When “Close Enough” is Not Enough: Accommodating the Religiously Devout

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When “Close Enough” is Not Enough:
Accommodating the Religiously Devout

Dallan F. Flake*

Title VII of the Civil Rights Act of 1964 requires employers to “reasonably accommodate” employees’ religious practices that conflict with work requirements unless doing so would cause undue hardship to their business operations. Can an accommodation be reasonable if it only partially removes the conflict between an employee’s job and their religious beliefs? For instance, if a Christian employee requests Sundays off because he believes working on his Sabbath is a sin, and his employer responds by giving him Sunday mornings off to attend church services but requires him to work in the afternoon, has the employer provided a reasonable accommodation? The federal courts of appeals are divided. For some, the answer is no because the proposed accommodation does not eliminate the conflict; the employee still must choose between his job and his religion — the precise dilemma Title VII seeks to avoid. For others, the answer could be yes. These courts take the view that because the statute requires only “reasonable” accommodation, rather than “full,” “total,” or “complete,” an accommodation that lessens, but does not eliminate, the conflict may nonetheless be reasonable depending on the circumstances.

This Article argues that an accommodation is reasonable only if it fully eliminates the conflict between an employee’s job and religion. Several tools of statutory interpretation support this position, including textualism, legislative history, Supreme Court precedent, and agency guidance. Additionally, and perhaps even more importantly, a full-accommodation rule reflects the reality of religious devotion for the millions of American workers who believe in full obedience to the tenets of their faiths. For these individuals, religious observance is not something that can or should be done partway. If an employee believes it is sinful to work

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on Sundays, the ability to attend church in the morning hardly mitigates the sin of working in the afternoon. Thus, a partial accommodation is not just unreasonable—it is no accommodation at all.

CONTENTS

INTRODUCTION ............................................................................................................ 50
I. BACKGROUND ........................................................................................................ 56
   A. Origins .................................................................................................................. 57
   B. Judicial Hostility .................................................................................................. 58
   C. Full Versus Partial Accommodation ............................................................... 64
      1. Full-Accommodation Circuits ........................................................................ 64
      2. Partial-Accommodation Circuits .................................................................... 69
      3. Inconsistent Circuits ....................................................................................... 74
II. STATUTORY INTERPRETATION ........................................................................... 77
   A. Statutory Text ....................................................................................................... 78
   B. Legislative History ............................................................................................... 82
   C. Supreme Court Jurisprudence .......................................................................... 86
      1. Trans World Airlines, Inc. v. Hardison ......................................................... 86
      2. Ansonia Board of Education v. Philbrook ..................................................... 89
      3. US Airways, Inc. v. Barnett ........................................................................... 91
      4. EEOC v. Abercrombie & Fitch Stores, Inc. ............................................... 94
   D. EEOC Guidance .................................................................................................. 96
III. RELIGIOUS DEVOTION ....................................................................................... 100
IV. POTENTIAL IMPLICATIONS ............................................................................... 110
CONCLUSION .............................................................................................................. 114

INTRODUCTION

A security guard asks his employer for an exemption from its grooming policy that bans facial hair, as his religious beliefs prohibit him from cutting his beard.1 The employer rejects the request but tells the employee he can keep his beard if he trims it to no more than a quarter inch in length.2 A store clerk asks his manager to not schedule him for Sunday shifts because he considers working

2. Id. at *2–3.
on his Sabbath a sin. The manager is unwilling to give the employee Sundays off but offers to schedule him for later in the day so he can attend his church services in the morning. Production workers at a meatpacking plant ask their supervisor for short, periodic breaks during their shifts so they can pray at specific times in observance of a religious holiday. The supervisor denies the request but permits them to pray before and after their shifts and during their regularly scheduled breaks.

Title VII of the Civil Rights Act of 1964 requires employers to “reasonably accommodate” an employee’s religious observance unless doing so would impose “undue hardship” on their business operations. Have the employers in these scenarios complied with this duty by offering partial rather than full remedies for the conflict between the employees’ jobs and their religious beliefs? The federal courts of appeals are divided over the answer. Some circuits undoubtedly would find the proffered accommodations unreasonable as a matter of law. These courts have held that an accommodation that does not fully eliminate the employee’s conflict cannot be reasonable because it still forces the employee to choose between their job and their religion—the very dilemma Congress sought to avoid by requiring employers to reasonably accommodate. But in other circuits, the proposed accommodations could be entirely reasonable. These courts take the position that because Title VII expressly requires only “reasonable”—not “full,” “total,” or “complete”—accommodation, an accommodation that lessens but does not eliminate an employee’s conflict may nonetheless be reasonable depending on the circumstances.

4. Id. at 544–45.
6. Id. at 1229.
8. See infra Section I.C.1.
9. See infra Section II.B; Gordon v. MCI Telecomms. Corp., 791 F. Supp. 431, 435 (S.D.N.Y. 1992) (holding that the employer’s proposed accommodation forced the employee to choose between her job and her religious beliefs, “thereby vitiating its very existence for purposes of Title VII”).
10. See infra Section I.C.2.
This circuit split, which dates to 2008,11 shows no sign of resolution anytime soon. The two most recent appellate courts to address this issue could not have been further apart. In 2018, the Tenth Circuit held that “[a]dopting a per se ‘elimination’ rule that applies across all circumstances is not helpful” and that “ultimately the question of whether an accommodation is reasonable must be made on a case-by-case basis, grounded on the specific facts presented by a particular situation.”12 By contrast, four years later, the Third Circuit rejected the notion that a partial accommodation could ever be reasonable, no matter the particular facts.13 The court reasoned that “[t]o offer an accommodation that in practice will result in continued infringement does not fulfill Title VII’s requirements.”14 Consequently, “a legally sufficient accommodation under Title VII’s religious discrimination provision is one that eliminates the conflict between the religious practice and the job requirement.”15

This issue is too consequential to be left to the fortuity of geography to determine. An employee’s ability to practice their religion and keep their job should not depend on whether the employee resides in the Tenth Circuit or the Third Circuit. This is especially true for members of minority religions, who are more likely than mainline Christians to find their religious practices at odds with workplace requirements. Sonia Ghumann and colleagues explain:

[A]lthough most American workplaces may be secular in nature, the majority of work policies and procedures favor Christian practices and observances (i.e., no work on Sundays, Christmas is considered a federal holiday) . . . . As religious diversity increases, some of the religions gaining increasing representation in America (i.e., Muslims, Sikhs) may have certain religious-based obligations requiring expression and requests for religious

11. Up until 2008, the appellate courts that had considered this issue agreed Title VII requires full accommodation. See infra Section I.C.1. But that year, both the Fourth and the Eighth Circuits took the opposite view. EEOC v. Firestone Fibers & Textiles Co., 515 F.3d 307, 313–15 (4th Cir. 2008); Sturgill v. United Parcel Serv., Inc., 512 F.3d 1024, 1032–33 (8th Cir. 2008).
12. Tabura v. Kellogg USA, 880 F.3d 544, 553–54 (10th Cir. 2018).
14. Id. at 171.
15. Id. at 169.
accommodations such as religious holidays during regular workdays, time off for prayer/rituals, religious attire, and grooming practices will also inevitably increase.\footnote{Sonia Ghumman, Ann Marie Ryan, Lizabeth A. Barclay & Karen S. Markel, Religious Discrimination in the Workplace: A Review and Examination of Current and Future Trends, 28 J. BUS. & PSYCH. 439, 449 (2013) (citations omitted). See also Giles Roblyer, Half-Answered Prayers: Sturgill v. United Parcel Service, 512 F.3d 1024 (8th Cir. 2008), 77 U. CIN. L. REV. 1683, 1683 (2009) (“This conflict is particularly difficult for those believers of minority religions whose Sabbaths, holidays, and rigorous proscriptions for prayer do not follow the Christian calendar, which has been partly assimilated into the normal work schedule.”).}

Thus, accommodation is vital in promoting workplace diversity, equity, and inclusion because it enables members of minority religions to observe their beliefs on terms similar to those typically available to mainstream Christians.\footnote{See Kathleen A. Brady, Religious Accommodations and Third-Party Harms: Constitutional Values and Limits, 106 KY. L.J. 717, 726 (2018) (“Accommodations for religious believers and groups whose beliefs and practices are out of step with prevailing norms protect the benefits of American pluralism.”).}

This Article argues that an accommodation must fully eliminate the conflict between an employee’s job and their religious beliefs to be reasonable. Several tools of statutory interpretation support this position. First, a full-accommodation rule is consistent with the plain meaning of the term “accommodate.”\footnote{See infra Section II.A.} The placement of “reasonably” in front of “accommodate” does not lessen the requirement of full accommodation but rather relates to the manner in which an employer provides an accommodation.\footnote{See infra notes 189–95 and accompanying text.} Second, Congress added the religious accommodation provision to Title VII to protect employees from having to choose between their jobs and their religious beliefs.\footnote{See infra notes 208–14 and accompanying text.} A full-accommodation rule is consistent with congressional intent, for without it, employees would be forced into the very dilemma Congress sought to avoid. Third, although the Supreme Court has not been particularly hospitable to religious accommodations,\footnote{See infra Section I.B.} there is much in its accommodation jurisprudence to suggest it reads Title VII as requiring full accommodation.\footnote{See infra Section II.C.} Fourth, the Equal Employment Opportunity Commission (EEOC), the administrative agency tasked with interpreting Title VII, has long maintained that an accommodation...
cannot be reasonable unless it eliminates the conflict between an employee’s job and their religious beliefs.  

Beyond these traditional tools of statutory interpretation, there is a fifth, and perhaps even more compelling, justification for requiring full accommodation. Many religiously devout individuals believe they must be fully obedient to the tenets of their faiths or they risk jeopardizing their eternal salvation. For them, religious observance is a matter of principle rather than of degree; it is not something they can or should do partway. For the security guard who believes cutting his beard at all is a sin, the employer’s offer to allow him to keep a short beard is not a solution; he is still forced to choose between “losing his job or losing his God.” For the store clerk whose religion prohibits him from working on Sundays, the employer’s offer to let him work a later shift so he can attend church services before work may be a nice gesture, but it does nothing to remedy the actual conflict. And for the production workers who need to pray at specific times, it is no solution—and, frankly, is insulting—for their employer to suggest that praying before and after their shifts and during their regularly scheduled breaks would be close enough to what their religion required.

No matter how well-meaning these employers might be, the accommodations they offer cannot possibly be reasonable because they run counter to the very nature of the employees’ religious needs. When an employer offers a partial accommodation, it is in effect asking the employee to compromise their religious beliefs. For many people of faith, compromising their beliefs so they can keep their jobs simply is not an option. For the religiously devout, an accommodation that lessens but does not eliminate the conflict between their jobs and their religious beliefs is not just unreasonable—it is no accommodation at all.

Before delving further, two points bear emphasis. First, this Article’s central argument, that reasonable accommodation requires full accommodation, does not imply that every accommodation that eliminates the conflict between an employee’s job and their

23. See infra Section II.D.
24. See infra Part III.
25. See infra Part III.
27. EEOC v. JBS USA, LLC, 115 F. Supp. 3d 1203, 1229 (D. Colo. 2015) (noting the employer’s position that “although these prayer opportunities are not perfect, they ‘occur reasonably close to Islamic prayer times.’”).
religious beliefs will automatically be reasonable. As several courts have pointed out, in addition to eliminating the conflict, the accommodation must ensure the employee is not unnecessarily disadvantaged in the terms and conditions of their employment. Suppose an employer with a no-headwear policy accommodates a Muslim worker by allowing her to wear a hijab, but it moves her workspace to a closet so she will be outside the view of other workers. Even though this would technically eliminate the conflict, the accommodation would not be reasonable because it would unnecessarily disadvantage the employee by subjecting her to considerably worse working conditions. Thus, although eliminating the conflict is necessary to establish a reasonable accommodation, it is not sufficient.

Second, in arguing for a full-accommodation rule, this Article by no means suggests employees have the absolute right to an accommodation. Title VII requires reasonable accommodation only if the accommodation would not cause the employer undue hardship. This means that even if an employer can fully accommodate an employee, it has no obligation to do so if the accommodation would impose undue hardship on its business. For instance, if an employer could fully accommodate an employee’s request to never work on his Sabbath, but the employer would have to pay another employee cost-prohibitive overtime wages to cover that shift, the employer would not have to provide the accommodation because it would cause the employer undue hardship. Whether an accommodation is reasonable and whether the accommodation would cause undue hardship are not two sides of the same coin; they are analytically distinct concepts that must be assessed separately.

28. See, e.g., Am. Postal Workers Union, S.F. Local v. Postmaster Gen., 781 F.2d 772, 776 (9th Cir. 1986) (explaining that Title VII “requires an employer to accommodate the religious beliefs of an employee in a manner which will reasonably preserve that employee’s employment status, i.e., compensation, terms, conditions, or privileges of employment”).


31. See Groff v. DeJoy, 35 F.4th 162, 172 (3d Cir. 2022), rev’d on other grounds, 600 U.S. 447 (2023) (“In addition to requiring that the accommodation eliminate the conflict, the statute requires that the offered accommodation be reasonable.”); Dallan F. Flake, Restoring
Article asserts that an accommodation must fully eliminate the employee’s conflict to be reasonable, whether the employer must ultimately grant the accommodation is a separate question altogether.

This Article proceeds in four Parts. Part I provides background on Title VII’s religious accommodation provision and explains how the endorsement of a partial-accommodation rule by some courts is consistent with broader judicial efforts to neutralize Title VII’s religious accommodation provision. Part II examines how several tools of statutory interpretation, including textualism, legislative history, Supreme Court jurisprudence, and EEOC guidance, support a full-accommodation rule. Part III explores the nature of religious devotion and how a full-accommodation rule is necessary to protect employees from being asked to compromise their religious beliefs to keep their jobs. Part IV considers the potential implications of a full-accommodation rule, including the possibility that such a rule might result in fewer accommodations.

