vaccines and otherwise.

Religious Accommodations under Title VII

Title VII of the Civil Rights Act of 1964 ("Title VII") prohibits covered employers from discriminating against employees and applicants on the basis of religion (as well as race, color, sex, and national origin). See 42 U.S.C. § 2000e-2(a). Prohibited discrimination on the basis of religion does not occur, however, in situations where the employer "demonstrates [it] is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." See 42 U.S.C. §§ 2000e(j), 2000e-2(a). Title VII does not define "undue hardship" or "conduct of the business," which instead have been

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interpreted by the courts.

The current standard for evaluating religious accommodation requests was set on June 29, 2023, when the United States Supreme Court decided *Groff v. DeJoy*. 600 U.S. 447; 143 S. Ct. 2279 (2023). The *Groff* case involved an employee, Gerald Groff, who asked to be excused from Sunday work shifts that conflicted with his religious views of the Sabbath. 143 S. Ct. at 2286. When his requests were denied, Groff continued to decline to report to work, which led to ongoing discipline and his eventual resignation. *Id.* at 2287.

Groff later sued, alleging that the Postal Service violated Title VII by failing to accommodate his religious practice and belief regarding the Sabbath. *Id.* The district court and Third Circuit ruled for the Postal Service, finding that exempting Groff from Sunday work caused an undue hardship on his employer under the then-applicable standard, which was that any burden on an employer that was “more than . . . *de minimis*” constituted “undue hardship” such that an accommodation could be denied. *Id.* Under that then-applicable standard, the circuit court’s reasoning was that changing Groff’s schedule would violate an agreement between the Postal Service and the union that represented Groff and unfairly burden other employees who would need to work his shifts. *See id.* The courts also indicated that Groff’s absences “imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale.” *See id.*

The Supreme Court reversed. In a unanimous opinion authored by Justice Samuel Alito, the Court in *Groff* emphasized that Title VII focuses on “hardship,” a word choice that does not mean any mere burden. *Id.* at 2294. The Court further reasoned that the requirement that any hardship must be “undue” under Title VII indicated Congress’s intent that employers may have to bear meaningful costs to accommodate a religious employee. *Id.* Accordingly, the Court held, Title VII requires an employer seeking to deny an accommodation to demonstrate that the accommodation will substantially increase costs to its business—a significant change from the earlier standard, under which employers were effectively authorized to deny accommodations that required more than minimal cost of compliance. *Id.* at 2294-97. The Court then remanded the case for the lower courts to apply the standard set forth in the decision. *Id.* at 2297.

Groff instructs lower courts to apply its standard on a case-by-case basis and assess proposed accommodations in a “common-sense manner,” with an eye on the “practical impact” of the accommodation in light of the size and nature of the employer’s business and all other facts on hand. The Court also clarified that employers may take into account the burdens an accommodation imposes on other employees as part of its assessment of the extent to which the accommodation affects the “conduct” of the employer’s business, *id.* at 2298 (Sotomayor, J., concurring), as long as those burdens affect the employer’s operations.

Accommodations under the ADA

The Supreme Court assessed the standard for reasonable accommodations related to

disabilities under the Americans with Disabilities Act (“ADA”) more than 20 years ago, in *US Airways, Inc. v. Barnett*, 535 U.S. 391, 402 (2002). *Barnett* dealt with the conflict between an employer’s seniority system and an employee’s request to be assigned to a vacant position before other coworkers who had greater seniority, and thus greater entitlement to the position. 535 U.S. at 394.

Under *Barnett*, once an employee shows that a requested accommodation is “possible,” the burden shifts to the defendant employer to “show special (typically case-specific) circumstances that demonstrate undue hardship in the particular circumstances.” *Barnett*, 535 U.S. at 402. Under the ADA, unlawful employment discrimination is defined to include the failure to make reasonable accommodations to the disability-related limitations of an otherwise qualified employee or job applicant, “unless [the employer] can demonstrate that the accommodation would impose an undue hardship on the operation of [its] business” 42 U.S.C. § 12112.

