What's in a Name? Judge Says Plenty

Leah Trahan

Oct 15, 2024 4 min read

Summary

- District court grapples with new standard for denying religious accommodations.
- A federal district court has tackled balancing religious accommodations against the needs of students in a public school.
- The decision may provide a roadmap for employers who wish to promote inclusivity in the workplace.

A federal district court has tackled balancing religious accommodations against the needs of students in a public school. *Kluge v. Brownsburg Cmty. Sch. Corp.* is one of the first cases applying a new standard announced by the U.S. Supreme Court for denying religious accommodations under Title VII. Leaders in the field of accommodation law note that the decision may provide a roadmap for employers who wish to promote inclusivity in the workplace but caution employers not to take a black-and-white approach to religious accommodations.

District Court's Initial Decision

To address challenges of transgender students such as diminished self-esteem and heightened exposure to bullying, a public high school in Indiana enacted a "name policy." The policy required staff to address students by the name and pronoun in the school database. After a music teacher at the school said this policy trampled his religious beliefs, the school attempted a "last names only accommodation." Under this accommodation, the teacher could call students by only their last names instead of using the names in the school database.

Students quickly communicated discomfort. A student reported feelings of alienation, being upset, and dehumanization. Others said the teacher's refusal to acknowledge their corrected names was insulting. Educators noted emotional harm to transgender students. The music teacher was told to comply with the name policy, resign, or be terminated.

The teacher chose to resign and sued the school in the U.S. District Court for the Southern District of Indiana. He alleged a violation of Title VII for failure to accommodate his religious beliefs.

The school won summary judgment. The district court concluded the "last names only" policy resulted in an undue hardship to the school which was more than de minimis. This showing allowed the school to avoid liability.

Applying a New Standard

The teacher appealed, and the U.S. Court of Appeals for the Seventh Circuit affirmed the district court. But while a petition for rehearing en banc was pending, the U.S. Supreme Court decided *Groff v. DeJoy*. After *Groff*, an employer needs to show "the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business" to deny an accommodation. The Seventh Circuit vacated its order affirming the district court and told the district court to take another look at the name policy under this new standard.

The district court revisited the case to determine whether allowing the teacher to use the last-name only policy as an accommodation was a "substantial" hardship in the context of the school's business. Unlike a typical business with profit-focused motive, the school's mission includes educating all students and fostering a safe, inclusive learning environment.

Because refusing to affirm transgender students' identities could cause emotional harm, the school incurred substantially increased cost to its mission to provide public education that is equally open to all. The school also risked Title IX litigation if it did not address the students' concerns, which was itself an undue hardship, the court concluded. The district

court again granted summary judgment to the school. The teacher filed an appeal which is currently pending.

Kluge Provides Guidance for Employers After *Groff*

Leaders in the field of accommodation law note that *Kluge* provides a roadmap for employers to balance religious accommodations against company needs. “The court made very clear that the analysis of undue hardship must be done within the context of an employer’s particular business,” explains Charlene A. Gedeus, Philadelphia, PA, ABA member and employment litigation attorney.

“The decision was very mindful of the school corporation’s mission of educating all students by fostering a learning environment of respect and affirmation,” Gedeus adds. “We can imagine other employers who have missions that would dovetail on creating an environment of respect and affirmation can use some of the language of this decision as a road map for rolling out policies,” predicts Gedeus. In other words, “when an employer’s desire to foster inclusivity is seemingly intertwined with their mission, this decision provides support for advancing inclusion initiatives,” Gedeus advises.

Employers Should Still Be Cautious

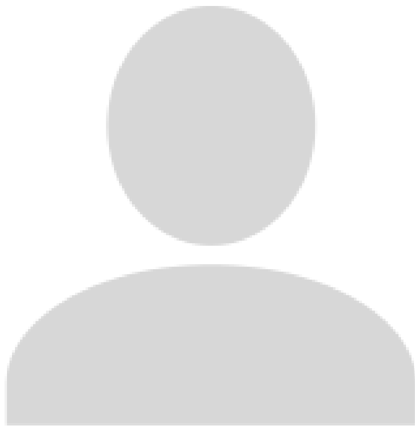
“Employers still need to be quite careful when it comes to per se denying certain religious accommodations based upon these matters,” cautions Rebecca Sha, New Orleans, LA, Co-Chair of the ABA Litigation Section’s Diversity, Equity, and Inclusion Committee. The process should be interactive and well-documented so employers can substantiate any denials. “You might even want to do what happened here, which was grant an accommodation, made it for a period of time to see what the end results are,” suggests Sha. “If there are no complaints, then, great. It was an accommodation that worked,” she adds. “These are very nuanced fact-specific inquiries that should be taken with the guidance of counsel,” warns Gedeus.

Still, leaders suggest *Kluge* illuminates how non-economic burdens of accommodations might be analyzed. For example, “the risk of liability can translate rather seamlessly to the private sector” as a burden on an employer, notes Gedeus. Employers can ask “What does this mean for my workforce? How would this impact the workforce?” Gedeus recommends. “It’s not just the dollars and cents,” she adds.

Resources

- Adam P. Romero, "The Nineteenth Amendment and Gender Identity Discrimination," *Litig. J.* (May 6, 2020).
- Kenneth M. Battle & Jamie L. Augustinsky, "It's Been a Long Time Coming, But I Know a Change Gon' Come," *The Woman Advocate* (Aug. 3, 2021).
- Raffi Melkonian "All Persons Having Business," *Litig. J.* (July 5, 2020).

Author



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