I. BACKGROUND

This Part begins by explaining how Title VII, a statute that primarily prohibits status-based employment discrimination, came to include a provision that affirmatively requires employers to accommodate religious conduct. It next considers the various ways in which the courts have tried to strip the accommodation provision of its force, including by setting the standard for undue hardship so low that employers can deny almost any accommodation request, by allowing employers rather than employees to select the accommodation, by conflating the reasonableness and undue hardship tests, by limiting employees’ participation in the accommodation process, and by requiring only partial accommodation. This Part concludes by analyzing the split between circuits that require full accommodation, circuits that require only partial accommodation, and circuits where the issue is not yet settled.

Reasonableness to Workplace Religious Accommodations, 95 WASH. L. REV. 1673, 1707–11 (2020) [hereinafter Restoring Reasonableness] (analyzing cases in which courts have analyzed reasonableness separately from undue hardship).
When “Close Enough” is Not Enough

A. Origins

Title VII of the Civil Rights Act of 1964 prohibits employers from “fail[ing] or refus[ing] to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” 32 Because the statute’s primary aim was to eradicate race discrimination in employment, most of the legislative history focuses on that issue. 33 Consequently, relatively little is known about how religion ended up as a protected trait. Some have argued that religion is an anomaly among Title VII’s protected characteristics because it is the only trait that is arguably mutable. 34 But under more contemporary notions of immutability, religion’s inclusion makes sense, given the centrality of the trait to some individuals’ personal identities. 35

Shortly after Title VII was enacted, it became evident to the EEOC that additional safeguards were necessary to protect employees from religious discrimination, as workers inundated the agency with complaints that they had lost their jobs because their religious practices conflicted with work requirements. 36 Employers circumvented Title VII’s proscription against religious

34. See Rachel M. Birnbach, Love Thy Neighbor: Should Religious Accommodations that Negatively Affect Coworkers’ Shift Preferences Constitute an Undue Hardship on the Employer Under Title VII?, 78 FORDHAM L. REV. 1331, 1338–39 (2009) (”[I]t may seem anomalous that religion is a protected class under Title VII—religion is a trait that is directly within one’s control, whereas race or gender is typically immutable.”), Debbie N. Kaminer, Religious Conduct and the Immutability Requirement: Title VII’s Failure to Protect Religious Employees in the Workplace, 17 VA. J. SOC. POL’Y & L. 453, 457–58 (2010) (addressing the debate over whether religion is a mutable characteristic).
35. See Jessica A. Clarke, Against Immutability, 125 YALE L.J. 2, 28 (2015) (arguing that this revised version of immutability abandons the “fraught distinction between chance and choice[,]” “refocuses the doctrine to consider the costs of change for an individual’s sense of self[,]” “expands protection beyond those deemed blameless for possessing disfavored traits to include those who have made protected choices to adopt particular traits[,]” and “counters stigma by allowing those claiming discrimination to do so without disavowing their own agency and pride in determining the content of their characters”).
discrimination by discharging such employees, not directly because of their religious beliefs but rather because their religious beliefs inhibited them from performing certain work assignments. Thus, if an employer required its employees to work on Saturdays, and a Jewish employee was unable to work on Saturdays because of her religious beliefs, the employer could lawfully fire the employee based on her inability to meet the work requirement—even though the reason for the employee’s conflict was religiously based. To close this loophole, the EEOC issued guidelines in 1966 suggesting it was not enough for employers to treat religious employees merely the same as other employees. Instead, employers bore an affirmative obligation to accommodate an employee’s “reasonable religious needs” absent “serious inconvenience to the conduct of the business.” The following year, the EEOC softened its position somewhat, modifying the guidelines to require employers to provide “reasonable accommodations to the religious needs of employees and prospective employees where such accommodations can be made without undue hardship on the conduct of the employer’s business.” The EEOC did not expound on what it meant by “reasonable accommodations” or “undue hardship.”

B. Judicial Hostility

Almost immediately, the courts were suspicious of, if not outright hostile to, the concept of religious accommodation. In Dewey v. Reynolds Metals Co., the Sixth Circuit rejected the EEOC’s guidance outright:

Nowhere in the legislative history of the Act do we find any Congressional intent to coerce or compel one person to accede to or accommodate the religious beliefs of another. The requirement of accommodation to religious beliefs is contained only in the EEOC Regulations, which in our judgment are not consistent with the Act.

... 

To construe the Act as authorizing the adoption of Regulations which would coerce or compel an employer to accede to or

38. Id.
39. 29 C.F.R. § 1605.1(b) (1968).
When “Close Enough” is Not Enough

accommodate the religious beliefs of all of his employees would raise grave constitutional questions of violation of the Establishment Clause of the First Amendment.

... The employer ought not to be forced to accommodate each of the varying religious beliefs and practices of his employees.40

When the Supreme Court subsequently affirmed Dewey by an equally-divided Court,41 Congress moved swiftly to pass legislation in 1972 that amended Title VII to require an employer to “reasonably accommodate to an employee’s or prospective employee’s religious observance or practice,” unless doing so would impose “undue hardship on the conduct of the employer’s business.”42 In doing so, Congress elevated religion over Title VII’s other protected traits. It is not enough for an employer merely to refrain from discriminating against an employee because of their religion; in some circumstances, the employer has an affirmative duty to provide an accommodation that enables the employee to perform their job without violating their religious beliefs. There is no corresponding duty to accommodate race, color, national origin, or sex.

Judicial hostility toward religious accommodations did not end once Congress amended Title VII. Just five years later, the Supreme Court stripped the religious accommodation provision of nearly all force.43 In Trans World Airlines, Inc. v. Hardison, the Court considered how much of a burden an employer must bear in

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43. See Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 87 (1977) (Marshall, J., dissenting) (“[I]f an accommodation can be rejected simply because it involves preferential treatment, then the regulation and the statute, while brimming with ‘sound and fury,’ ultimately ‘signify nothing.’” (second alteration in original)); J.H. Verkerke, Disaggregating Antidiscrimination and Accommodation, 44 Wm. & Mary L. Rev. 1385, 1399–1400 (2003) (“Unlike the toothless duty to accommodate employees’ religious practices that is contained in Title VII, this provision [of the Americans with Disabilities Act of 1990 (ADA)] has real bite.” (footnote omitted)); Small v. Memphis Light, Gas & Water, 952 F.3d 821, 829 (6th Cir. 2020) (Thapar, J., concurring) (“The American story is one of religious pluralism. The Founders wrote that story into our Constitution in its very first amendment. And almost two-hundred years later, a new generation of leaders sought to continue that legacy in Title VII. But the Supreme Court soon thwarted their best efforts.”).
providing a religious accommodation before the employer suffers “undue hardship,” a term the statute does not define.\textsuperscript{44} The Court interpreted “undue hardship” to mean anything “more than a \textit{de minimis} cost.”\textsuperscript{45} This standard was baffling, not only because neither party had argued for it,\textsuperscript{46} but also because it runs contrary to the plain meaning of the term.\textsuperscript{47} Regardless of the logical soundness of \textit{Hardison}, the result was clear: By setting the bar for what constitutes undue hardship so low, only the most unimaginative employer was unable to justify refusing a religious accommodation. By definition, an accommodation requires deviation from ordinary policies and procedures.\textsuperscript{48} Because nearly any deviation from the norm will impose at least some cost, employers could almost always lawfully deny an accommodation request under the \textit{Hardison} standard. And in the rare instance that an employee challenged that decision in court, the employer was practically guaranteed to prevail.

The \textit{Hardison} decision drew the immediate ire of Justice Thurgood Marshall, who lamented in dissent that the Court dealt a “fatal blow to all efforts under Title VII to accommodate work requirements to religious practices” by setting the bar for undue hardship so low that an employer “need not grant even the most minor special privilege to religious observers to enable them to

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\textsuperscript{44} \textit{Hardison}, 432 U.S. at 66.
\textsuperscript{45} \textit{Id.} at 84.
\textsuperscript{46} Patterson v. Walgreen Co., 140 S. Ct. 685, 686 (2020) (Alito, J., concurring) (“[T]he parties’ briefs in \textit{Hardison} did not focus on the meaning of [undue hardship]; no party in that case advanced the \textit{de minimis} position; and the Court did not explain the basis for this interpretation.”).
\textsuperscript{47} \textit{Hardison}, 432 U.S. at 88, 92–93 n.6 (Marshall, J., dissenting) (“I seriously question whether simple English usage permits ‘undue hardship’ to be interpreted to mean ‘more than \textit{de minimis} cost . . . .’”); Patterson, 140 S. Ct. at 686 (Alito, J., concurring) (arguing that the \textit{de minimis} standard “does not represent the most likely interpretation of the statutory term ‘undue hardship’”); Brief of Religious Liberty Scholars, Employment Law Scholars, and KARAMAH: Muslim Women Lawyers for Human Rights as Amici Curiae in Support of Petitioner at 7, Small v. Memphis Light, Gas & Water, 141 S. Ct. 1227 (2021) (No. 19-1388), 2020 WL 4260328, at *7 (“[U]nder \textit{Hardison}’s reading, an ‘undue hardship’ occurs whenever a religious accommodation generates any cost for an employer that is more than a trifle. A trifle plus a dollar cannot be reconciled with the words ‘undue hardship.’”).
\textsuperscript{48} See Bilal Zaheer, \textit{Accommodating Minority Religions Under Title VII: How Muslims Make the Case for a New Interpretation of Section 701(f)}, 2007 U. Ill. L. REV. 497, 520 (2007) (“Employers can easily demonstrate that a requested accommodation imposes a \textit{de minimis} cost on their operations because by definition every accommodation involves an exemption from an otherwise neutral employment rule or practice.” (citing \textit{Hardison}, 432 U.S. at 87)).
\end{flushleft}
follow their faith.” Marshall argued that “a society that truly values religious pluralism cannot compel adherents of minority religions to make the cruel choice of surrendering their religion or their job.” He warned that “[a]ll Americans will be a little poorer until today’s decision is erased.”

_Hardison_ wreaked havoc on religious-accommodation seekers for nearly five decades, until the Supreme Court finally held in 2023 that undue hardship does not mean anything “more than a de minimis cost.” That long-held view of _Hardison_’s holding, according to the Court, was “mistaken”; the proper test of undue hardship is whether “the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of [the employer’s] particular business.” The Court made no attempt to define “substantial increased costs,” noting instead that “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.’” It remains to be seen how the courts will apply this new standard, but at least for now, it appears the danger _Hardison_ long posed to religious-accommodation seekers has been neutralized.

Nine years after _Hardison_, the Supreme Court dealt a second blow to religious accommodation seekers that remains unabated to this day. In _Ansonia Board of Education v. Philbrook_, the Court held that in situations where an employee could be accommodated in a variety of ways, and none would impose undue hardship, the employer—not the employee—decides which accommodation to provide. The Court explained that once an employer offers any reasonable accommodation, it has fulfilled its duty under Title VII and is under no further obligation to consider other accommodations the employee suggests, even if they are reasonable and would not

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49. _Hardison_, 432 U.S. at 86–87.
50. _Id._ at 87.
51. _Id._ at 97.
53. _Id._ at 2295–96 (citing _Hardison_, 432 U.S. at 83 n.14).
54. _Id._ at 2295 (alteration in original) (internal quotation omitted).
impose undue hardship. This holding further shifted power over religious accommodations from the employee to the employer. The decision fails to recognize that a religious employee is best positioned to determine which accommodation will best meet their needs. Since none of the options would impose more than de minimis cost on the employer, it should not matter to the employer which accommodation is selected. As Justice Marshall explained, this time concurring in part and dissenting in part, “It may be that unpaid leave [(the accommodation offered by the employer)] will generally amount to a reasonable accommodation, but this does not mean that unpaid leave will always be the reasonable accommodation which best resolves the conflict between the needs of the employer and the employee.”

Marshall urged that “[i]f an employee, in turn, offers another reasonable proposal that results in a more effective resolution without causing undue hardship, the employer should be required to implement it.”

In the lower courts, religious accommodations are often met with skepticism, if not outright hostility. One subtle yet damaging way in which some courts have chipped away at the right to a religious accommodation is by determining the reasonableness of an accommodation by how much it would burden the employer.

