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UPDATE: When Does a Requested Religious Accommodation Pose an Undue Hardship?

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In a recent opinion, the U.S. Court of Appeals for the Seventh Circuit reiterated the standards for balancing an employee's religious accommodation request against the potential undue hardship that such a request may impose on an employer. ***Kluge v. Brownsburg Comm. Sch. Corp.***, No. 21-2475, 2023 U.S. App. LEXIS 8328 (Apr. 7, 2023).

The Brownsburg Community School Corporation (Brownsburg) had a practice of requiring teachers to use the names and pronouns of students as they were listed in Brownsburg's database. Brownsburg's "Name Policy" was deemed to be a larger plan to address the needs of transgender students within the school. Prior to the 2017–2018 school year, one of Brownsburg's teachers, John Kluge (Kluge), was notified that there would be two transgender students in his classes, whose preferred names and pronouns were reflected in Brownsburg's database. Kluge objected to calling the transgender students by their preferred names and pronouns on the basis that it was against his sincerely held religious belief to use the first names of transgender students to the extent that he deemed those names inconsistent with their sex recorded at birth. Kluge presented Brownsburg with a requested accommodation—to be allowed to refer to students only by their last names, like a gym coach. Brownsburg agreed to this accommodation.

Within a month of agreeing to this accommodation, Brownsburg began receiving complaints from teachers, students, and parents that Kluge's "last names" practice was causing transgender students emotional harm and

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making other students feel uncomfortable. Brownsburg also received reports that Kluge would occasionally use incorrect gendered language that was inconsistent with the preferred names and pronouns in Brownsburg's database. Brownsburg met with Kluge after it became apparent that Kluge's "last names" practice was not working as a religious accommodation due to the reports that students were being harmed and the learning environment was being disrupted. Brownsburg thus rescinded the practice of allowing Kluge to call students by their last names. Kluge maintained that his last name only practice was not an "undue hardship" on the school.

Brownsburg eventually began discussing resignation, as the school held firm on its policy that teachers must call students by the name listed in its database. Brownsburg informed Kluge that he had three options: (1) comply with the name policy; (2) resign; or (3) be terminated. Kluge subsequently submitted his formal resignation by email. Shortly after Kluge submitted his resignation, he attempted to withdraw his resignation and submit a request for continued religious accommodation. This was denied, and the Brownsburg accepted his resignation.

Kluge then sued Brownsburg in federal district court for, among other things, religious discrimination and failure to accommodate under Title VII. The district court granted summary judgment in favor of Brownsburg on the religious discrimination and failure to accommodate claims. The district court held that the last-names-only accommodation burdened the school's ability to provide an education for all its students and conflicted with the school's philosophy of creating a safe and supportive environment for all students, thus creating an undue hardship.

Kluge appealed the district court's decision to the Seventh Circuit, which affirmed the district court's decision. The Seventh Circuit held that Kluge's practice, which caused emotional harm to students and disruptions to the learning environment, was in fact an undue hardship to Brownsburg and further recognized that schools have a legitimate interest in the mental health of their students. Moreover, the Seventh Circuit opined that, to show undue hardship, Brownsburg only needed to show that accommodating Kluge's theology conflicted with the school's established theory and practice. The decision also reiterated that Title VII did not require Brownsburg to adopt an accommodation that, although facially neutral, does not operate as neutral in practice. In addition, Title VII did not require Brownsburg to retain an employee who harmed its mission. The Seventh Circuit's decision was in part based on its decision in *Trans World Airlines v. Hardison*, in which the court defined undue hardship as anything that required the employer to bear more than a *de minimis* cost to its operation.

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In sum, the Seventh Circuit confirmed that Title VII does not require employers to accommodate religious practices that pose an undue hardship on the conduct of the employer's business. In so doing, the Court's opinion provided useful guidance on what constitutes a *de minimis* burden to meet the requirement of a showing of undue hardship posed by a requested religious accommodation, which hardship may include not only monetary costs but also conflicts with an employer's established practices and mission.

UPDATE: After the Seventh Circuit issued its decision, Kluge filed a petition for rehearing en banc. On April 25, 2023, the Seventh Circuit delayed action on Kluge's petition pending the Supreme Court's resolution of the appeal in *Groff v. DeJoy*, No. 22-174. In *Groff*, the Supreme Court is reconsidering the standards under which an employer may refuse religious accommodations, including whether to overturn the "more than *de minimis* cost" standard the Seventh Circuit relied upon when it determined accommodating Kluge's religious accommodation request would be an undue hardship on Brownsburg. The Supreme Court heard oral argument in *Groff* on April 18, 2023.

If you have questions about providing accommodations in your workplace, please contact your Laner Muchin servicing attorney.