

RISKY BUSINESS

A Publication of the

Miami Valley Risk Management Association

AUGUST 2023

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COUNSELOR'S COMMENTS

Religion and the Workplace in the Post-Groff World

By Gabrielle Karl, Surdyk, Dowd and Turner

This summer the U.S. Supreme Court issued a (surprisingly) unanimous decision which expanded religious accommodations in the workplace.

In *Groff v. DeJoy*, the Supreme Court held that Title VII requires an employer that denies a religious accommodation to show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business. 600 U.S., 143 S.Ct. 2279, 2287-97 (2023).

In *Groff*, the parties requested that the Court revisit an almost 50-year-old case: *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977). In that case, the Supreme Court ruled an employer and a union that had agreed on a seniority system were not required to deprive senior employees of their seniority rights in order to accommodate a junior employee's religious practices. *Hardison*, 432 U.S. at 84-85. After *Hardison* was handed down, the lower courts were inconsistent in their interpretations of what *Hardison* required of employers with respect to religious accommodations. *Hardison*, much like *Groff*, was a case about accommodating requests to have particular days of the weeks off for religious observation. Lower courts often quoted a line from *Hardison*: "to require TWA to bear more than a *de minimis* cost in order to give Hardison Saturdays off is an undue hardship" and those courts "viewed this line as the authoritative interpretation of the statutory term 'undue hardship.'" *Id.* at 84; *Groff*, 143 S.Ct. at 2291-92. In practice, the courts used this low standard to deny even minor accommodations such as coverage for occasional absences or the relaxation of certain dress codes. This seemingly contrasted with other language found in *Hardison*: that an accommodation is not required when it entailed "substantial costs or expenditures." The *Groff* Court highlighted this by stating "there is a big difference between costs and expenditures that are not 'substantial' and those that are not '*de minimis*,' which is to say, so 'very small or trifling' that they are not even worth noticing." 143 S.Ct. at 2292 quoting Black's Law Dictionary 388 (5th ed. 1979).

Articles

| | |
|---------------------------------------|-----|
| Counselor's Comments | 1-3 |
| FYI | 3 |
| Loss Control Lowdown | 4 |
| Broker's Beat | 5 |
| Events/From the Board | 6 |

Counselor's Comments...Continued

This time around, the Court wanted to set the record straight. A religious accommodation request could not be denied by an employer unless that employer could show that accommodation would constitute an “undue hardship” pursuant to Title VII. The undue hardship standard would not be met, however, by merely showing more than a *de minimis* cost. Now, undue hardship has been clarified to mean that an employer must show that the accommodation’s costs “rise to an excessive or unjustifiable level.” *Groff*, 143 S.Ct. at 2294.

The facts of the case in *Groff* centered around a postal worker whose religious beliefs prevented him from working on Sundays. Groff’s job initially did not involve Sunday work. When the office that he worked for contracted with Amazon to start helping with Sunday deliveries, Groff transferred to a rural post where Sunday deliveries were not required. That later changed, however, and postal workers at that location were also required to work on Sundays. Groff continued to request Sundays off. The post office received complaints from other employees about Groff’s absences. One of those employees “filed a grievance asserting a conflict with his contractual rights.” 143 S.Ct. at 2286, n.1. Groff continued to work through progressive discipline for his failure work Sundays and eventually resigned, which Groff represented “was in light of expected termination.” 143 S.Ct. at 2287, n.2.

The Third Circuit Court of Appeals found the *de minimis* cost standard met here, concluding that exempting Groff from Sunday work had “imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale.” 143 S.Ct. at 2287, quoting *Groff v. DeJoy*, 35 F. 4th 162, 175 (3d Cir. 2022). The Supreme Court reversed the Third Circuit’s finding in *Groff* stating that it didn’t go far enough in its analysis. The Supreme Court held that the undue hardship burden is not met by relying solely on the impact of the requested accommodation on the employee’s coworkers – the employer must also then demonstrate how the burden on the coworkers substantially burdens the employer’s business. Hardships in the workplace will not be considered “undue” that are “attributable to employee animosity to a particular religion, to religion in general, or to the very notion of accommodating religious practice.” 143 S.Ct. at 2296.

In light of *Groff*, employers will want to review and revise many of their policies and practices. While the Justices did not provide a hardline definition of “undue hardship,” what is clear is that merely something beyond a *de minimus* cost is not good enough. *De minimus* is defined as “too trivial or minor to merit consideration.” In order to comply with the law, it is advisable to include the “undue hardship” language in your employment manuals but be careful not to try and define it yourself. Every religious accommodation request should be analyzed under fact-specific circumstances. In the context of requests off for religious days of worship, the following questions are examples that could aid in that analysis:

Counselor's Comments...Continued

- Is it possible for the employee to trade shifts with another employee?
- Is there something that the employer could do to facilitate the trading of shifts?
- Is it possible for the employer to incentivize other employees to pick up the shift?
- Is it possible for the employer to leave a shift short-staffed?

Finally, not only should an employer look at the specifics of the accommodation request, but they must also look at the reasonableness of any and all alternative methods of accommodation. For further information, employers are encouraged to review the EEOC's guidance on reasonable religious accommodation requests. See 29 CFR §1605.2.

