EMPLOYEE DISABILITY AND RELIGIOUS ACCOMMODATIONS – UPDATES

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THIS PRESENTATION IS NOT INTENDED TO SERVE AS LEGAL ADVICE. EACH EMPLOYMENT SITUATION IS UNIQUE AND REQUIRES SPECIFIC LEGAL ADVICE AND COUNSEL.

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ADA ACCOMMODATION UPDATES

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WHAT A PLAINTIFF MUST SHOW FOR A FAILURE TO ACCOMMODATE CLAIM IN THE 9TH CIRCUIT

- (1) The plaintiff has a disability within the meaning of the ADA;
- (2) The plaintiff is qualified for the relevant job and capable of performing it with a reasonable accommodation;
- (3) The employer had notice of the disability; and
- 4) The employer failed to reasonably accommodate the plaintiff's disability.

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STANLEY V. CITY OF SANFORD, FL
(U.S. 2025)

- **Before the Court on a motion to dismiss.**
- **Alleged facts:**
  - **Plaintiff was a firefighter for city of Sanford.**
  - **At time of Plaintiff's hiring, City offered health insurance to two categories:**
    - **Retirees with 25 years of service**
    - **Early retirees due to disability**
  - **City changed policy in 2003. Now, only 24 months of coverage for early retirees.**

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STANLEY V. CITY OF SANFORD, FL
(U.S. 2025)

- **Alleged facts (cont'd):**
  - **Plaintiff later began to suffer from disability, which forced early retirement in 2018.**
    - **Therefore, only 24 months of coverage.**
- **Plaintiff then sued for violation of the ADA.**
  - **Alleged impermissible discrimination based on disability.**

STANLEY V. CITY OF SANFORD, FL

(U.S. 2025)

- **Court granted cert to resolve a circuit split "over whether § 12112(a) reaches discrimination against retirees who neither hold nor desire a job whose essential tasks they can perform with reasonable accommodation."**

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STANLEY V. CITY OF SANFORD, FL

(U.S. 2025)

- **Holding: "[T]o prevail under § 12112(a), a plaintiff must plead and prove that she held or desired a job, and could perform its essential functions with or without reasonable accommodation, at the time of an employer's alleged act of disability-based discrimination."**

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STANLEY V. CITY OF SANFORD, FL

145 S.CT. 2058 (U.S. 2025)

- **Essentially, if an employee wants to allege she was unlawfully discriminated against based on a disability, she must:**
  - **Either currently hold that job, OR desire that job**
  - **AND be able to perform that job with or without reasonable accommodation.**
  - **This must have been true at the time of the alleged discrimination.**
- **Here, by the time the alleged discrimination occurred (i.e., when the 24 months ran out), she had been retired for two years and was no longer seeking a job or qualified for her old one.**
  - **Therefore, she could not prevail on her discrimination claim.**

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STANLEY V. CITY OF SANFORD, FL
(U.S. 2025)

- **TAKEAWAYS:**
  - **A retired employee who neither has nor desires a job—which he or she could perform with or without an accommodation—is not a "qualified individual" under ADA Title I.**
  - **May give employers pause to provide extended leaves of absences as a reasonable accommodation. The *Stanley court's* emphasis on an employees' present ability to perform the essential functions of their job provides an argument that the ADA does not require extended leave of absences.**

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SIGLEY V. ND FAIRMONT LLC
(4TH CIR. 2025)

- **Before the court on a motion for summary judgment.**
- **Facts:**
  - **August 2021: Sigley applies for position with NDF a material handler. The job involved lifting, pushing, stopping and standing.**
    - **As part of application, Sigley denied having ever seen medical providers for back issues. Denied having back issues.**
  - **Initialed statement acknowledging that falsifying information on application can be cause for termination.**
  - **After starting job, disclosed three back surgeries in two years, metal rod in back, and back spasms.**

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SIGLEY V. ND FAIRMONT LLC

(4TH CIR. 2025)

- **NDF terminated Sigley due to his failure to disclose his prior conditions.**
- **Sigley sued, alleging disability discrimination. He argued that his disclosure of his disability prevented his employer from taking an adverse action against him.**
- **Holding: "Sigley has not provided sufficient evidence to demonstrate that the circumstances of his discharge raise a reasonable inference of unlawful discrimination."**
  - **"Misconduct—even misconduct related to a disability—is not itself a disability, and an employer is free to fire an employee on that basis."**
- **Dishonesty is dishonesty. Even if it is connected to a disability.**
  - **Employers are not required to just "ignore" employee misconduct.**