In essence, these courts read the reasonableness requirement out of Title VII by considering reasonableness and undue hardship to be one and the same: an accommodation is reasonable only if it does not cause the employer undue hardship. If all that matters is

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56. Id. (“By its very terms the statute directs that any reasonable accommodation by the employer is sufficient to meet its accommodation obligation. . . . Thus, where the employer has already reasonably accommodated the employee’s religious needs, the statutory inquiry is at an end. The employer need not further show that each of the employee’s alternative accommodations would result in undue hardship.”).
57. Id. at 74 (Marshall, J., concurring in part and dissenting in part).
58. Id.
59. See, e.g., EEOC v. Universal Mfg. Corp., 914 F.2d 71, 73 n.3 (5th Cir. 1990) (“Reasonableness seems to focus more upon the cost to the employer, the extent of positive involvement which the employer must exercise, and the existence of overt discrimination by the employer.”); EEOC v. Firestone Fibers & Textile Co., 515 F.3d 307, 314 (4th Cir. 2008) (acknowledging that reasonableness and undue hardship are “separate and distinct” inquiries but are “interrelated” and “there is much overlap between the two”); Adeyeye v. Heartland Sweeteners, LLC, 721 F.3d 444, 455 (7th Cir. 2013) (“Reasonableness is assessed in context, of course, and this evaluation will turn in part on whether or not the employer can in fact continue to function absent undue hardship if the employee is permitted to take unpaid leave on the needed schedule.”).
whether the accommodation would unduly burden the employer, this renders the reasonableness requirement superfluous.\textsuperscript{60}

An additional tactic some lower courts employ to further diminish the religious accommodation requirement is to question whether religious-accommodation seekers are entitled to the same interactive process with their employers that disability accommodation seekers enjoy.\textsuperscript{61} In the disability context, courts have long followed EEOC guidance\textsuperscript{62} and required employers to engage in an interactive process with accommodation seekers, even though the Americans with Disabilities Act imposes no such mandate.\textsuperscript{63} This process generally requires that the employer meet with the employee in good faith to discuss if and how the employee’s job limitations might be accommodated.\textsuperscript{64} The employer must “[c]onsider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the employer.”\textsuperscript{65} Although the EEOC has made clear that its guidance on the interactive process applies with equal force to religious accommodations,\textsuperscript{66} some courts

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  \item \textsuperscript{60} Leslie Goddard, \textit{Searching for Balance in the ADA: Recent Developments in the Legal and Practical Issues of Reasonable Accommodation}, 35 IDAHO L. REV. 227, 232 (1999) (“Any reading which equates the word ‘reasonable’ with ‘not imposing an undue hardship’ would make the use of the word ‘reasonable’ as a modifier for accommodation in this provision superfluous.”).
  \item \textsuperscript{61} See Dallan F. Flake, \textit{Interactive Religious Accommodations}, 71 ALA. L. REV. 67, 86-89 (2019) (explaining how courts are reluctant to apply the interactive process requirement to religious accommodation claims).
  \item \textsuperscript{62} 29 C.F.R. § 1630.2(o)(3) (2019).
  \item \textsuperscript{63} See, e.g., Dansie v. Union Pac. R.R., 42 F.4th 1184, 1188 (10th Cir. 2022) (“When an employee provides notice to his employer of a disability and expresses a desire for a reasonable accommodation, the employee and the employer must engage in good-faith communications—what we have termed the interactive process.”); Arndt v. Ford Motor Co., 716 F. App’x 519, 528 (6th Cir. 2017) (“The ADA’s regulations require an employer “‘to initiate an informal, interactive process’ when necessary . . .”).
  \item \textsuperscript{64} See McDonald v. UAW-GM Ctr. for Human Res., 738 F. App’x 848, 854 (6th Cir. 2018) (“Both the employer and the employee must participate in the interactive process in good faith.” (citing Kleiber v. Honda of Am. Mfg., Inc., 485 F.3d 862, 871 (6th Cir. 2007))); Phillips v. Victor Cnty. Support Servs., Inc., 692 F. App’x 920, 921 (9th Cir. 2017) (“[T]he interactive process requires ‘direct communication between the employer and employee to explore in good faith the possible accommodations’” (quoting EEOC v. UPS Supply Chain Sols., 620 F.3d 1103, 1110 (9th Cir. 2010))).
  \item \textsuperscript{65} 29 C.F.R. § 1630 app. (2022).
question this proposition. Consequently, whereas a disability accommodation seeker can rightfully expect their employer to consult with them about their job-related limitations and to work closely with them to identify potential accommodations, a religious-accommodation seeker cannot necessarily expect the same level of involvement.

C. Full Versus Partial Accommodation

Against this backdrop of judicial hostility, it should come as little surprise that some courts would seek to further weaken the religious accommodation requirement by finding accommodations reasonable even if they do not fully eliminate the conflict between the employee’s job and their religion. While several circuits have adopted this position, others have rejected it. In still others, the issue remains undecided.

1. Full-Accommodation Circuits

Five circuits have adopted a full-accommodation requirement. The Second Circuit has decided two cases in which it required full accommodation. In Cosme v. Henderson, a letter carrier sued his employer, the U.S. Postal Service (USPS), for failing to reasonably accommodate his need to not work Saturdays so he could observe interactive process with employees to provide workplace [religious] accommodation.”); U.S. EQUAL EMP. OPPORTUNITY COMM’N COMPLIANCE MANUAL § 12-IV.A.2 (2008), https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination [hereinafter COMPLIANCE MANUAL] (explaining that even though Title VII does not expressly require the interactive process, “as a practical matter it can be important to do so”); Plaintiff EEOC’s Response in Opposition to Defendant’s Motion for Summary Judgment at 48, EEOC v. JBS USA, LLC, 339 F. Supp. 3d 1135 (D. Colo. 2018) (No. 10-CV-0213-KLM), 2014 WL 11171486 (arguing that employers and employees “have a duty to cooperate with each other in an attempt to arrive at the [religious] accommodation, something akin to the duty to engage in an interactive process under the [ADA]”).

67. See, e.g., Miller v. Port Auth., 351 F. Supp. 3d 762, 787 (D.N.J. 2018) (acknowledging courts “have not been consistent” in deciding whether the interactive process applies to religious accommodations); EEOC v. Jetstream Ground Servs., Inc., No. 13-CV-02340-KMT, 2016 WL 879625, at *4 (D. Colo. Mar. 8, 2016) (observing that Title VII’s regulations, unlike the ADA’s, do not describe an interactive process). Judicial skepticism of the interactive process requirement for religious accommodations prompted drafters of the 1994 version of the Workplace Religious Freedom Act to include in the proposed legislation a provision that would have prohibited employers from determining they cannot provide an accommodation until “after initiating and engaging in an affirmative and bona fide effort” to accommodate the employee. H.R. 5233, 103d Cong. § 2 (1994).
When “Close Enough” is Not Enough

his Sabbath.68 In affirming the bench verdict for the employer, the appellate court explained that the proffered accommodation was only reasonable if it “eliminated” the employee’s conflict.69 The court found that two accommodations the USPS offered satisfied this requirement: designating the employee as an “unassigned regular,” and transferring him to other positions.70

In Baker v. Home Depot, an evangelical Christian brought a failure to accommodate claim against his former employer, The Home Depot, for firing him for refusing to work Sundays due to his religious beliefs.71 The district court granted summary judgment to the employer, finding that its offer to schedule the employee for a later Sunday shift so he could attend his church services in the morning was a reasonable accommodation.72 The Second Circuit reversed, reasoning that the proffered shift change “was no accommodation at all because . . . it would not permit him to observe his religious requirement to abstain from work totally on Sundays.”73 “Simply put,” the court explained, “[t]he offered accommodation cannot be considered reasonable because . . . it does not eliminate the conflict between the employment requirement and the religious practice.”74

The Third Circuit is the most recent appellate court to address this issue. Groff v. DeJoy involved a claim by a rural letter carrier against the USPS for failing to accommodate his need to not work Sundays due to his religious beliefs.75 The district court held that the USPS reasonably accommodated the employee by offering him the opportunity to swap shifts with other employees—“even if he was ‘not happy’ with it,” and even if nobody was willing to trade.76

69. Id. at 159.
70. Id. at 159–61. The court also determined that in addition to eliminating the religious conflict, the proposed accommodations would not have caused the employee “to suffer an inexplicable diminution in his employee status or benefits.” Id. at 160.
72. Id. at 545.
73. Id. at 547–48.
74. Id. at 548 (alterations in original) (quoting EEOC v. Ilona of Hung., Inc., 108 F.3d 1569, 1576 (7th Cir. 1996)).
76. Id. at 164, 168 (quoting Groff v. DeJoy, No. 19-1879, 2021 WL 1264030, at *5 (E.D. Pa. Apr. 6, 2021)). Although the USPS offered to find coworkers to swap shifts with the
In reversing the lower court, the Third Circuit reasoned that “[i]nterpreting ‘reasonably accommodate’ to require that an accommodation eliminate the conflict between a job requirement and the religious practice is consistent with the meaning of the word ‘accommodate.’” The court then declared, “a legally sufficient accommodation under Title VII’s religious accommodation provision is one that eliminates the conflict between the religious practice and the job requirement.” The court concluded that although shift swapping could be a reasonable accommodation in some cases, here it was not because it failed to “successfully eliminate the conflict.” Nevertheless, the Third Circuit affirmed summary judgment for the USPS because accommodating the letter carrier would have imposed more than a de minimis burden on the employer. It was this determination that the Supreme Court reviewed and, ultimately, vacated and remanded based on its clarification of the undue hardship standard.

The Sixth Circuit has decided three cases concerning partial accommodations. EEOC v. University of Detroit involved an engineering professor who objected on religious grounds to paying service fees to or otherwise associating with a union that provided financial support to pro-abortion organizations. The union offered to reduce his fees by an amount proportional to what it contributed to the organizations, but the professor declined the offer because it did not address his associational concern. Although the accommodation resolved the professor’s concern about contributing directly to an organization that had adopted a pro-choice position, the employer made no effort to accommodate the accommodation seeker, there were more than twenty Sundays when no coworker would trade with him, and he did not work.

77. Id. at 169–70.
78. Id. at 169.
79. Id. at 173.
80. Id. at 175–76.
82. EEOC v. Univ. of Detroit, 904 F.2d 331, 332-33 (6th Cir. 1990).
83. Id. at 333.
84. Id. at 335.
professor’s other concern that he would still be required to associate with an organization that conflicted with his Catholic faith.  

Cooper v. Oak Rubber Co. involved a production employee who objected to working from sundown on Fridays to sundown on Saturdays because it was her Sabbath. The district court granted summary judgment to the employer, finding that the employer’s offer to move the employee to the Friday night shift (which ran from 11 p.m. to 7 a.m. the next day) so she could attend church on Saturday was reasonable as a matter of law. The Sixth Circuit reversed, noting that although the employer’s offer addressed the employee’s concern about missing church, it did not address her objection to working on her Sabbath. The court concluded that “[a]n employer does not fulfill its obligation to reasonably accommodate a religious belief when it is confronted with two religious objections and offers an accommodation which completely ignores one.”

Crider v. University of Tennessee, Knoxville involved a study-abroad coordinator who objected to monitoring an emergency cell phone on her Sabbath, from sundown on Fridays to sundown on Saturdays. The university offered to limit the number of weekends she had to carry the phone to times when “one of the other [two] coordinators were out of town, had a family crisis, or in the event of an emergency.” The employee maintained she was unable to ever monitor the phone on her Sabbath and consequently lost her job for being “inflexible, uncooperative, and unwilling to strike a reasonable compromise.” Once again reversing a district court’s grant of summary judgment for the employer, the Sixth Circuit explained:

Although an employee is obligated to cooperate with an employer’s attempt at accommodation, cooperation is not synonymous with compromise, where such compromise would be in violation of the employees’ [sic] religious needs. Offering

85. Id.
87. Id.
88. Id. at 1379.
89. Id.
90. Crider v. Univ. of Tenn., Knoxville, 492 F. App’x 609, 610–11 (6th Cir. 2012).
91. Id. at 611.
92. Id. at 612–13.
[the employee] fewer Saturday shifts is not a reasonable accommodation to religious beliefs which prohibit working on Saturdays.\textsuperscript{93}

The Seventh Circuit has twice held that an accommodation must fully eliminate an employee’s religious conflict to be reasonable. In \textit{Wright v. Runyon}, the court affirmed summary judgment for the USPS after it gave a postal worker the opportunity to bid on four positions that did not require him to work on his Sabbath.\textsuperscript{94} The worker declined the invitation, even though he was guaranteed to secure at least two of the positions, opting instead to bid for positions that he did not receive.\textsuperscript{95} Noting that a reasonable accommodation is one that “eliminates the conflict between employment requirements and religious practices,” the court found that the USPS satisfied its obligation by inviting the employee to bid on positions that did not require him to violate his Sabbath.\textsuperscript{96} Then, in \textit{EEOC v. Ilona of Hungary, Inc.}, the court upheld a bench verdict for two Jewish beauty-salon workers who were fired for refusing to work on Yom Kippur, a Jewish holiday.\textsuperscript{97} The appellate court agreed with the trial court’s determination that the salon’s offer to the workers to take a different day off was not reasonable because it failed to “eliminate the conflict” between their job and their religious beliefs.\textsuperscript{98}

The Ninth Circuit addressed the question in \textit{American Postal Workers Union, San Francisco Local v. Postmaster General}.\textsuperscript{99} The case involved two post office window clerks who objected to processing draft registration forms on religious grounds.\textsuperscript{100} The Postal Service adopted a rule requiring any window clerk who so objected to

\textsuperscript{93} Id. at 613.
\textsuperscript{94} Wright v. Runyon, 2 F.3d 214, 217–18 (7th Cir. 1993).
\textsuperscript{95} Id. at 216.
\textsuperscript{96} Id. at 217 (quoting Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, 70 (1986)).
\textsuperscript{97} EEOC v. Ilona of Hung., Inc., 108 F.3d 1569, 1572 (7th Cir. 1997).
\textsuperscript{98} Id. at 1576. In pointing out that the only attempt at accommodation was to offer the employees a different day off, the court somewhat curiously stated, “[a]side from that, Ilona offered no other accommodation. It did not, for example, offer a partial day off to either employee . . . .” Id. A partial day off would not have eliminated the conflict, so it is puzzling why the court would give this example. Perhaps the court raised the example simply to highlight the salon’s unreasonableness in exploring any alternative accommodation, not to insinuate that such an accommodation would actually have been reasonable.
\textsuperscript{99} Am. Postal Workers Union, S.F. Local v. Postmaster Gen., 781 F.2d 772 (9th Cir. 1986).
\textsuperscript{100} Id. at 774.
When “Close Enough” is Not Enough

transfer to a non-window position that did not require draft registration processing. The clerks claimed the Postal Service failed to reasonably accommodate them by refusing their request to keep their positions and simply refer draft registrants to other window clerks. The district court held that although the transfer rule eliminated the employees’ conflict, the Postal Service was bound to accept their preferred accommodation unless doing so would impose undue hardship. The Ninth Circuit reversed, explaining that “[w]here an employer proposes an accommodation which effectively eliminates the religious conflict,” the employee is not entitled to their preferred accommodation. Instead, “the inquiry under Title VII reduces to whether the accommodation reasonably preserves the affected employee’s employment status.” Because the Postal Service’s rule that the objecting clerks transfer to a non-window position would have eliminated the conflict for the objecting employees, all that was left for the court to decide was whether such a transfer would have reasonably preserved the clerks’ employment status.