FYI

By Tom Judy

New Practice for First-Party Property Claims

The MVRMA board recently approved a change in the way first-party property claims are paid. Effective July 1, 2023, such claims are now paid net of the member deductible. For example, assume the member City has filed a \$10,000 claim for damages to a City vehicle. Previously, this claim would have been paid at the gross amount, \$10,000, and MVRMA would bill the member for its \$2,500 deductible at the end of that calendar quarter. Under the new practice, \$7,500 will be paid on this claim (\$10,000 damages less the \$2,500 deductible) and no quarterly deductible billing will be necessary. We believe this new practice will streamline the processing of first-party claims for the members.

All other claims, including third-party bodily injury and third-party property damage claims, will continue to be paid at the gross amount and members will be billed for deductibles on a quarterly basis.

Please contact MVRMA staff with questions.

Loss Control Lowdown...

Starr Markworth

Lightning Strikes



Summer is the peak season for one of the nation's deadliest weather phenomena— lightning. A single stroke of lightning has 125,000,000 volts of electricity. That's enough power to light a 100-watt light bulb for more than 3 months, or enough to seriously hurt or to kill someone.

There were **444 lightning strike deaths** in the United States from 2006-2021. Only about 10% of people struck by lightning are killed. The other 90% must cope with varying degrees of discomfort and disability, sometimes for the rest of their lives.

Males are four times more likely than females to be struck by lightning. 81% of all lightning deaths were male.

The reported number of injuries is likely far lower than the actual total number because many people do not seek help or doctors do not record it as a lightning injury.

Each year, thousands of homes and other properties are damaged or destroyed by lightning. It accounts for more than a quarter billion dollars in property damage annually in the United States.

From 2012-2022, the MVRMA member cities have experienced 22 separate incidents of lightning strikes resulting in over \$420,000 worth of property damage.

A risk management approach to lightning safety must assume the facility will be struck by lightning. A lightning protection system is a risk management technique that is used to identify properties more susceptible to lightning strikes and mitigate the damage that could be caused by lightning strikes.

A lightning protection system provides a means by which this discharge may enter or leave earth without passing through and damaging non-conducting parts of a structure, such as those made of wood, brick, tile or concrete. A lightning protection system does not prevent lightning from striking; it provides a means for controlling it and preventing damage by providing a low resistance path for the discharge of lightning energy.

Some properties have a higher risk of lightning damage. When considering installation of a lightning protection system, you may want to assess this risk. A risk assessment guide for determining lightning loss for all types of structures can be found in Appendix I of the [National Fire Protection Association's Lightning Protection Code, NFPA 780](#).

Lightning is responsible for more deaths and property loss than tornadoes, hurricanes and floods combined, but of these violent forces of nature, lightning is the only one we can economically afford to protect ourselves against.



Broker's Beat

Emerging Cyber Trend: Artificial Intelligence

In some respects, the Cyber landscape was like the current Property landscape three years ago. It consisted of uncertainty and volatility. However, after years of patience and market corrections, the waves have somewhat settled regarding market conditions. However, this is no time for a sigh of relief.

It is time to be proactive as we enter a cultural shift with technology such as ChatGPT and language models. With somewhat of a baseline set of privacy and security procedures in place, such as multi-factor authentication, organizations should now look forward and plan for future risks and ensure they're doing everything possible to minimize them.

ChatGPT, a revolutionary tool launched in November 2022, is a natural language processing app driven by Artificial intelligence technology that allows you to have human-like conversations and much more with the chatbot (i.e. the computer!). The language model can answer questions and assist you with tasks like composing emails, essays, and code. The tool became an instant success and is the fastest-growing app in history. While the app has many potential benefits, like automating various tasks and helping people find information instantaneously, it immediately opened the door for bad actors with new avenues to breach advanced cybersecurity software.

Cybercriminals can use ChatGPT to assist in creating effective phishing emails that can write in the style or manner of an individual without any grammar mistakes, create ransomware demands, or be used for social engineering. Additionally, concerns about sensitive information being used, released, or even manipulated also exist. Malicious actors can develop programs and platforms that mimic others and provide free access to attract users. These actors can also use the tool to create applications to install malware on users' devices. All of this is scary to imagine, but reality.

With ChatGPT still being relatively new, the risks and threats associated with it are constantly evolving. Staying current and one step ahead of these new risks will protect your organization in the future and help avoid another Cyber marketplace like the one we just emerged from. Alliant will continue to update the board as these, and other, risks evolve.

Calendar of Events

Upcoming Training Events

Forklift Train the Trainer Certification—August 3rd—9:00 AM to 3:00 PM, Sidney Public Works
Cyber Security Best Practice—August 8th—8:30 AM to 11:30 AM, West Carrollton Fire Station
Police Use of Force—October 17th, Location TBD

Upcoming Board Events

Committee Meetings - Via Zoom:

Risk Management - August 29th 10:00 AM
Finance - August 29th - 1:30 PM

Board Meeting

September 18th, Home2Suites, Centerville, Ohio

From The Board Room

June 20, 2023

- Approved 2022 Annual Report
- Approved Renewal of APIP 2023-2024 Property, Pollution, Cyber, Boiler & Machinery Coverage
- Approved 2023-2024 Deadly Weapons Coverage
- Approved 2023-2024 Excess Cyber Coverage
- Approved 2023-2024 Excess Property Coverage Document
- Approved 2 year contract extension with Alliant Brokerage Services
- Approved Revisions to Member Deductible Policy and Member Selection Policy
- Approved Revisions to Drug & Alcohol, Workplace Violence, EEO / Anti-Discrimination, Sexual Conduct, and Anti-Harassment Policies