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SIGLEY V. ND FAIRMONT LLC
(4TH CIR. 2025)

- **TAKEAWAYS:**
  - **An employer may terminate an employee for *misconduct*, even if the misconduct is related to a disability.**
  - **In other words, an employee cannot hide behind a disability to excuse his or her misconduct (such as dishonesty).**
  - **In any medical documentation submitted by an employee during the ADA interactive process or for FMLA purposes, as well as for physical exams related to employment, employees should certify that they are being truthful and understand that dishonesty is grounds for termination.**

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SMITH V. NEWPORT UTILS.
(6TH CIR. 2025)

- **Before the court on a motion for summary judgment.**
- **Facts:**
  - **Smith started with Newport in 1988 and worked his way up to bucket foreman.**
  - **Work required working with live powerlines in extreme weather conditions for "unusual hours."**
    - **This included climbing up poles and operating bucket trucks.**
    - **Required the ability to drive a commercial truck.**

SMITH V. NEWPORT UTILS.

(6TH CIR. 2025)

- **Smith began to suffer from unpredictable "stare seizures," where he would lose consciousness for up to 90 seconds.**
- **One of these occurred while Smith was driving. He later had a heat exhaustion episode.**

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SMITH V. NEWPORT UTILS.

(6TH CIR. 2025)

- **Smith was diagnosed with "absence seizures" and was placed on temporary leave.**
- **Newport received work accommodation requests from doctors limiting Smith's work hours and his ability to operate equipment.**
- **Smith applied for long-term disability benefits because Newport could not further accommodate.**
- **Smith's doctor later requested a 40-hour work week with no "standby work."**

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SMITH V. NEWPORT UTILS.

(6TH CIR. 2025)

- **Newport decided that the ability to work unusual hours was essential and looked into transferring Smith to a different role.**
  - **There were none.**
- **Newport gave Smith the choice: retire or get fired.**
- **Smith chose to retire and then sued Newport under the ADA.**
- **On appeal, the court was required to consider how the ADA accounts for a concern that disabled employees might injure themselves or others in a particular job.**

SMITH V. NEWPORT UTILS.

(6TH CIR. 2025)

- **Holding: "We have treated the need for employees not to cause harm as an 'essential function' of all jobs."**
  - **If an employee will be causing harm or a "direct threat" of harm, then an employee is not "qualified" under the ADA.**
- **Here: Smith's condition caused danger of death.**
  - **During his seizure, his almost total lack of awareness could get someone killed.**
- **No failure to accommodate:**
  - **Working odd hours was essential to the job.**
- **In sum: "Smith qualified as a direct threat of harm to himself and others as a bucket foreman."**

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SMITH V. NEWPORT UTILS.
(6TH CIR. 2025)

- **ADA regulations define direct threat as "a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation."**
- **Four-factor test to determine whether there is a "direct threat" of harm (from 29 C.F.R. § 1630.2(r)(1)–(4)):**
  - **Duration of the risk**
  - **Nature and severity of the potential harm**
  - **Likelihood that this harm will arise**
  - **Imminence of the harm**

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SMITH V. NEWPORT UTILS.

(6TH CIR. 2025)

- **TAKEAWAYS:**

  - Keep in mind Sixth Circuit cases, like *Smith,* have repeatedly indicated that employees who represent a direct threat of harm to themselves or others cannot show that they are "qualified individuals" under the ADA. In the Ninth Circuit, however, the direct threat of harm is an affirmative defense.
  - The Court also refused to hold the employer liable for failing to engage in an interactive dialogue with Smith before the litigation because he did not identify any reasonable accommodation during the litigation.

STRIFE V. ALDINE INDEP. SCH. DIST.
(5TH CIR. 2025)

- **Before the court on a motion for summary judgment/motion to dismiss.**
- **Facts:**
  - **Alisha Strife: Iraq War veteran with PTSD and shoulder, leg, and brain injuries.**
  - **Worked for Aldine Independent School District as a teacher, but due to disabilities switched to human resources.**
  - **Disability treatment included a service dog, which helped with balance and PTSD symptoms.**

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STRIFE V. ALDINE INDEP. SCH. DIST.