2. Partial-Accommodation Circuits

Three circuits have rejected the full-accommodation rule outright, holding instead that in certain circumstances, an accommodation can be reasonable even if it does not eliminate the employee’s conflict. In Sturgill v. United Parcel Service, Inc., the Eighth Circuit became the first appellate court to adopt this position. The case involved a delivery driver who sued his former employer for failing to accommodate his need to not work past sundown on Fridays. The trial court instructed the jury that “an accommodation is reasonable if it eliminates the conflict between Plaintiff’s religious beliefs and Defendant’s work requirements and

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101. Id.
102. Id.
103. Id. at 775. The district court reached its decision prior to the Supreme Court holding in Ansonia that an employee is not entitled to their preferred religious accommodation. Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, 68 (1986).
105. Id.
106. Id.
108. Id. at 1027.
reasonably permits Plaintiff to continue to be employed by Defendant.”

On appeal, United Parcel Service (UPS) argued the instruction was erroneous “because, as a matter of law, an employer’s accommodation is reasonable if it provides a religion-neutral way for the employee to minimize a religious conflict.”

The employee countered that the instruction was not erroneous “because, to be reasonable as a matter of law, an employer’s accommodation must eliminate the conflict and ‘fully satisfy the religious convictions of an employee.’”

The court rejected both contentions, opting instead to adopt a rule that “[w]hat is reasonable depends on the totality of the circumstances and therefore might, or might not, require elimination of a particular, fact-specific conflict.” The court acknowledged that in “many” cases, “the only reasonable accommodation [may be] to eliminate the . . . conflict altogether.”

“But in close cases, that is a question for the jury because it turns on fact-intensive issues such as work demands, the strength and nature of the employee’s religious conviction, the terms of an applicable CBA, and the contractual rights and workplace attitudes of co-workers.”

The court stressed the importance of “bilateral cooperation” between employers and employees, explaining that while “Title VII requires employers to make serious efforts to accommodate,” the statute “also requires accommodation by the employee, and a reasonable jury may find in many circumstances that the employee must either compromise a religious observance or practice, or accept a less desirable job or less favorable working conditions.”

The court’s assertion that an accommodation’s reasonableness may depend on an employee’s willingness to compromise their religious beliefs is controversial, to say the least, and runs counter to the Sixth Circuit’s declaration in Crider that although Title VII requires employee cooperation, it does not require an employee to compromise their religious beliefs.

109. *Id.* at 1030.
110. *Id.* (emphasis omitted).
111. *Id.* (emphasis omitted).
112. *Id.*
113. *Id.* at 1033.
114. *Id.*
115. *Id.* (emphasis added).
116. Crider v. Univ. of Tenn., Knoxville, 492 F. App’x 609, 613 (6th Cir. 2012); *see also* Redmond v. GAF Corp., 574 F.2d 897, 901 (7th Cir. 1978) (“We agree that the concept of a
Shortly after the *Sturgill* decision, the Fourth Circuit followed suit in *EEOC v. Firestone Fibers & Textiles Co.* The EEOC brought a failure to accommodate claim on behalf of an employee who was unable to work from sundown on Fridays to sundown on Saturdays due to his religious beliefs. Firestone did not offer the employee any accommodation beyond the standard attendance accommodations it made available to all employees who needed time off. After using all of his leave under this policy, the employee requested eleven days off to observe two religious holidays. Firestone denied the request and terminated his employment when he failed to report to work on those days.

The district court granted Firestone summary judgment based on its determination that the company had reasonably accommodated the employee through its standard policies. On appeal, the EEOC argued the accommodation was not reasonable because it did not fully eliminate the employee’s conflict. In rejecting this argument, the Fourth Circuit reasoned:

The problem with appellants’ “total” accommodation interpretation is that such a construction ignores the plain text of the statute, namely the inclusion of the word “reasonably” as a modifier of accommodate. If Congress had wanted to require employers to provide complete accommodation absent undue hardship, it could easily have done so. For instance, Congress could have used the words “totally” or “completely,” instead of “reasonably.” It even could have left out any qualifying adjective at all. Rather,
Congress included the term reasonably, expressly declaring that an employer’s obligation is to “reasonably accommodate” absent undue hardship—not to totally do so.\textsuperscript{124}

The court further explained that “this is not an area for absolutes” because “[r]eligion does not exist in a vacuum in the workplace,” but “[r]ather . . . coexists, both with intensely secular arrangements such as collective bargaining agreements and with the intensely secular pressures of the marketplace.”\textsuperscript{125} The court viewed reasonable accommodation as “a field of degrees, not a matter for extremes” that is “dependent on the extent of the employee’s religious obligations and the nature of the employer’s work requirements.”\textsuperscript{126} Accordingly, “[a] duty of ‘reasonableness’ cannot be read as an invariable duty to eliminate the conflict between workplace rules and religious practice.”\textsuperscript{127}

In determining reasonableness, the Fourth Circuit focused on how the proposed accommodation would impact the employer and other employees rather than whether the accommodation would fully eliminate the employee’s conflict.\textsuperscript{128} The court concluded that Firestone reasonably accommodated the employee through its pre-existing attendance policies because those policies permitted “most employees the opportunity to meet all of their religious observances.”\textsuperscript{129} And beyond these policies, Firestone allowed the employee to take more half-day vacations than allowed under the collective bargaining agreement, which “constitute[d] another meaningful accommodation to [the employee’s] religious observances.”\textsuperscript{130} It also altered his shift when possible, which demonstrated that “Firestone ‘actively attempt[ed] to accommodate [the employee’s] religious’ observances.”\textsuperscript{131}

The Tenth Circuit has adopted a slightly more moderate position than the Fourth and Eighth Circuits. \textit{Tabura v. Kellogg USA}
involved claims by Seventh-Day Adventist production workers that their employer failed to reasonably accommodate their need to avoid working from sundown on Fridays to sundown on Saturdays so they could observe their Sabbath. Kellogg refused to accommodate the employees beyond allowing them to use its generally applicable vacation and shift-swapping policies. These policies afforded the employees some relief but did not protect them from all Sabbath work. The employees eventually lost their jobs for missing too many weekend shifts. The district court entered summary judgment for the employer, holding that the accommodations offered were reasonable as a matter of law.

The Tenth Circuit disagreed, holding that a fact issue as to the reasonableness of the accommodations precluded summary judgment. It began its analysis of reasonableness by stating that “an accommodation will not be reasonable if it only provides Plaintiffs an opportunity to avoid working on some, but not all, Saturdays” — an observation that seems in line with a full-accommodation requirement. But in the same breath, the court explained that “[o]n the other hand, to be reasonable, an accommodation need not provide a ‘total’ accommodation; that is, Kellogg is not required to guarantee Plaintiffs will never be scheduled for a Saturday shift, nor is Kellogg required to provide an accommodation that ‘spares the employee any cost whatsoever.’” The court did not articulate what costs an accommodation seeker may be expected to bear but did seem to disagree with Sturgill’s observation that an employee may have to compromise their religious beliefs.

The Tenth Circuit rejected the employees and the EEOC’s (as amicus) argument that an accommodation is reasonable only if it

132. Tabura v. Kellogg USA, 880 F.3d 544, 546 (10th Cir. 2018).
133. Id. at 547.
134. Id. at 547–48.
135. Id. at 548.
136. Id. at 550.
137. Id. at 555.
138. Id. at 550 (citing Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, 70 (1986)).
139. Id. at 550–51 (quoting Pinsker v. Joint Dist. No. 28j, 735 F.2d 388, 390–91 (10th Cir. 1994)) (citing Brener v. Diagnostic Ctr. Hosp., 671 F.2d 141, 145–46, 146 n.3 (5th Cir. 1982)).
140. Id. at 551 (citing with approval Brener v. Diagnostic Ctr. Hosp., 671 F.2d 141, 145–46, 146 n.3 (5th Cir. 1982), for the proposition that “of course, an employee is not required to modify his religious beliefs”).
fully eliminates the conflict. Like the Fourth Circuit in *Firestone*, the Tenth Circuit observed that Title VII requires only reasonable—not actual, total, or full—accommodation. It explained that a full-accommodation rule “would read ‘reasonably’ out of the statute,” “unnecessarily complicates the question of reasonableness,” and “begs additional questions, including what is meant by ‘eliminate’ or ‘totally’ eliminate or ‘completely’ eliminate.” The court then analyzed cases where courts required full accommodation and determined that “in most cases it is not clear that these courts reached any different result than if they simply considered whether the accommodation was reasonable.” The court saw “no need to adopt a per se rule requiring [full accommodation].” It concluded instead that “[t]he statute requires the accommodation to be reasonable and ultimately the question of whether an accommodation is reasonable must be made on a case-by-case basis, grounded on the specific facts presented by a particular situation.”

3. Inconsistent Circuits

While several circuits have taken a clear stand on whether a religious accommodation must partially or fully eliminate an employee’s conflict, the Fifth and the Eleventh Circuits have both taken inconsistent positions. The Fifth Circuit first addressed this issue in *EEOC v. Universal Manufacturing Corp.* A machine operator asked for seven days off so she could observe a religious holiday and attend its corresponding festival. The employer offered to let her take five days off or, alternatively, to take seven days off if she worked one shift within those seven days. The

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141. *Id.* at 551–52.
142. *Id.* at 551 (“At times, Plaintiffs add adjectives, arguing an accommodation must ‘actually’ or ‘totally’ or ‘fully and completely’ eliminate a conflict. But Title VII expressly requires only that an employer ‘reasonably accommodate’ an employee’s religion.” (first citing 42 U.S.C. § 2000e(j) (2018); and then citing *EEOC v. Firestone Fibers & Textiles Co.*, 515 F.3d 307, 313 (4th Cir. 2008)).
143. *Id.*
144. *Id.* at 551–53.
145. *Id.* at 553.
146. *Id.* at 554 (first citing *Thomas v. Nat’l Ass’n of Letter Carriers*, 225 F.3d 1149, 1157 n.8 (10th Cir. 2000); and then citing *United States v. City of Albuquerque*, 545 F.2d 110, 115 (10th Cir. 1976)).
148. *Id.* at 72.
149. *Id.*
employee rejected both proposals because neither resolved her concern about refraining from working during the religious holiday. When she attended the festival and did not report to work, her employer fired her. The EEOC subsequently brought suit, claiming the employer violated Title VII.

The district court granted the employer summary judgment, finding that the proposals constituted a reasonable accommodation as a matter of law. The Fifth Circuit disagreed. It stressed that the employee had presented two conflicts: attending the festival and refraining from working during that time. Although the employer provided an accommodation that allowed the employee to attend the festival, it made no attempt to accommodate her need to refrain from working at all during the holiday. The court rejected the employer’s claim that under Supreme Court precedent, an employer is not required to offer multiple accommodations. “Requiring the employer at least to attempt to accommodate each religious conflict that arises does not . . . contradict the Supreme Court’s reading of section 701(j),” the court explained. “The Supreme Court has never held that the question of ‘reasonable’ accommodation focuses upon the number of conflicts or even upon the proportion of a single conflict eliminated by the employer’s offer of accommodation.” This language strongly suggests the Fifth Circuit will assess reasonableness based on whether the accommodation eliminates the employee’s conflict, not the proportion of the conflict that the accommodation eliminates.

The Fifth Circuit took the opposite view in Bruff v. North Mississippi Health Services, Inc. A counselor was terminated for refusing on religious grounds to provide relationship counseling to a woman in a same-sex relationship. The appellate court affirmed

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150. *Id.*
151. *Id.*
152. *Id.*
153. *Id.*
154. *Id.* at 73–74.
155. *Id.* at 73.
156. *Id.*
157. *Id.*
158. *Id.*
159. *Id.*
160. Bruff v. N. Miss. Health Servs., Inc., 244 F.3d 495 (5th Cir. 2001).
161. *Id.* at 497–99.
summary judgment for the employer, finding reasonable the employer’s offer to give her thirty days, and the assistance of its in-house employment counselor, to find another position within the organization where “the likelihood of encountering further conflicts with her religious beliefs would be reduced.” The court did not delve further into the issue, nor did it attempt to reconcile its view with the position it took in Universal Manufacturing. Nonetheless, its determination that an accommodation that could potentially “reduce” the conflict was reasonable suggests the Fifth Circuit may be more open to considering the proportion of the conflict that an accommodation eliminates than it previously indicated.

The Eleventh Circuit has likewise sent mixed signals. In Patterson v. Walgreen Co., a training instructor brought suit against his former employer after he was terminated for refusing to work on his Sabbath. Walgreens encouraged him to seek a different position within the company, including his former position as a customer care representative, where a larger pool of employees would make it easier for him to swap shifts in the future. However, because Walgreens could not guarantee he would never have to work on his Sabbath, he did not pursue a new position. In affirming summary judgment for the employer, the court explained that “[g]uarantees are not required[,]” and that even if switching positions “did not completely eliminate the conflict, it would have enhanced the likelihood of avoiding it.”

The Eleventh Circuit took the opposite view in Bailey v. Metro Ambulance Services, Inc. An emergency medical technician requested an exemption from his employer’s grooming policy so he could keep his goatee in accordance with his Rastafarian religious beliefs. The company sought to accommodate him by offering him a transfer to a non-emergency-transport EMT position that was not subject to the grooming code. The employee declined the offer and brought suit for failure to accommodate. In affirming

162. Id. at 501.
164. Id. at 587.
165. Id. at 584–85.
166. Id. at 587.
168. Id. at 1269.
169. Id. at 1269–70.
170. Id. at 1270–71.
the reasonableness of the proffered accommodation, the Eleventh Circuit noted that “[a] ‘reasonable accommodation’ ‘eliminates the conflict between employment requirements and religious practices.’”\(^\text{171}\) It explained that a transfer to a comparable position that “removes the conflict between the policy and the practice, and reasonably preserves the employee’s terms, conditions, or privileges of employment, satisfies the reasonable-accommodation requirement.”\(^\text{172}\) Because the employer offered the employee a comparable position where he could maintain his goatee, it provided a reasonable accommodation.\(^\text{173}\)

As this Part demonstrates, the history of religious accommodations under Title VII has been somewhat of a rollercoaster ride. The statute did not originally include a religious accommodation provision, but one was soon added in response to outcry from employees who were losing their jobs because of their religious conduct rather than their religious status. The judicial skepticism of religious accommodations that predated Title VII’s amendment has carried over despite the statute’s plain requirements. Courts have employed several methods to diminish the religious accommodation provision, including by asserting that an accommodation does not have to eliminate the conflict between an employee’s job and their religion to be reasonable. Not all circuits have adopted this position; some have taken the opposite view, some have taken inconsistent positions, and still others are yet to weigh in on this critical matter.

