Recent U.S. Supreme Court Cases – Potential Impact on Workplaces

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The U.S. Supreme Court recently issued decisions that may impact workplace practices in significant ways.

Religious Accommodations in the Workplace

In the first case, *Groff v. DeJoy*, the Supreme Court increased the legal burden an employer must meet to deny a reasonable accommodation request based on an employee's sincerely held religious belief. However, the Court expressly declined to go so far as to adopt the employer's higher burden for denying reasonable accommodations based on an employee disability imposed by the Americans with Disabilities Act.

In *Groff*, the plaintiff was a United States Postal Service delivery driver who requested not to work on Sundays due to his sincerely held religious beliefs. The employer insisted that Groff report to work on his scheduled Sundays or find a replacement. When Groff could not find replacements and began to be disciplined for his ongoing absences, he eventually quit and claimed he was effectively terminated.

Under Title VII, if an employee can show that a requirement of their job conflicts with their sincerely held religious beliefs, the employee may request an accommodation to resolve that conflict. Examples of common accommodation issues are an employee requesting not to be scheduled on their day of worship or being excused from an employer's no hat/headwear policy to allow the wearing of a religious head covering.

Employers must grant such accommodations unless they cause undue hardship. Prior to the *Groff* case, employers could show undue hardship if the accommodation would cause "de minimus" (minor or insignificant) cost or burden to their operations. In other words, the law made it relatively easy for employers to lawfully reject religious accommodations.

The Supreme Court in *Groff* changed the *de minimus* standard, ruling that an employer must show that the burden of granting an accommodation would result in "substantial increased costs" in relation to the conduct of its particular business in order to deny a requested accommodation. To determine whether an accommodation will cause substantial increased costs, courts must consider all relevant factors, including the particular accommodations at issue and their practical impact in light of the nature, size, and operating cost of the employer.

The Court stressed that the "substantial increased costs" standard can take into consideration the effect of the accommodation on the conduct of the employer's business (not just a financial cost). In a case like Groff's, where an employee's requested accommodation will have likely unwelcome impacts on other employees (increased overtime or coverage of undesirable shifts), the employer must carefully analyze the circumstances to determine whether granting the accommodation is reasonable and cannot automatically default to a conclusion that undue hardship will result. In most situations, mere complaints from other employees about the impact of the accommodation will not be sufficient to meet the employer's burden of showing undue hardship.

The Court left it to future courts to determine the exact parameters around this increased legal burden on employers. Additionally, the Court suggested that the Equal Employment Opportunities Commission (EEOC) should review and revise its existing guidance on religious accommodations. In the meantime, employers should exercise due diligence and analyze religious accommodation requests thoroughly before deciding whether to grant or deny a given religious accommodation.

Affirmative Action in College Admissions Struck Down

The Court also struck down decades-long law in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* in ruling that universities' consideration of race as a factor in college admissions violates the Equal Protection Clause of the 14th Amendment to the U.S. Constitution. Affirmative action programs had been used by universities and colleges for over 40 years to attempt to address the impacts of systemic racism and underrepresentation in higher education.

While the Court's decision only expressly applies to the admissions process of colleges and universities, it may indirectly impact employer recruiting and hiring

practices, as well as DE&I programs aimed at increasing workplace diversity. Anti-affirmative action watchdog groups have already publicly commented that the Supreme Court's decision should send a clear message to employers to temper their efforts on increasing diversity in the workplace. However, to be clear, properly designed DE&I initiatives are still legal, even in the wake of this Court decision.

Employers need to be attuned to these developments as they continue to navigate these sensitive and challenging issues. The Boardman Clark Labor & Employment Practice Group is available to assist employers in these efforts.

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