(5TH CIR. 2025)

- **Strife requested that she be allowed to take her dog to work; obtained doctor's note for that request.**
- **After a delay, School District eventually asked her to undergo an additional examination.**
- **School District continued to request additional information over the coming months, continually mentioning that the additional materials Strife kept providing were inadequate.**
- **<u>After Strife initiated litigation</u>, School District granted Strife's request. Prior to litigation, School District did not provide any other alternatives.**
- **Strife sued for, among other things, failure to accommodate and disability discrimination.**

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STRIFE V. ALDINE INDEP. SCH. DIST.
(5TH CIR. 2025)

- **Holding: A delay may, in and of itself, constitute a failure to accommodate.**
  - **If the delay demonstrates a lack of good faith on the part of the employer, there may be a problem.**
  - **If the delay forces the employee to work under "suboptimal conditions," that may be a failure to accommodate.**
  - **An employee may be able to prove that the reasons for the delay are unreasonable.**
- **Strife's failure-to-accommodate claim therefore survived the motion to dismiss.**

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STRIFE V. ALDINE INDEP. SCH. DIST.

(5TH CIR. 2025)

TAKEAWAYS:

- **ADA mandates employers to participate in a timely and good-faith interactive process. Delays, specifically those extending over several months, may be deemed a failure to accommodate.**
- **Employers do need to move at maximum speed, but need to make sure any delay does not prevent the employee's performance of her duties.**
- **Employers need to consider if existing medical documentation is adequate before requesting an IME. Otherwise, the request may be considered unreasonable.**

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SUTHERLAND V. PETERSON'S OIL SERV., INC.
(1ST CIR. 2025)

- **Before the court on a motion for summary judgment.**
- **Facts:**
  - **Sutherland tore his right meniscus and injured his patella, causing pain.**
  - **Repeatedly requested accommodations, some being granted, and some not.**
  - **Sutherland did maintenance work and installation.**
  - **Eventually had surgery on his knee and requested to come back to work.**
  - **Was ghosted by the employer and later found out he had been terminated, ostensibly because of the slowdown during the COVID-19 pandemic.**
  - **Employer had drafted a termination letter, but it was never sent. The letter surfaced during discovery.**

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SUTHERLAND V. PETERSON'S OIL SERV., INC.

(1ST CIR. 2025)

- **Sutherland sued for disability discrimination and retaliation under the ADA.**
- **Peterson's argued that he did not have a disability under the ADA.**
  - **Reasoning: his injury was temporary.**
- **Holding:**
  - **"An injury need not be permanent or long term to be considered sufficiently severe and thus, qualify as an "impairment."**
  - **"A temporary injury can qualify as a disability if it is sufficiently severe."**
  - **"Medical evidence also is not always necessary to prove than an impairment constitutes a substantial limitation on a major life activity . . . . A lay jury would have no difficulty grasping the connection between a knee injury and problems in conducting major life activities such as standing, walking, and bending."**

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SUTHERLAND V. PETERSON'S OIL SERV., INC.
(1ST CIR. 2025)

- **Additionally, the court held that a text message from Sutherland to his employer was "sufficiently direct and specific" for a jury to conclude that Peterson's was "on notice" that Sutherland was requesting accommodations due to his knee injury, regardless of whether he sent a doctor's note with that request.**

SUTHERLAND V. PETERSON'S OIL SERV., INC.
(1ST CIR. 2025)

- **TAKEAWAYS:**
  - **An injury does not have to be permanent to qualify as a disability.**
  - **"There is no per se rule about either the type or quantum of evidence a plaintiff needs to establish that an impairment exists."**
  - **A text message describing the injury can suffice to establish notice—a doctor's note is not needed.**

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TITLE VII – RELIGIOUS ACCOMMODATIONS

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BRIEF RECAP – *GROFF V. DEJOY*
(U.S. 2023)

- **Plaintiff was a USPS employee who believed that working on Sunday was a violation of his religion.**
- **USPS began to request that he work on Sundays, and he requested accommodation.**
- **USPS did not allow him to take Sundays off, resulting in discipline for missed work and plaintiff's eventual resignation.**