II. STATUTORY INTERPRETATION

Although the circuit courts are split on the issue, several tools of statutory interpretation support a full-accommodation rule, even though Title VII does not expressly require it. This Part examines four of those tools. It begins by demonstrating that the statutory text itself supports a full-accommodation rule based on the plain meaning of the terms “reasonably” and “accommodate.” Next, it reviews the applicable legislative history, which shows Congress enacted the religious accommodation provision

\(^{171}\) Id. at 1276 (quoting Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, 70 (1986)).
\(^{172}\) Id. (first citing Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, 71 (1986); and then citing EEOC v. United Parcel Serv., 94 F.3d 314, 318-20 (7th Cir. 1996)).
\(^{173}\) Id.
specifically to protect employees who need full accommodations. It then turns to the Supreme Court’s accommodation jurisprudence, which includes numerous statements to suggest the Court may already read Title VII as requiring full accommodation, even if it has not explicitly said so. This Part concludes by examining the EEOC’s position, which has long been that a reasonable accommodation must eliminate the conflict between the employee’s job and their religion.

A. Statutory Text

The starting point in determining the meaning of “reasonably accommodate” is the statutory language itself. Because Title VII does not define “reasonably” or “accommodate,” the terms should “be interpreted as taking their ordinary, contemporary, common meaning.”

Where the language of an enactment is clear and construction according to its terms does not lead to absurd or impracticable consequences, the words employed are to be taken as the final expression of the meaning intended.

The plain meaning of “accommodate” requires the elimination of the conflict between work requirements and religious practices. Merriam-Webster’s Online Dictionary defines “accommodate” as: “to provide with something desired, needed, or suited,” “to bring into agreement or concord: reconcile,” and “to make fit, suitable, or congruous.” The Random House Dictionary of the English Language defines “accommodate” as “to bring into harmony; adjust; reconcile.” Black’s Law Dictionary defines “accommodation” as “[t]he act or an instance of making a change or provision for someone or something; an adaptation or adjustment.” “Adapt” means “to make fit (as for a new use) often

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174. See Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 756 (1975) (Powell, J., concurring) (“The starting point in every case involving construction of a statute is the language itself.”).


by modification," and "adjust" means "to bring to a more satisfactory state: (1) settle, resolve (2) rectify." The plain meaning of "accommodate," as derived from the phrases and synonyms used in these definitions, makes clear that an accommodation "must actually allow the employee to engage in the religious practice without adverse employment consequences."

This, of course, is only possible if the accommodation eliminates the conflict between the employee’s job requirements and religious practices. If the proposed accommodation merely lessens the conflict, it is no accommodation at all because it does not "reconcile," "settle," or "resolve" the conflict; the employee must still decide between their job and their religion.

Courts, the EEOC, and scholars have taken the position that the plain meaning of "accommodate" requires full elimination of the conflict. The Third Circuit explained in Groff that “[i]nterpreting ‘reasonably accommodate’ to require that an accommodation eliminate the conflict between a job requirement and the religious practice is consistent with the meaning of the word ‘accommodate.’” Similarly, the EEOC has argued in amicus briefs that:

Under those ordinary meanings, an employer’s ‘accommodation’ of an employee’s religious practice must be suitable to meet the employee’s religious needs—that is, it must actually allow the employee to engage in the religious practice without adverse employment consequences. That is possible only if it eliminates the conflict between the employee’s religious practice and work.

Further, Professors Kurtz and Sleeper’s analysis of the meaning of “accommodate” led them to conclude that Title VII’s “use of ‘accommodate’ obliges employers to meet the needs of employees’ religious convictions. The plain meaning of the phrases, and

184. Amicus Brief—Patterson, supra note 182, at *9.
synonyms used in the definitions, including ‘to make fit,’ ‘to make suitable,’ ‘rectify,’ and ‘reconcile,’ all indicate that the accommodation must eliminate the conflict between work and religion.’

Even circuit courts that require only partial accommodation do not seem to dispute that the term “accommodate” requires the conflict to be eliminated. Rather, they contend that the placement of “reasonably” in front of “accommodate” allows an accommodation to stop short of fully eliminating the conflict, and that if Congress had intended something different, it would have used an adverb such as “fully,” “totally,” or “completely”—or no modifier at all—instead of “reasonably.” But, as Kurtz and Sleeper argue, adding a modifier such as “totally” would have been redundant because “[t]he use of the word ‘accommodate’ demands removal of the conflict.” According to basic grammatical principles of how modifiers work, an adverb cannot contradict a verb. Thus, “reasonably” cannot possibly weaken the baseline requirement for an accommodation, which is that it eliminates the conflict between the employee’s job and religious practices. “Reasonably” does not convey the level of completeness required; the need for completeness derives directly from the word “accommodate.” Consequently, a partial accommodation can never be a reasonable accommodation.

If “reasonably” does not lessen the accommodation requirement, what role does it play in the statute? In Groff, the employer argued “the word ‘reasonable’ in other contexts does not require complete achievement of the action that the word ‘reasonable’ modifies.” For instance, “reasonable doubt” does

186. See Tabura v. Kellogg USA, 880 F.3d 544, 551 (10th Cir. 2018); EEOC v. Firestone Fibers & Textiles Co., 515 F.3d 307, 313 (4th Cir. 2008).
187. Kurtz & Sleeper, supra note 185, at 90.
188. See Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv., 139 S. Ct. 361, 368 (2018) (“According to the ordinary understanding of how adjectives work, ‘critical habitat’ must also be ‘habitat.’ Adjectives modify nouns—they pick out a subset of a category that possesses a certain quality. It follows that ‘critical habitat’ is the subset of ‘habitat’ that is ‘critical’ to the conservation of an endangered species.”).
189. See US Airways, Inc. v. Barnett, 535 U.S. 391, 400 (2002) (“[I]n ordinary English the word ‘reasonable’ does not mean ‘effective.’ It is the word ‘accommodation,’ not the word ‘reasonable,’ that conveys the need for effectiveness.”). Moreover, “the word ‘reasonably’ means ‘fairly’ or ‘moderately,’ not ‘partially’ or ‘incompletely.’” Kurtz & Sleeper, supra note 185, at 90.
not mean there must be a complete elimination of all doubt to find a criminal defendant guilty. The Third Circuit conceded this was true but countered that “context matters”:

The context in which the word “reasonable” is used informs what it modifies. In the Title VII religious discrimination context, the word “accommodate” requires the employer to offer an adjustment that allows the employee to fulfill the religious tenet but requires nothing more from the employer. The word “reasonably” informs how an employer provides an accommodation that eliminates the conflict, but it does not obligate the employer to “choose any particular reasonable accommodation,” or grant an employee’s preferred accommodation.

Thus, Title VII’s use of the modifier “reasonably” does not change the obligation to accommodate but instead describes the manner of the accommodation. It means that when adopting an accommodation, the employer possesses discretion to reasonably select among effective resolutions. “Reasonableness thus defines the outer bounds of an employer’s discretion to select among effective accommodations that resolve the religious conflict.” The Supreme Court seems to have endorsed this view of reasonableness, noting in Groff that “Title VII requires that an employer reasonably accommodate an employee’s practice of religion, not merely that it assess the reasonableness of a particular possible accommodation or accommodations. This distinction matters[...].” The Court explained, because “[f]aced with an accommodation request like Groff’s, it would not be enough for an employer to conclude that forcing other employees to work

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191. Id.
192. Id. (citations omitted) (quoting Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, 68 (1986)) (citing Getz v. Pennsylvania, 802 F.2d 72, 74 (3d. Cir. 1986)).
193. Id. (“In evaluating whether the avenue is reasonable, we look at the manner in which the accommodation is implemented.”).
194. See, e.g., Cosme v. Henderson, 287 F.3d 152, 153 (2d Cir. 2002) (“[A]n employer need not offer the accommodation the employee prefers [...],”); Baker v. Home Depot, 445 F.3d 541, 548 (2d Cir. 2006) (explaining that “employees are not entitled to hold out for the ‘most beneficial accommodation’”).
195. Opening Brief for Plaintiff-Appellant at 22, Groff v. DeJoy, 35 F.4th 162 (No. 21-1900), 2021 WL 3285579, at *21 [hereinafter “Opening Brief – Groff”]. “[A]n offer of accommodation may be unreasonable ‘if it cause[s] [an employee] to suffer an inexplicable diminution in his employee status or benefits. [...].’ In other words, an accommodation might be unreasonable if it imposes a significant work-related burden on the employee without justification [...].” Lewis v. N.Y.C. Transit Auth., 12 F. Supp. 3d 418, 444 (E.D.N.Y. 2014).
overtime would constitute an undue hardship. Consideration of other options, such as voluntary shift swapping, would also be necessary.\textsuperscript{196}

Courts that read “reasonably” as lessening the accommodation requirement seem driven by concern for how an accommodation might impact the employer.\textsuperscript{197} That concern is valid—but entirely misplaced. An accommodation’s reasonableness has nothing to do with how the accommodation would impact the employer. “Reasonably” informs how an employer provides an accommodation that eliminates the conflict, not whether the accommodation would unduly burden the employer. Title VII balances this initial requirement that employers provide accommodations that allow employees to fully observe their religious customs with a counter provision that excuses an employer from providing such an accommodation if it would impose undue hardship on the employer’s business. The undue hardship defense reflects the reality that in certain instances, an accommodation would simply be too burdensome for an employer to be expected to bear. Whether an accommodation is reasonable and whether an accommodation would impose undue hardship are separate inquiries.\textsuperscript{198} “[T]he employer’s burdens are assessed under the hardship defense, not used to dilute the front-line requirement that employers provide an accommodation that effectively eliminates the religious conflict.”\textsuperscript{199}

\textbf{B. Legislative History}

The legislative history of Title VII’s religious accommodation provision supports a full-accommodation requirement. When statutory terms are ambiguous, extrinsic materials, including legislative history, can be useful “to the extent they shed a reliable

\begin{itemize}
\item \textsuperscript{196} Groff v. DeJoy, 600 U.S. 447, 473 (2023).
\item \textsuperscript{197} See, e.g., EEOC v. Firestone Fibers & Textiles Co., 515 F.3d 307, 314 (4th Cir. 2008) (explaining that "an accommodation that results in undue hardship almost certainly would not be viewed as one that would be reasonable”).
\item \textsuperscript{198} Groff, 35 F.4th at 169 (“[W]e must determine whether the employer offered a reasonable accommodation to the employee. If it did, then ‘the statutory inquiry is at an end.’ If it did not, then we evaluate whether the employee’s requested accommodation would cause the employer an undue hardship. Whether the employer provided a reasonable accommodation and whether the accommodation would cause an undue hardship are separate inquiries.”).
\item \textsuperscript{199} Opening Brief – Groff, supra note 195, at 23.
\end{itemize}
light on the enacting Legislature’s understanding of [such] terms.” And, as Justice Sotomayor has instructed, “[E]ven when . . . a statute’s meaning can clearly be discerned from its text, consulting reliable legislative history can still be useful, as it enables us to corroborate and fortify our understanding of the text.”

The religious accommodation provision’s legislative history is scant. Almost immediately after the Supreme Court upheld *Dewey*, the Sixth Circuit decision rejecting the EEOC’s guidance that Title VII required accommodation, Senator Jennings Randolph of West Virginia proposed legislation to amend Title VII to codify the EEOC’s position. The amendment somewhat awkwardly imposes the accommodation requirement as part of the statute’s definition of religion: “The term ‘religion’ includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.” Senator Randolph’s proposal faced virtually no resistance, as evidenced by the fact that the entire legislative history of the proposal consists of just two pages of the Congressional Record, in which Senator Randolph explains why the amendment is needed and answers four questions from two senators. The measure was ultimately “passed by a unanimous vote in the Senate” and by “similar approval by the House of Representatives . . .”

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204. 118 CONG. REC. 705–06 (1972).
The amendment’s historical context is critical to understanding how the legislative history supports a full-accommodation requirement. As previously noted, the impetus for the EEOC’s religious accommodation requirement was that employees whose religious beliefs prevented them from working on their Sabbath were losing their jobs because of their unwillingness to compromise their beliefs. Senator Randolph referenced these employees in his remarks on the Senate floor:

[T]here are several religious bodies . . . not large in membership, but with certain strong convictions, that believe there should be a steadfast observance of the Sabbath and require that the observance of the day of worship, the day of the Sabbath, be other than on Sunday. On this day of worship work is prohibited whether the day would fall on Friday, or Saturday, or Sunday.

Senator Randolph’s repeated use of the word “day” underscores that the workers he had in mind were not the type who would be content with taking a few hours off on their Sabbath to attend religious services and then go to work; these were workers who needed a full accommodation that would allow them the entire day off to worship. Indeed, Senator Randolph emphasized that these workers could not compromise their beliefs, as their “religious practices rigidly require them to abstain from work in the nature of hire on particular days.” Senator Randolph was especially sympathetic to their plight because he, too, was a Sabbatarian. As part of his remarks to the Senate, he shared, “I am a member of a denomination which is a relatively small one, the Seventh-Day Baptists. . . . [W]e think in terms of our observance of the Sabbath beginning at sundown Friday evening and ending at sundown Saturday evening, following the Biblical words, ‘From eve unto eve shall you celebrate your Sabbath.’”

Senator Randolph’s stated intent behind the amendment was “to assure that freedom from religious discrimination in the

208. See Brierton, supra note 36, at 167 (explaining that the EEOC “raised the issue of reasonable accommodation two years after the law had gone into effect due to complaints from religious employees that employers were refusing to allow them to take time off during the regular work week in order to observe holy days”).
209. 118 CONG. REC. 705 (1972).
210. Id.
211. Id.
employment of workers is for all time guaranteed by law.” 212 In his view, “the law flowing from the original Constitution of the United States should protect [workers’] religious freedom, and hopefully their opportunity to earn a livelihood within the American system[].” 213 Given his references to workers like him who needed the entire day off to observe their Sabbath, “protect[ing] their religious freedom” while providing the “opportunity to earn a livelihood” was not something that could be accomplished through partial accommodation. 214 The only solution would be for employers to provide accommodations that fully resolved the employees’ conflict.