The Equal Employment Opportunity Commission (“EEOC”) has stated that “undue hardship” under the ADA “means significant difficulty or expense and focuses on the resources and circumstances of the particular employer in relationship to the cost or difficulty of providing a specific accommodation.” *Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA*, <https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada> (EEOC Notice 915.002, October 17, 2002). “Undue hardship” refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business.” *Id.*

Decisions Applying *Groff* in Vaccine Litigation

Despite the similarities in the language of the “undue hardship” standards of the ADA and of Title VII, in *Groff* the Supreme Court rejected a request to use ADA cases in evaluating religious accommodations. *Groff*, 143 S. Ct. at 2295-96. The Court also declined to ratify EEOC guidance regarding religious accommodations, given that it was issued “without the benefit of the clarification we adopt today.” *Id.* at 2296. The Court did, however, refer favorably to the previously issued EEOC guidance regarding religious accommodations, stating that the justices expected “little, if any, change in the agency’s guidance explaining why no undue hardship is imposed by temporary costs, voluntary shift swapping, occasional shift swapping, or administrative costs” if needed to provide a religious accommodation. *Id.*

Groff was cited 50 times by federal courts across the country through November 28, 2023, including approximately 30 cases that addressed COVID-19 vaccine mandates. Among these, the following three cases are instructive to employers assessing the legality of vaccine policies.

Bordeaux v. Lions Gate Ent., Inc., No. 2:22-cv-04244-SVW-PLA, 2023 U.S. Dist. LEXIS 209626 (C.D. Cal. Nov. 21, 2023). In this case, the Central District of California expressly deferred deciding the employer’s motion for summary judgment on a Title VII

religious-discrimination claim until after the Supreme Court decided *Groff*. 2023 U.S. Dist. LEXIS 209626, at *2-3. With supplemental briefing on *Groff*, the court granted the motion for summary judgment, finding that the actor's requested exemption from a COVID-19 vaccine requirement created an undue hardship on the production company that did not re-hire her for a second season of a television program. *Id.*, at *47-48. Focusing on the nature of the actor's role on the program, the court concluded that her close, unmasked contact with other performers and crew members would expose those coworkers to a greater risk of COVID-19 infection and determined "In and of itself, this safety risk constitutes an undue hardship." *Id.*, at *35-36.

D'Cunha v. Northwell Health Sys., No. 23-476-cv, 2023 U.S. App. LEXIS 30612 (2d Cir. Nov. 17, 2023). This decision is the most recent federal appellate decision to apply *Groff* as of November 21, 2023. As with many cases surveyed since *Groff*, the plaintiff alleged both a religious-discrimination claim under Title VII and a disability-discrimination claim under the ADA, as she asked for a religious exemption from a COVID-19 vaccine mandate—and then a medical exemption after the religious exemption was denied. 2023 U.S. App. LEXIS 30612, at *3. The Second Circuit affirmed the dismissal of both the Title VII and the ADA claims. *Id.*, at *8, 12. Applying *Groff*, the court noted that granting the requested exemption would have placed the hospital defendant in violation of New York State's then-applicable 2021 mandate that all medically-eligible hospital personnel receive a COVID-19 vaccination and thereby exposed itself to potential penalties—which, in turn, would have been a burden "both 'excessive' and 'unjustifiable.'" *Id.*, at *8 (citing *Groff*, 143 S. Ct. at 2294).

Lee v. Seasons Hospice, No. 22-CV-1593 (PJS/DJF), 2023 U.S. Dist. LEXIS 174927 (D. Minn. Sep. 29, 2023). Here, the district court denied the private hospice defendant's motion under Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss two plaintiffs' claims alleging failures to accommodate their religious beliefs and failures to accommodate their disabilities. 2023 U.S. Dist. LEXIS 174927, at *11-12, 31. Applying *Groff* to the religious accommodation claim, the court found that its inquiry into defendant's claims of undue hardship was necessarily fact-intensive—and so would require a factual record to decide, which was not available at the motion-to-dismiss stage of the case. *Id.*, at *11-12.

Best Practices for Employers

Several best practices for employers responding to requests for accommodations arise from the *Groff* decision and those applying it, including:

1. **Assess requests for accommodations on a case-by-case basis.** Employers should evaluate every employee's request for an accommodation on its own merits, in light of the employee's responsibilities and essential job functions.
2. **Consider alternatives.** Determining that a requested accommodation poses an undue hardship does not end the analysis. If a requested accommodation is not feasible, employers reduce risk by working with the employee to determine if other, less burdensome accommodations would be effective from the employee's perspective.
3. **Document factors that support decisions.** As courts require employers to assess

specific facts at issue with every employee's request, employers should be ready to show that they have done such an assessment—through accurate documentation and recordkeeping.

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