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BRIEF RECAP – *GROFF V. DEJOY*
(U.S. 2023)

- **Standard at the time was based on *Hardison*, and required employers to show more than a *de minimis* cost in order to deny a religious accommodation.**
- **This standard was discarded in favor of a new standard:**
  - **"We think it is enough to say 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."**
  - **This is a test "that takes into account all relevant factors in the case at hand."**
- **Remanded for further consideration in light of this standard.**

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BRIEF RECAP – *GROFF V. DEJOY*
(U.S. 2023)

TAKEAWAYS:

- **As part of the new "undue burden" analysis, employers need to determine if the requested religious accommodation would result in substantial increased costs in conducting their business operations.**
- **The undue burden analysis should include an interactive dialogue. Employees should be counseled to understand the difference between a "reasonable" accommodation and a "preferred" accommodation. Employers are not obligated to provide a preferred accommodation if it truly results in an undue hardship.**
- **It was not clear in the *Groff* decision if substantial increased costs was limited to financial harm or could include other harmful impacts on a business.**

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BURDENS OF PROOF FOR FAILURE TO PROVIDE A RELIGIOUS ACCOMODATION IN THE 9TH CIRCUIT

Plaintiff must show:

(1) a bona fide religious belief, the practice of which conflicts with an employment duty;

(2) the plaintiff informed the employer of the belief and conflict; and

(3) the employer discharged, threatened, or otherwise subjected the plaintiff to an adverse employment action because of his inability to fulfill the job requirement.

If shown, the burden then shifts to employer to show that it initiated good faith efforts to accommodate reasonably the employee's religious practices or that it could not reasonably accommodate the employee without undue hardship.

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HYPO #1

- Governor of a state issues proclamation requiring healthcare workers to be vaccinated against COVID-19, including firefighters. Proclamation allows for religious accommodations that do not cause undue hardship to employer.
- Several firefighters request religious exemptions.
- Employer determines that it cannot accommodate these exemptions without undue hardship.
  - Cites interfacing with the public, lack of alternative positions, and inability to facilitate the requested accommodation (masking, testing, and social distancing).
- Several firefighters sue under Title VII for failure to accommodate.

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HYPO #1

- Can the employer (the regional fire and rescue organization) claim undue hardship?
  - Concerned about health of population it serves and the health of its employees.
  - Worried that an outbreak amongst firefighters would severely limit EMS and other services by hamstringing the organization's operational capabilities.
  - Concerned that nearly a quarter of its firefighters requested accommodations.
  - Concerned about risk of losing a DOC contract which required vaccination for all on-site workers.
  - Concerned about liability regarding COVID-19 transmission.

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HYPO #1

- **Can the employer claim undue hardship?**

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PETERSEN V. SNOHOMISH REG'L FIRE & RESCUE
(9TH CIR. 2025)

- **"SRFR has pointed to several substantial costs of accommodating Plaintiff's requested vaccine exemption— the health and safety of its own firefighters and the public, the large number of firefighters seeking accommodations, the risk to its operations and the cost of widespread absences, the potential loss of a lucrative contract with DOC, and the risk of additional liability. SRFR also provided unrebutted medical evidence that showed the inadequacy of Plaintiffs' proposed accommodation. All of this amounts to a showing that SRFR could not reasonably have accommodated Plaintiffs without undue hardship in October 2021."**

CAVANAGH

PETERSEN V. SNOHOMISH REG'L FIRE & RESCUE
(9TH CIR. 2025)

- **"SRFR thoroughly explained the medical evidence that supported its decision, why Plaintiffs' proposed accommodation would not be sufficient, and the other costs it would face if it did not institute a vaccine mandate. The costs were substantial."**
- **It was important to the Court that SRFR set out in detail what *exactly* its anticipated costs were and provide evidence to back both the medical (particularly expert testimony) and financial issues.**
- **The court cited several decisions that indicated that increased risk of COVID-19 transmission may prove to be an "undue burden" on employers.**

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HYPO #2

- Plaintiffs were account managers who sold medical products and services to healthcare providers within an assigned geographic territory.
- Plaintiffs split their time with in-person meetings and remote work.
- Employer implemented a vaccination protocol requiring employees who entered healthcare settings to be fully vaccinated.
- Employees could apply for an exemption based on sincerely held religious beliefs.