This point was perhaps so obvious that neither Senator Randolph nor any member of Congress even raised the possibility that an accommodation could be reasonable if it did not fully eliminate the employee’s conflict. Instead, they intended and understood that the limiting feature of the amendment is the undue hardship clause. Responding to a hypothetical from Senator Dominick of Colorado about whether a particular situation would impose undue hardship on the employer, Senator Randolph stated that he did “not believe that an undue hardship would come to such an employer.” 215 He then explained, “I have placed in the language of the amendment, that there would be such flexibility, there would be this approach of understanding, even perhaps of discretion, to a very real degree.” 216 This prompted Senator Williams of New Jersey to pose a follow-up hypothetical about whether it would be an undue hardship for an employer that operates only on the weekends to hire a worker whose Sabbath observance prohibited him from working on one of the two days of the employment. 217 Senator Randolph confirmed this would constitute undue hardship and thus the amendment would not require accommodation in that case. 218 Senator Randolph’s exchanges with Senator Dominick and Senator Williams further demonstrate Congress’s intent that an accommodation fully

212. Id.
213. Id. at 706.
214. Id.
215. Id.
216. Id.
217. Id.
218. Id.
eliminate the conflict—and that any limitation on the employer’s duty to do so derives not from the reasonableness requirement but rather from the undue hardship provision.

C. Supreme Court Jurisprudence

The Supreme Court has never directly addressed whether a reasonable accommodation must fully eliminate the conflict between an employee’s job and their religion. And yet, it has made statements in three of the religious accommodation cases it has decided, as well as in a disability accommodation case, that support a full-accommodation rule.

1. Trans World Airlines, Inc. v. Hardison

Although Hardison is best known for its now-defunct interpretation of undue hardship, it also provides insight into the Supreme Court’s understanding of the reasonableness requirement. The case involved a Sabbatarian employee, who brought suit after his employer failed to accommodate his request to not work on his Sabbath or certain religious holidays.219 Neither the parties nor the Court contemplated the possibility of something less than a full accommodation. In fact, the Court noted that transferring the employee from the day shift to the twilight shift was “unavailing since that schedule still required Hardison to work past sundown on Fridays.”220 The record showed that the employer considered three potential solutions to Hardison’s conflict, each of which would have fully eliminated the employee’s conflict: (1) allow him to work a four-day week and fill his Saturday shift with a supervisor or another worker on duty elsewhere, (2) exempt him from Saturday work and fill his position from other available personnel, or (3) arrange a shift swap.221 The Court described these as “reasonable efforts to accommodate.”222 While it did not expressly state that the proposed accommodations were reasonable because they eliminated the employee’s conflict, this inference is logical. Upon declaring the proposed accommodations reasonable,

220. Id. at 69.
221. Id. at 76–77.
222. Id. at 77.
the Court turned its attention to the question of undue hardship.\textsuperscript{223} It concluded that because the accommodations would have imposed more than de minimis cost on the employer, it had no duty to accommodate and was, in fact, within its rights to terminate the employee for his religious-based absences.\textsuperscript{224}

In \textit{Firestone}, the Fourth Circuit took the view that \textit{Hardison} supports a partial-accommodation rule.\textsuperscript{225} It noted that in \textit{Hardison}, the Supreme Court had observed that “the statute provides no guidance for determining the degree of accommodation that is required of an employer,” and that while “the employer’s statutory obligation to make reasonable accommodation” was “clear,” the precise “reach of that obligation ha[d] never been spelled out by Congress” or by EEOC guidelines.\textsuperscript{226} The Fourth Circuit reasoned that “[b]y struggling to locate the degree of accommodation required under [Title VII], the Court recognized that the line was one of reasonable, not total, accommodation.”\textsuperscript{227} This conclusion seems misplaced. \textit{Hardison} was not a case about reasonableness; it was a case about undue hardship. The Supreme Court had no trouble determining the proposed accommodations were reasonable, as they fully eliminated the employee’s conflict.\textsuperscript{228} The difficulty of the case lay in how much of a burden an employer must bear before an accommodation imposes undue hardship.\textsuperscript{229} The Supreme Court’s “struggle” was with undue hardship—not reasonableness. The Fourth Circuit’s interpretation of \textit{Hardison} as requiring less than full accommodation simply is not justified.

The other aspect of \textit{Hardison} that some courts and litigants have seized on in claiming partial accommodations can be reasonable is the Supreme Court’s observation that the employer’s seniority system “represented a significant accommodation to the needs, both religious and secular, of all of TWA’s employees” because it was “a neutral way of minimizing the number of occasions when

\begin{itemize}
\item \textsuperscript{223} \textit{Id.}
\item \textsuperscript{224} \textit{Id.} at 84–85.
\item \textsuperscript{225} EEOC v. Firestone Fibers \& Textiles Co., 515 F.3d 307, 313–14 (4th Cir. 2008).
\item \textsuperscript{226} \textit{Id.} at 313.
\item \textsuperscript{227} \textit{Id.} at 313–14.
\item \textsuperscript{228} \textit{Hardison}, 432 U.S. at 77.
\item \textsuperscript{229} \textit{Id.} at 66 (“The issue in this case is the extent of the employer’s obligation under Title VII to accommodate an employee whose religious beliefs prohibit him from working on Saturdays.”).
\end{itemize}
an employee must work on a day that he would prefer to have off." Some have taken this to mean an accommodation can be reasonable if it lessens but does not eliminate the conflict. In Sturgill, the Eighth Circuit rejected this interpretation. The court explained that while the Hardison court praised the employer’s seniority system under the specific circumstances of the case, it did not hold that an employer’s duty to reasonably accommodate will never require additional actions beyond a collective bargaining agreement or neutral policy:

But Hardison did not hold, more broadly, that an employer's duty to reasonably accommodate never requires additional actions beyond, but not inconsistent with, its contractual obligations under a collective bargaining agreement. Indeed, the Court in Hardison discussed such additional actions but concluded on the facts of that case that they would have imposed an undue hardship.

The Sturgill court’s assessment of Hardison is correct. The Hardison Court did not hold that the employer’s seniority system constituted a reasonable accommodation. It merely pointed out that for any employee wanting certain days of the week off, whether for religious or secular reasons, the seniority system provided a neutral way to minimize scheduling conflicts. The seniority system was a helpful starting point, but it was hardly sufficient to constitute a reasonable accommodation. The employee needed more than for his scheduling conflicts to be lessened; he needed an accommodation that allowed him to observe his Sabbath and religious holidays completely. Recognizing this reality, the employer explored options beyond the seniority system to try to fully accommodate the employee. It was those attempts to fully accommodate—not the seniority system’s ability to lessen

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230. Id. at 78.
231. See, e.g., Cook v. Chrysler Corp., 981 F.2d 336 (8th Cir. 1992) (holding that the employer’s protocols in place were a reasonable accommodation, even though the employee lacked enough seniority to utilize them); Mann v. Frank, 7 F.3d 1365, 1369 (8th Cir. 1993) (holding that the employer’s seniority-based shift system represented a reasonable accommodation, even if the employee could not get his Sabbath off every week).
232. Sturgill v. United Parcel Serv., Inc., 512 F.3d 1024, 1030 (8th Cir. 2008).
233. Id.
234. Hardison, 432 U.S. at 78.
235. Id. at 79–81.
scheduling conflicts—that led the Supreme Court to conclude that “TWA had made reasonable efforts to accommodate[].”

2. Ansonia Board of Education v. Philbrook

In Ansonia, the Supreme Court once again dealt with an employee whose religious beliefs sometimes conflicted with his work schedule. As a high school teacher, Ronald Philbrook’s religious conflict was not with his ability to observe his Sabbath but rather with his ability to observe those religious holidays that fell on school days. Under the terms of the collective bargaining agreement, Philbrook could use three days of paid leave annually for religious observance but could not use for religious observance any accumulated sick leave (three days of which were otherwise available for “necessary personal business”). Philbrook typically needed six days off per year to observe his religious holidays, so he asked the school board either to modify the leave policy to allow use of the three days of personal business leave for religious observance or, alternatively, to let him pay the cost of a substitute and receive full pay for additional days off for religious observance. The board rejected both proposals and opted instead to permit Philbrook to take unpaid leave for the three religious holidays not covered by the paid leave policy.

Unlike Hardison, which focused almost exclusively on whether the proposed accommodations would have imposed undue hardship on the employer, Ansonia primarily explores what it means for an employer to “reasonably accommodate.” Most of the Court’s analysis centers around the question of whether the employer or the employee gets to select the accommodation when multiple options are available that would not cause the employer undue hardship. Upon concluding the employer is entitled to

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236. Id. at 77.
238. Id.
239. Id. at 63–64.
240. Id. at 64–65.
241. Id. at 65.
242. Id. at 63 (“We are asked to determine whether the employer’s efforts to adjust respondent’s work schedule in light of his belief fulfill its obligation under [Title VII] to ‘reasonably accommodate . . .’”).
243. Id. at 66–69.
select the accommodation in such cases, the Court turned its focus to whether the school board had provided Philbrook with a reasonable accommodation by allowing him to take unpaid leave.\textsuperscript{244} The Court decided that additional fact finding was necessary on this point, as neither the district nor appellate court had explicitly considered this question.\textsuperscript{245} It then explained:

We think that the school board policy in this case, requiring [Philbrook] to take unpaid leave for holy day observance that exceeded the amount allowed by the collective-bargaining agreement, would generally be a reasonable one…. The provision of unpaid leave eliminates the conflict between employment requirements and religious practices by allowing the individual to observe fully religious holy days and requires him only to give up compensation for a day that he did not in fact work.\textsuperscript{246}

The Court made explicit what it left implicit in \textit{Hardison}: the proffered accommodation was reasonable because it “eliminate[d] the conflict” by allowing Philbrook “to observe fully” his religious holidays.\textsuperscript{247}

Courts that require full accommodation routinely reference this passage to support their position. In \textit{Groff}, the Third Circuit reasoned:

Our task is to determine whether an offered accommodation must eliminate the conflict between a job requirement and the religious practice. Cases from the Supreme Court and our Court answer this question. The Supreme Court has stated [in Ansonia] that an accommodation is reasonable if it “eliminates the conflict between employment requirements and religious practices.” Our Court has said that, where a good-faith effort to accommodate a religious practice has been “unsuccessful,” the inquiry must then turn to the undue hardship analysis, which suggests that an accommodation must be effective. Thus, a legally sufficient accommodation under Title VII’s religious discrimination provision is one that eliminates the conflict between the religious practice and the job requirement.\textsuperscript{248}

\begin{footnotes}
\footnote{244}{\textit{Id. at 70–71.}}
\footnote{245}{\textit{Id. at 70.}}
\footnote{246}{\textit{Id.}}
\footnote{247}{\textit{Id.}}
\footnote{248}{\textit{Groff v. DeJoy}, 35 F.4th 162, 169 (3d Cir. 2022), rev’d on other grounds, 600 U.S. 447 (2023).}
\end{footnotes}
But not all courts read Ansonia so definitively. In Sturgill, the Eighth Circuit acknowledged the Supreme Court’s use of the word “eliminate” in Ansonia but downplayed its significance. It interpreted Ansonia to mean “that an accommodation is reasonable as a matter of law if it eliminates a religious conflict”; however, the Supreme Court “did not hold, indeed did not suggest, that an accommodation, to be reasonable as a matter of law, must eliminate any religious conflict.” While it is true that the word “must” appears nowhere in the Ansonia Court’s analysis, the fact that the Court declared the provision of unpaid leave to “generally be a reasonable [accommodation],” and then immediately noted that the policy eliminated Philbrook’s work-religion conflict by allowing him to “observe fully” his religious holidays, certainly allows the inference that an accommodation must eliminate the conflict to be reasonable.

Moreover, even if the Eighth Circuit’s reading of Ansonia were correct, its conclusion, that “the Court’s reference to ‘eliminating’ the conflict was not intended to pronounce a rule that all employees—absent undue hardship—must receive accommodations that eliminate any conflict between religion and work,” does not follow. Although the Ansonia Court did not expressly declare that accommodations must eliminate the conflict, the absence of such a declaration hardly signifies that it endorsed a partial accommodation approach. Indeed, nothing in Ansonia suggests anything less than full accommodation will suffice. That the school board offered Philbrook an accommodation that eliminated his conflict, and the Supreme Court deemed it reasonable because it allowed him to “fully” observe his religious holidays, indicates quite the opposite.


In US Airways, Inc. v. Barnett, the Supreme Court addressed whether the ADA required an employer to accommodate a worker with a back injury by permanently transferring him to a position he was not otherwise be entitled to under the employer’s seniority
system.\textsuperscript{253} Although the case did not arise under Title VII and therefore is not binding, the Court’s analysis is illuminating because “the [ADA’s and Title VII’s statutory schemes] are identical in many respects[,]”\textsuperscript{254} and “courts around the country—unless they find a good reason to do otherwise—generally use Title VII precedent to interpret ADA claims”\textsuperscript{255} (and vice versa).

