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**Crystal Balls and Tarot Cards—
Decerning the Impact on
Employers of Recent SCOTUS
Decisions**

Presented By: Evan Way

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Title VII and Religious Accommodations

- Under Title VII of the Civil Rights Act of 1964, covered employers with 15 or more employees have an obligation to provide a reasonable accommodation to employees who have sincerely held religious beliefs, practices, or observances that conflict with their work requirements
- This means that the employer should engage in a good faith interactive dialogue with the employee in order to determine whether the requested accommodation can be granted
- Under previous precedent many accommodations were being denied because the employer merely had to show that the cost was “very small or trifling”

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Groff v. DeJoy – Facts of the Case

- Mr. Groff was an Evangelical Christian who was a rural mail carrier for USPS
- Mr. Groff observed the Sabbath every Sunday
- He requested Sundays off to devote to rest and worship
- Mr. Groff was disciplined for failing to work on Sundays and he subsequently resigned his employment
- He then filed suit under Title VII alleging that USPS could have accommodated his request without placing an undue burden on his employer

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SCOTUS Ruling

- The Supreme Court held that showing “more than a de minimis cost does not suffice to establish “undue hardship” under Title VII
- The Court defined “hardship” at a minimum is, “something hard to bear,” and is more severe than a mere burden
- The Court emphasized that the burden to the employer in granting the accommodation must substantially increase costs when considering the employer’s business as a whole
- “Courts must apply the test in a manner that takes into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, size, and operating cost of an employer”

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What Does This Mean for Employers

- Although the Supreme Court clarified the new heightened context-specific standard, it left it to the lower courts to apply the standard to the specific facts of each case
- It is crucial that employers review each request for religious accommodation carefully and thoughtfully
- Requires meaningful consideration whether the employer can reasonably accommodate the employee’s religious practice
- If the employer believes that the request would be an undue burden, the employer should document its reasoning in a clear and concise manner that provides ample context for the denial

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Takeaways

- Recognize common scenarios giving rise to the need for religious accommodation, such as:
 - the observance of a Sabbath or religious holidays;
 - the need for prayer break during working hours;
 - a practice of following certain dietary requirements;
 - a practice of not working during a mourning period for a deceased relative;
 - a prohibition against medical examinations;
 - a prohibition against membership in labor organizations; or
 - practices relating to dress and other personal grooming habits.

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Takeaways

- Employees must provide notice of an accommodation
 - An employee need not use any "magic words" (for example, specifically mentioning "religious accommodation" or "Title VII" is not required); and
 - The employer must have enough information to be aware that there is a conflict between a religious observance, practice, or belief and a job requirement
- Assess each request for a religious accommodation on a case-by-case basis
- Do not rely on assumptions, stereotypes, or past practices regarding a particular religious belief

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Takeaways

- Need to show the business cost of accommodation would be excessive or unjustifiable
- Relying on impact to other employees will require showing substantial impact on the business
- Employers need to provide training for those making religious accommodation decisions
- *Groff* did not overrule Title VII's protections for seniority-based bidding systems

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Americans With Disabilities Act (ADA)

- Prohibits discrimination based on disability
 - Mental or physical disability
 - Disability does not need to be permanent
 - Substantially limits a major life activity
- Requires employers to provide reasonable accommodations
- Requires accessibility requirements on public accommodations
- Also applies to web content accessibility

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***Acheson Hotels, LLC v. Laufer* – Facts of the Case**

- Mr. Laufer is a Florida resident who uses a wheelchair
- She browses internet websites to see if hotels are compliant with the ADA
- She is a self-described ADA “tester”
- She has sued over 600 businesses alleging ADA violations
- Acheson operates hotels in Maine
- Ms. Laufer sued in the United States District Court for the District of Maine in 2020 arguing Acheson failed to provide sufficient information regarding ADA accessibility

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SCOTUS Ruling – TBD

- U.S. Supreme Court heard oral argument on October 4, 2023
- Question presented to the Court:
 - Does an ADA “tester” have Article III standing to challenge a hotel’s failure to provide disability accessibility information on its website, even if she has no plans to visit the hotel?
- In Acheson’s brief to the Supreme Court, it argued: “A cottage industry has arisen in which uninjured plaintiffs lob ADA lawsuits of questionable merit, while using the threat of attorney’s fees to extract settlement payments. These lawsuits have burdened small businesses, clogged the judicial system, and undermined the Executive Branch’s exclusive authority to enforce federal law.”

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What Does This Mean for Employers

- Probably less now following oral argument as it appears *Havens Realty* will not be overturned
- The Tenth Circuit has rejected ADA “tester” standing when a plaintiff has no intention of visiting the place of public accommodation
- Ensure company websites are ADA compliant
 - Applies to businesses that are open to the public under Title III
 - Includes: retail stores and other sales or retail establishments; banks; hotels, inns, and motels; hospitals and medical offices; food and drink establishments; and auditoriums, theaters, and sports arenas.

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Takeaways


- Ensure compliance with the ADA for brick-and-mortar locations
- If a demand letter is received, correct the ADA deficiency
- Consider using software that reviews the company’s website for ADA compliance
- Ensure that company training materials, webinars, seminars, etc. are ADA compliant
- Newly adopted technologies need to be reviewed for ADA compliance





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