HYPO #2

- The employer received twenty-four religious accommodation requests from account managers.
- The employer denied them all.
- In denying them, the employer considered potential damage to its reputation, its moral obligation to minimize possible Covid-19 exposure to employees, its customers' vaccination requirements, the difficulty of swapping customers among sales representatives without negative impact, the need for in-person customer interaction, the potential lost business, and the inability to remain competitive.

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HYPO #2

- In deposition, the employer representative testified to the following:
  - It swapped accounts amongst sales representatives in the ordinary course of business.
  - It did not consult with customers to determine whether they would work with an account manager who was unvaccinated.
  - It did not know if its customers had vaccination requirements.
  - It did not know if customers were demanding face-to-face meetings.

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HYPO #2

- **Employer requests summary judgment based on an undue hardship defense. Should the employer prevail?**

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LOYD V. MCKESSON CORPORATION
(DISTRICT OF ARIZONA 2025)

- **No. Summary judgment was denied.**
- **While the effect of the accommodation on an employee's colleagues may impose undue hardship, the record does not compel that conclusion here. Account swapping may have been unnecessary. In fact, according to testimony, account managers appreciate receiving additional and new accounts.**

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HYPO #3

- A Christian works for the Atlantic City Fire Department. The City prohibits him from growing a beard of any length, contrary to his religious beliefs.
- To ensure SCBAs (self-contained breathing apparatuses) work properly, the City has strict grooming standards that prohibit beards.
- Exceptions to policy existed for administrative employees and captains.
- The employee in question works as an air mask technician. He maintains the SCBAs on the scene of fire. The employee is not required to wear a SCBA at the scene of a fire. Instead, he positions himself away from the smoke and fumes.

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HYPO #3

- The employee submits an accommodation request asking that he "continue to wear [his] beard." He does not offer any compromises regarding length but did not insist his request was all-or-nothing, either.
- The City never discusses with the employee whether certain compromises or alternative accommodations would satisfy his request.
- After the City denies his accommodation, employee sues alleging a violations of Title VII's religious accommodation requirements.
- City argues that it had interest in preserving employee safety. That it may need to call the employee to engage in fire suppression.
- Trial Court grants summary judgment in favor of the City.

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HYPO #3

- **On appeal, does the employer establish an undue hardship?**

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SMITH V. CITY OF ATL. CITY

(3D CIR. 2025)

- Court makes it clear that showing "undue hardship" has nothing to do with a good faith attempt to accommodate.
  - It is only circumstantial evidence to prove an appropriate accommodation or a mark of honesty with regard to claiming undue hardship.
- No air mask technician had been called to engage in fire suppression for several decades. Thus, the City could only theorize a vanishingly small risk.
- Further, there were no other personnel who were seeking an accommodation relating to the SCBAs. Thus, the risk that the City would be unable to respond to an emergency safely was all the more unlikely.
- Summary judgment reversed.

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HYPO #4

- School implements a policy mandating teachers to call students by their first names as shown in the school's electronic database.
- One teacher objects to the school's name policy on religious grounds. He believes that calling transgender students names that conflict with their biological sex encourages their transgender identities—a sin, in his view.
- Teacher is initially given an accommodation and could call students by their last names.

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HYPO #4

- Some students and teachers complain. One parent also complains.
- The school rescinds the accommodation. The teacher resigns. The teacher then sues the school under Title VII for failing to accommodate his religion.
- School argues that use of last names causes an undue hardship. Transgender students testify that the last-name only policy causes emotional distress. They also testify that the teacher's use of gendered pronouns and his avoidance of transgender students also causes emotional distress. However, there was also testimony to the opposite effect: the accommodation did not cause any distress or disruption.