The employer argued that a disability-neutral workplace rule, such as a seniority system, should never have to give way to an accommodation because the ADA merely requires equal—not preferential—treatment for those with disabilities.\textsuperscript{256} The Court rejected this contention, explaining that preferences, which come in the form of reasonable accommodation, “will sometimes prove necessary to achieve the Act’s basic equal opportunity goal.”\textsuperscript{257} It further noted that “[b]y definition any special ‘accommodation’ requires the employer to treat an employee with a disability differently, that is, preferentially. And the fact that the difference in treatment violates an employer’s disability-neutral rule cannot by itself place the accommodation beyond the Act’s potential reach.”\textsuperscript{258}

Beyond making clear that accommodations not only justify but in fact require preferential treatment, the Court addressed the meaning of reasonable accommodation. The employee argued that the term means only “effective accommodation,” thus “authorizing a court to consider the requested accommodation’s ability to meet an individual’s disability-related needs, and nothing more.”\textsuperscript{259} The Court agreed that a reasonable accommodation must be effective, but it disagreed that the requirement derives from the term “reasonable.”\textsuperscript{260} It explained that “in ordinary English the word ‘reasonable’ does not mean ‘effective.’ It is the word ‘accommodation,’ not the word ‘reasonable,’ that conveys the need for effectiveness. An ineffective ‘modification’ or ‘adjustment’ will not accommodate a

\textsuperscript{254} Walsh v. Nev. Dep’t of Human Res., 471 F.3d 1033, 1038 (9th Cir. 2006).
\textsuperscript{255} Garity v. APWU Nat’l Lab. Org., 828 F.3d 848, 858 n.9 (9th Cir. 2016); see also Flowers v. S. Reg’l Physician Servs. Inc., 247 F.3d 229, 233 (5th Cir. 2001) (“We conclude that the language of Title VII and the ADA dictates a consistent reading of the two statutes.”).
\textsuperscript{256} Barnett, 535 U.S. at 397.
\textsuperscript{257} Id.
\textsuperscript{258} Id.
\textsuperscript{259} Id. at 399–400.
\textsuperscript{260} Id. at 400.
disabled individual’s limitations.”261 The Court’s pronouncement that the word “accommodation” demands effectiveness is critical. It lends further support to the view that, on its face, an accommodation must eliminate the conflict, or it is no accommodation at all. An accommodation that merely lessens the conflict cannot be effective. If a factory worker has a back condition that prohibits him from lifting over fifteen pounds, an employer could hardly argue it reasonably accommodated the employee by exempting him from lifting over forty pounds but still requiring him to lift anything below that weight. The proffered accommodation may lessen the conflict, but it certainly would not be effective; the employee would still have to lift weight beyond what his disability allows. A religious accommodation that lessens but does not eliminate the employee’s conflict is no different.262

If “reasonable” is not synonymous with “effective,” what role does the term play in an accommodation analysis under the ADA? The Barnett Court made clear that “an ordinary English meaning of the term ‘reasonable accommodation’ [does not] make of it a simple, redundant mirror image of the term ‘undue hardship.’”263 Instead, reasonableness goes to the manner in which the employer implements the accommodation.264 Justice O’Connor explained in her concurrence that this requires a showing “that the method of accommodation the employee seeks is reasonable in the run of cases.”265 This interpretation of reasonableness is consistent with the Third Circuit’s view in Groff, where it noted that the ordinary meaning of “reasonable” is “not conflicting with reason; not absurd; not ridiculous; being or remaining within the bounds of reason; not extreme; not excessive.”266 The court concluded from

261. Id.
262. See Amicus Brief—Patterson, supra note 182, at 10 (“Just as a method or policy cannot be considered effective under the ADA if it does not actually eliminate the barriers otherwise preventing a ‘qualified individual with a disability [from] perform[ing] the essential functions of a position,’ . . . so too a method or policy under Title VII cannot be considered effective if it does not actually eliminate all conflicts between the employee’s religious practice and workplace demands.”) (alterations in original).
266. Groff, 35 F.4th at 172 (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1892 (3d ed. 1993)).
this definition that, in the religious accommodation context, “the
word ‘reasonable’ here requires that an adjustment to an otherwise
neutral policy need not go beyond what is necessary to eliminate
the conflict.” In short, reasonableness, as interpreted by the
Supreme Court in *Barnett* and the Third Circuit in *Groff*, informs the
method by which an employer provides an accommodation, but it
has no bearing on the extent to which the accommodation must
resolve the employee’s conflict.

4. EEOC v. Abercrombie & Fitch Stores, Inc.

In *EEOC v. Abercrombie & Fitch Stores, Inc.*, the EEOC brought
suit on behalf of a Muslim woman, whom Abercrombie & Fitch
refused to hire because she wore a hijab. The hyper-image-
conscious retailer did not want to have to grant her an exemption
from its dress code, which prohibited certain employees from
wearing “caps.” The bulk of the Court’s decision focuses on
whether an employer must have actual knowledge of an individual’s
need for an accommodation in order to discriminate. But in
addressing that issue, the Court made a profound observation about
accommodation in general that further supports the argument that
an accommodation must fully eliminate the employee’s conflict.
The Court explained that accommodation “means nothing more
than allowing the plaintiff to engage in her religious practice
despite the employer’s normal rules to the contrary.” The Court
did not place any qualifier—partially, mostly, or reasonably—in
front of “engage in her religious practice.” A proposed
accommodation that does not allow an employee to “engage in her
religious practice” is no accommodation at all. It “would not
effectively reconcile the employee’s religious practices with his
employment obligations and thus fails the plain meaning of the
word accommodation.”

The *Abercrombie* Court likewise took aim at the notion that
neutral employment policies constitute reasonable accommoda-

\[267\] Id.
\[269\] Id. at 770.
\[270\] Id. at 772-75.
\[271\] Id. at 772 n.2.
\[272\] Id.
a question arguably left open by the *Hardison* Court’s observation that TWA’s seniority system “represented a significant accommodation” because it was “a neutral way of minimizing” employee scheduling conflicts.\textsuperscript{274} Building on its declaration in *Barnett* that any accommodation, by definition, requires preferential treatment,\textsuperscript{275} the Court explained:

But Title VII does not demand mere neutrality with regard to religious practices—that they be treated no worse than other practices. Rather, it gives them favored treatment, affirmatively obligating employers not ‘to fail or refuse to hire or discharge any individual . . . because of such individual’s ‘religious observance and practice.’ An employer is surely entitled to have, for example, a no-headwear policy as an ordinary matter. But when an applicant requires an accommodation as an ‘aspect of religious . . . practice,’ it is no response that the subsequent ‘failure . . . to hire’ was due to an otherwise-neutral policy. Title VII requires otherwise-neutral policies to give way to the need for an accommodation.\textsuperscript{276}

The Court’s position leaves no doubt that Title VII requires more than mere neutrality. A neutral workplace rule or policy that merely lessens an employee’s religious conflict cannot be sufficient. After *Abercrombie*, there can be no doubt that such an accommodation must “give way” to an accommodation that, in fact, eliminates the conflict.\textsuperscript{277}

In short, despite the Supreme Court never expressly holding that a reasonable accommodation must fully eliminate the conflict between an employee’s job and religion, there is ample support for this proposition in the Court’s accommodation jurisprudence. The Supreme Court has defined “accommodation” as “allowing the plaintiff to engage in her religious practice despite the employer’s normal rules to the contrary”\textsuperscript{278} and has acknowledged that an accommodation must be “effective” in resolving an employee’s

\textsuperscript{274} Trans World Air Lines, Inc., v. Hardison, 432 U.S. 63, 78 (1977); see also Amicus Brief—Patterson, supra note 182, at 22 (arguing that *Abercrombie*’s proclamation that “‘Title VII does not demand mere neutrality with regard to religious practices’ but rather ‘gives them favored treatment’” is “irreconcilable with *Hardison*’s focus on neutrality”).


\textsuperscript{276} *Abercrombie*, 575 U.S. at 775.

\textsuperscript{277} Id.

\textsuperscript{278} Id. at 772 n.2.
conflict.\textsuperscript{279} Consistent with this view, the Court has twice held that attempts to accommodate individuals in ways that would have fully eliminated their conflicts were reasonable,\textsuperscript{280} expressly stating in \textit{Ansonia} that the accommodation it deemed reasonable “eliminate[d] the conflict between employment requirements and religious practices by allowing the individual to observe fully” his religious beliefs.\textsuperscript{281} Courts that do not require full accommodation attempt to justify their position by reasoning that “[i]n fact, few things in life can be conflict-free,”\textsuperscript{282} “[Title VII] is not an area for absolutes,”\textsuperscript{283} and that the Supreme Court never “intended to pronounce a rule that all employees—absent undue hardship—must receive accommodations that eliminate any conflict between religion and work.”\textsuperscript{284} This view cannot be reconciled with Supreme Court precedent.

\textit{D. EEOC Guidance}

The EEOC’s interpretation of Title VII further supports a full accommodation rule. When a statute is ambiguous, courts accord some level of deference to the interpretation of the agency charged with administering and enforcing the statute.\textsuperscript{285} The EEOC is the government agency tasked with administering, interpreting, and enforcing Title VII.\textsuperscript{286} As such, the Supreme Court has held that the EEOC’s interpretation of Title VII should be given “great deference” by the courts.\textsuperscript{287} Although most EEOC guidance is entitled to \textit{Skidmore} rather than the higher \textit{Chevron} deference,\textsuperscript{288} the Supreme Court has endorsed the EEOC’s Compliance Manual

\begin{itemize}
\item \textsuperscript{279} \textit{Barnett}, 555 U.S. at 400.
\item \textsuperscript{281} \textit{Ansonia}, 479 U.S. at 70.
\item \textsuperscript{282} \textit{Tabura v. Kellogg USA}, 880 F.3d 544, 551-52 (10th Cir. 2018).
\item \textsuperscript{283} \textit{EEOC v. Firestone Fibers & Textile Co.}, 515 F.3d 307, 313 (4th Cir. 2008).
\item \textsuperscript{284} \textit{Sturgill v. United Parcel Serv., Inc.}, 512 F.3d 1024, 1031 (8th Cir. 2008).
\item \textsuperscript{285} \textit{See Union Pac. R.R. Co. v. United States}, 865 F.3d 1045, 1048 (8th Cir. 2017) (“Generally, when Congress authorizes an agency to issue regulations interpreting a statute that the agency enforces, we defer to the agency’s interpretation of an ambiguous statute so long as the interpretation is reasonable.”).
\item \textsuperscript{286} \textit{See Parr v. Woodmen of the World Life Ins. Co.}, 791 F.2d 888, 892 (11th Cir. 1986).
\item \textsuperscript{287} \textit{Griggs v. Duke Power Co.}, 401 U.S. 424, 434 (1971).
\item \textsuperscript{288} \textit{See Ebbert v. DaimlerChrysler Corp.}, 319 F.3d 103, 114 (3d Cir. 2003) (“Instead of Chevron deference, therefore, this court will afford only Skidmore deference to the EEOC regulations and other articulations of policy.”).
\end{itemize}

In its Compliance Manual, the EEOC takes the unequivocal position that a reasonable accommodation must fully eliminate the employee’s conflict: “An adjustment offered by an employer is not a ‘reasonable’ accommodation if it merely lessens rather than eliminates the conflict between religion and work, provided that eliminating the conflict would not impose an undue hardship . . . .”\footnote{COMPLIANCE MANUAL, supra note 66, at § 12-IV.A.3. Courts have cited this passage in requiring full accommodation. See, e.g., Groff v. DeJoy, 35 F.4th 162, 171 n.13 (3d. Cir. 2022), rev’d on other grounds, 600 U.S. 447 (2023); Farah v. A-1 Careers, No. 12-2692-SAC, 2013 WL 6095118, at *6 (D. Kan. Nov. 20, 2013).} The Commission reinforces this position with this hypothetical:

**Example 33**

**Employer Violates Title VII if it Offers Only Partial Accommodation Where Full Accommodation Would Not Pose an Undue Hardship**

Rachel, who worked as a ticket agent at a sports arena, asked not to be scheduled for any Friday night or Saturday shifts, to permit her to observe the Jewish Sabbath from sunset on Friday through sunset on Saturday. The arena wanted to give Rachel this time off only every other week. The arena’s proposed adjustment does not fully eliminate the religious conflict and therefore cannot be deemed a reasonable accommodation in the absence of a showing that giving Rachel the requested time off every week poses an undue hardship for the arena. . . .

By way of footnote, the Commission addresses *Firestone* and *Sturgill*.\footnote{Id. at § 12-IV.A.3.} It does not claim those decisions were wrong per se but instead takes the view that, “in practice, even those courts have not
applied a standard that is materially different from the [full elimination] standard.”294 In holding that a reasonable accommodation need only lessen the conflict between religion and work, those courts considered “facts that the Commission and other courts would analyze as relevant only to undue hardship.”295 In other words, while those courts conflated their analyses by considering certain factors out of order, in the end they reached the correct outcome.

The EEOC has steadfastly maintained its position in litigation.296 In Tabura, the Commission filed an amicus brief in which it argued to the Tenth Circuit that “an employer violates Title VII if it offers only partial accommodation where full accommodation would not pose an undue hardship.”297 It explained that the Firestone and Sturgill courts had reached the conclusion that reasonable accommodation did not require full elimination “without benefit of the Supreme Court’s analysis in Abercrombie.”298 The Commission asserted that the Firestone court’s determination that a “reasonable” accommodation is, linguistically, less than a complete accommodation was erroneous: “The sweeping language in Abercrombie suggests that rather than diluting the accommodation obligation, the word ‘reasonable’ simply allows an employer to choose among various possibilities for eliminating the work/religion conflict . . . .”299 As for the Sturgill court’s observation that the purpose of Title VII’s reasonable accommodation provision “is to foster bilateral cooperation,” and that it would be “inconsistent with this purpose to [require full

294. *Id.*

295. *Id.*

296. See, e.g., Press Release, EEOC, Williamsburg Hometown IGA Sued by EEOC for Religious Discrimination (Dec. 27, 2022), https://www.eeoc.gov/newsroom/williamsburg-hometown-iga-sued-eeoc-religious-discrimination (announcing lawsuit against a grocery store that refused to hire an applicant who would not cut his hair due to his Spiritualist Rastafarian religious beliefs; quoting EEOC Indianapolis District Director Michelle Eisele as stating, “No employee or applicant should have to choose between their religion and their job,” and quoting EEOC Regional Attorney Ken Bird as stating, “Employers must consider reasonable accommodations, as necessary, which allow employees and applicants to hold jobs without sacrificing their religious beliefs.”).