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HYPO #4

- **Is summary judgment finding undue hardship upheld on appeal?**

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KLUGE V. BROWNSBURG CMTY. SCH. CORP.
(7TH CIR. 2025)

- **No. The only fact the parties agree on is that the teacher called students by their last names. Further, there was conflicting evidence whether that act in isolation caused the alleged emotional distress.**
- **Additionally, on summary judgment, the employer did not produce any evidence that the emotional distress was objectively reasonable. Objectively reasonable does not mean that it has to be legally actionable. Court noted that under the right aggravating circumstances a last-name-only accommodation could impose objective emotional distress. For example: the teacher broadcasts the reasons he only uses last names.**

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KLUGE V. BROWNSBURG CMTY. SCH. CORP.
(7TH CIR. 2025)

- A coworker's mere dislike of a religious practice and expression in the workplace is not relevant under the undue hardship standard. It must be shown "that the accommodation would actually infringe on the rights of coworkers or cause disruption of work." This can be demonstrated this by asserting the accommodation "infring[es] on coworkers' abilities to perform their duties" or subjects them "to a hostile work environment".
- An employer is not obligated to accommodate an employee if doing so "would place it on the 'razor's edge' of legal liability."
- "[A]n accommodation that would require an employer to violate the law imposes an undue hardship."

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HYPO #5

- The employee is an administrator of a county jail.
- He makes online postings including predictions for an impending world war which the Muslim people would perpetrate against Christian and Jewish people.
- Further, his postings refer to Muslims as "pawns of the devil" aiming to kill Christians.
- He also made disparaging postings about homosexuals. These postings were featured in the news.
- The county places the employee on leave and then fires him.
- Termination letter cites two reasons:
  - "Continued employment was contrary to good order and discipline at the jail."
  - "[Employee] lacked credibility to function effectively in a management role."

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HYPO #5

- The parties agree that the accommodation at issue was allowing the employee to continue to post.
- The employer argues that retaining the employee would cause the jail undue hardship. Employer cites two kinds of undue hardship:
  - Public image: The online postings have spurred public concern that the county was discriminating against members of these communities who were detained at or visiting the jail.
    - Employer provides one email from the public expressing concern. Other disapproval came from public officials or in news articles.
  - Business relationships: The county argued to the district court that retaining employee as the jail administrator would imperil its business relationships.
    - People representing outside business relationships considered the possibility of ending business relations.
- The employer wins on summary judgment.

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HYPO #5

- **Is summary judgment in the employer's favor regarding undue hardship be upheld on appeal?**

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NAYLOR V. CNTY. OF MUSCATINE, IOWA
(8TH CIR. 2025)

- **The Court assumed that public image effects can present issues sufficient to rise to the level of an undue hardship under Title VII.**
- **It found that the employer had not provided sufficient evidence to warrant summary judgment.**

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NAYLOR V. CNTY. OF MUSCATINE, IOWA
(8TH CIR. 2025)

- **According to the Court, the record lacked sufficient evidence of an actual negative impact on the jail's public image.**
- **Employer provided just one email from the public expressing concern. Other disapproval came from public officials or in new articles, whose reach or impact is unknown.**
- **Absent more definitive evidence of reputational harm, and with an unclearly articulated theory of how such harm would constitute a hardship, the Court reversed summary judgment.**

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NAYLOR V. CNTY. OF MUSCATINE, IOWA
(8TH CIR. 2025)

- **In addition, the Court held that the "evidence is insufficient to show as a matter of law that the County's business relationships were so imperiled that keeping Naylor employed would cause the County undue hardship.**
- **Any loss of contractual relationships appears speculative from the evidence. The chance of losing business relationships was not "real" enough for summary judgment, even if there was evidence that outside entities considered ending their relationships with the jail.**

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KEY CONSIDERATIONS IN UNDUE HARDSHIP ANALYSIS BASED ON RECENT CASE LAW

The number of employees requesting a religious accommodation: The more employees requesting a religious accommodation to the same policy the more likely the accommodation will substantially increase the cost of business.

The nature of the religious accommodation sought: If the religious accommodation at issue relates to a medical workplace requirement, the employer is more likely to prevail on an undue hardship defense when the employee requesting the accommodation works in a group setting versus a solitary environment.

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KEY CONSIDERATIONS IN UNDUE HARDSHIP ANALYSIS BASED ON RECENT CASE LAW

The number of exceptions to the policy in which a religious accommodation is sought: If the employer has already provided multiple exceptions to a policy that are not religiously based, there must be a strong rationale as to why the religious accommodation should be treated differently.

The impact of the religious accommodation on other employees: If the religious accommodation sought infringes on the rights of other employers or causes disruption to their work, it is more likely that an undue hardship would exist. However, a coworker's mere dislike of religious practice and expression in the workplace is not relevant under the undue hardship standard.

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QUESTIONS?
COMMENTS?
THANK YOU!

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