298. *Id.* at 13–14.

299. *Id.* at 14.
elimination],” the EEOC argued that Abercrombie “eviscerated this analysis by making clear that, while cooperation is important, the central purpose of the reasonable accommodation provision is not to foster bilateral cooperation, but to require employers to modify neutral rules that conflict with an employee’s religious beliefs or practices when they can do so without undue hardship.”

Recently, the Supreme Court considered whether to grant certiorari in a case that raised the issue of whether Title VII requires full accommodation. The Court invited the Solicitor General to file an amicus brief expressing the views of the United States. In its brief, the government (including the senior counsel for the EEOC) argued that “an accommodation must eliminate any conflict between an employee’s religious practice and work requirements.” It reasoned that this interpretation flows from the ordinary meaning of “accommodate,” as well as from the Supreme Court’s observation in Ansonia that the accommodation “eliminate[d] the conflict between employment requirements and religious practices” and from its recognition in Barnett that “the word accommodation conveys the need for effectiveness.” Although the government ultimately took the position that the Court should not grant certiorari because the case was a “poor vehicle” for resolving the issue at hand, it left no doubt that its view on full accommodation that it articulated in its Compliance Manual, and advocated for in Tabura, remains unchanged.

In sum, various tools of statutory interpretation support the position that a reasonable accommodation must eliminate, not merely lessen, an employee’s religious conflict. These tools include the statute itself, its legislative history, Supreme Court jurisprudence, and EEOC guidance. While any one of these tools on its own may be sufficient to justify a full-accommodation rule, together their persuasive power is overwhelming. And yet, as the next Part explains, there is another, perhaps even more compelling, reason to require full accommodation.

300. Id. at 15.
303. Amicus Brief—Patterson, supra note 182, at 9.
304. Id. at 9–10 (alteration in original).
305. Id. at 14 (arguing that the appellate court correctly applied the full-accommodation rule, despite the employee’s claim to the contrary).
III. RELIGIOUS DEVOTION

A final reason for a full-accommodation rule is that it is consistent with the nature of religious devotion for the millions of American workers who believe they must be fully obedient to the tenets of their faiths. In amending Title VII to require religious accommodation, Congress recognized that religious conflicts are fundamentally different from secular conflicts.306 Most people would not walk away from their jobs because their employers occasionally schedule them to work on bowling league nights or impose grooming standards that conflict with their personal preferences. Yet, as the cases discussed herein demonstrate, some employees of faith would rather lose their jobs than ever work on their Sabbath, shave their beards, or otherwise violate their religious beliefs. The depth of some people’s religious conviction was on full display during the COVID-19 pandemic, when many organizations imposed vaccine mandates and fired employees who did not qualify for an exemption.307 Nick Rolovich, the head coach of the Washington State University football team, lost his job because of his religiously-based refusal to get vaccinated.308 Once the highest paid public employee in the state of Washington with a $3 million annual salary, Rolovich now works as an assistant coach at a high school in California.309 Likewise, when Lieutenant Colonel Edward Joseph Stapanon III faced discharge from the Air Force and possible imprisonment for refusing the COVID vaccine due to his religious beliefs, he testified in a preliminary injunction hearing:

306. See Roblyer, supra note 16, at 1699 (“[T]he constitutionally protected right to worship represents a rigid adherence to a higher law that is vastly different from the general needs of employees for time off.”).


308. See Scott Hanson, Ex-WSU Coach Nick Rolovich, Fired After Refusing COVID Vaccine, Reportedly Files Suit, SEATTLE TIMES (Nov. 14, 2022, 4:44 PM), https://www.seattletimes.com/sports/wsu-cougar-football/ex-wsu-coach-nick-rolovich-fired-after-refusing-covid-vaccine-reportedly-files-suit (reporting that Rolovich’s request for a religious exemption from the vaccine was denied).

Q. Now, you understand the seriousness of things, of the decision that you’re making today; correct?

A. Yes ma’am, I do.

Q. And if pushed, will you in fact go to prison to stand behind your religious beliefs?

A. Yes, Ma’am. I don’t see that I have any other alternative. When I meet my maker, I’m going to be held responsible for the decisions I’ve made, and I’d much rather go to prison. There’s been a lot of saints that have gone to prison, so I’m willing to do that.310

For some nonbelievers—and even some people of faith, for that matter—it can be difficult to comprehend how Coach Rolovich, Lieutenant Colonel Stapanon, or anyone else could feel so strongly about their religious beliefs that they are unwilling to compromise them in the least. After all, life is full of give and take, and intransigence rarely gets anyone anywhere. While a full examination of the psychology of religious devotion is beyond this Article’s scope, a few examples help to illustrate why some religious adherents are so committed to their beliefs.

Catholicism. For Catholics, “[a]nyone who is serious about obtaining Everlasting Life in Heaven will do all he can to increase in the virtue of obedience.”311 Father John Hardon taught that “obedience to God is without limit.”312 Saint Thomas Aquinas declared that God is to be obeyed in all things, while human authorities are to be obeyed in certain things.313 Pope Paul VI maintained that obedience is the chief of the vows because liberty is dearer to humans than anything else:

In professing obedience, religious offer the full surrender of their own will as a sacrifice of themselves to God and so are united permanently and securely to God’s salvific will. . . . In this way religious obedience, far from lessening the dignity of the human

313. THOMAS AQUINAS, SUMMA THEOLOGICA II, q. 104, art. 4–5, at 1225.
person, by extending the freedom of the sons of God, leads it to maturity.\textsuperscript{314}

The Catechism of the Catholic Church addresses the virtue of obedience, referring to it as a “duty.”\textsuperscript{315} While obedience is a virtue and a duty, Catholics likewise believe that disobedience is a sin. To preeminent Catholic scholar Oswin Magrath, disobedience “is a very special sin” because it signifies “contempt for authority,” whereas “obedience is precisely submission to authority.”\textsuperscript{316} Magrath reasons that “[f]ormal disobedience or formal contempt is always a mortal sin, even when the matter commanded is small, because it is a refusal to be subject to the authority of the superior. Its malice lies in the rebellious will rather than in the omission of the thing commanded.”\textsuperscript{317}

\textit{Islam}. For many Muslim women, wearing a hijab whenever they are in the presence of men who are not their close family members is a crucial component of their religious beliefs. Islamic scholars Kamal-Deen Olawale Sulaiman and Fatai Gbenga Raifu explain, “the Muslim must follow and obey the commands of Allah. This is the true meaning of \textit{Ibadah} (Islamic obligation), which is total submission to Allah’s commands in all aspects of our lives, big or small.”\textsuperscript{318} For Muslims, God has made clear that he will favor one human over the other based on the level of \textit{Taqwa} (piety or God-fearingness) a person possesses.\textsuperscript{319} Given these beliefs, “[t]he majority of Muslim women wear \textit{Hijab} . . . to obey God, and to be known as respectable women, as stated in the . . . \textit{Qur'an} . . . [T]hey embrace the veiling act . . . as a way for them to express their own surrender to God,” which causes them to “feel closer to God and spiritually more satisfied.”\textsuperscript{320}

\begin{thebibliography}{99}
\bibitem{Catechism} CATECHISM OF THE CATHOLIC CHURCH, par. 1900 (“The duty of obedience requires all to give due honor to authority and to treat those who are charged to exercise it with respect, and, insofar as it is deserved, with gratitude and good-will.”).
\bibitem{Kamal} Kamal-Deen Olawale Sulaiman & Fatai Gbenga Raifu, \textit{Investigating the Importance of Wearing Hijab by Muslim Women}, 5 J. ISLAMIC STUDIES IN INDON. & SE. ASIA 1, 6 (2020).
\end{thebibliography}
Judaism. Obedience is a central feature of Judaism. Like other religions, Judaism links obedience to blessings and disobedience to punishment. Additionally, the Jewish believe they should obey God’s commandments because it would be unwise not to, and because the commandments are ethical and moral. Moreover, they see obedience to the commandments as part of their covenantal relationship with God, whereby God promised to enter into a relationship with the children of Israel that included giving them a homeland and rewarding them with prosperity in exchange for their obedience to God’s commands. Within Judaism, obedience to commandments is key to developing self-discipline. Rabbi Berel Wein teaches that obedience “is simply a test of faith and a willingness to obey a higher authority, even if one’s own intellect and nature cannot fathom the reason for the command itself.” In effect,” he explains, “we are being taught that obedience is the necessary ingredient for human discipline and without human discipline people are little more than uncontrollable wild animals.” Thus, for many Jewish people, observing religious holidays, refraining from working on the Sabbath, and adhering to certain dress and grooming requirements is essential to their very existence.

Latter-day Saintism. Members of The Church of Jesus Christ of Latter-day Saints (sometimes referred to as “Mormons”) believe God requires complete obedience to His commands. In addition to the New Testament refrain that “[n]o man can serve two masters[,]”326 Latter-day Saint scripture teaches that “the Lord cannot look upon sin with the least degree of allowance . . . .”327 Although Latter-day Saints believe in the concept of repentance, they also believe it is only through obedience to God’s commandments

322. Id.
323. Id.
325. Id.
326. Matthew 6:24 (King James).
327. DOCTRINE AND COVENANTS 1:31. See also THE BOOK OF MORMON, Alma 45:16 (“Thus saith the Lord God—Cursed shall be the land, yea, this land, unto every nation, kindred, tongue, and people, unto destruction, which do wickedly, . . . for the Lord cannot look upon sin with the least degree of allowance.”).
that a person can gain eternal life and live in God’s presence.\textsuperscript{328} For Latter-day Saints, obedience is not only important to their eternal welfare but is a key component of their daily living: They believe there is a direct link between obedience and earthly blessings, and also that obedience to the commandments is a way to show one’s love for God.\textsuperscript{329}

\textit{Seventh-day Adventism.} Adventists are perhaps best known for their strict Sabbath observance from sundown on Fridays to sundown on Saturdays. Their refusal to perform work during their Sabbath has generated more religious accommodation litigation than perhaps any other religious requirement. Adventists believe the Sabbath is a “sacred day” that must be kept holy by “ceasing from the work of the week and reflecting on what [God] has done for us.”\textsuperscript{330} Their church teaches that “[t]he Sabbath encompasses our entire relationship with God” and “points men and women to the spiritual and to the personal.”\textsuperscript{331} For Adventists, “[t]he consequences for forgetting the Sabbath day to keep it holy are serious[,]” for “[i]t will lead to the distortion and eventual destruction of a person’s relationship with God.”\textsuperscript{332} The Church recognizes that to outsiders, its position on the Sabbath may seem extreme or irrational, but explains:

Sabbath keepers may have to face resistance at times because of their commitment to God to keep the Sabbath holy. To those who do not recognize God as their Creator, it seems arbitrary or inexplicable for someone to cease from all work on the Sabbath day for merely religious reasons. Meaningful Sabbath observance

\textsuperscript{328} See Joseph B. Wirthlin, \textit{Live in Obedience}, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS (Apr. 1994), https://www.churchofjesuschrist.org/study/general-conference/1994/04/live-in-obedience?lang=eng (“We all want you to succeed in this life and to qualify for the greatest of God’s gifts—eternal life in the celestial kingdom. To achieve your goals in this mortal life and prove yourselves worthy of eternal blessings, learn to obey. There is no other way. Obedience brings great strength and power into your lives.”).

\textsuperscript{329} See \textit{Obedience}, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, https://www.churchofjesuschrist.org/study/manual/gospel-topics/obedience?lang=eng (last visited Sept. 25, 2023) (“One reason we are here on the earth is to show our willingness to obey Heavenly Father’s commandments. God gives commandments for our benefit. Obedience to the commandments leads to blessings from God and shows our love for Him.”).


\textsuperscript{332} Id.
testifies to the fact that we have chosen to obey God’s commandment. We thus recognize that our life is now lived in obedience to God’s Word. The Sabbath will be a special test in the end time. The believer will have to make a choice either to give allegiance to God’s Word or to human authority.\textsuperscript{333}

Thus, for Adventists, keeping the Sabbath holy by not performing any work is a “special test” that signifies one’s allegiance to God instead of to man.

A common theme among these religions, and many others, is that God requires complete obedience and devotion. For religiously devout employees who believe they must be fully obedient to their understanding of God’s will, an accommodation is only useful if it eliminates the conflict between their job and their religion. A partial accommodation is unhelpful because it only allows for partial obedience—and partial obedience is disobedience. Therefore, a religiously devout employee’s insistence on full accommodation does not stem from selfishness or intransigence but from the sincere belief that their very salvation hangs in the balance.\textsuperscript{334} This is what differentiates religious conflicts from other types of work conflicts. An employee who wishes to have Wednesday nights off so he can participate in a bowling league, or who desires to grow a long beard to look more fashionable, may be able to live with his employer giving him every other Wednesday night off, or his employer allowing him to grow a short beard. While the employer did not give the employee everything he wanted, the ability to bowl some of the time and to have at least some facial hair is arguably better than nothing because bowling and beards are not existential matters. By contrast, for the employee who believes it is a sin to ever work on Sunday or to cut his beard at all, giving him every other Sunday off and allowing him to keep a short beard are not better than nothing; his salvation may be in jeopardy because he is unable to fully obey his God’s commands.

In imposing a religious accommodation requirement, Congress understood the difference between the employee who wants work off so he can bowl and the employee who needs work off so he can observe his Sabbath. If Sabbath observance (and other forms of

\textsuperscript{333} Id. (citing \textit{Revelation} 14:7, 12).

\textsuperscript{334} See, e.g., \textit{Opoku-Boateng v. California}, 95 F. 3d 1461, 1464 (9th Cir. 1996) (noting that the employee refused to work on his Sabbath out of concern for his ultimate salvation).
religious expression) were a matter of mere preference, Congress would never have imposed a duty on employers to accommodate such behavior. In general, Title VII prohibits status- rather than conduct-based discrimination. Put differently, the statute protects traits that are immutable (i.e., status) but not traits that are mutable (i.e., conduct).\(^{335}\) Thus, as important as race, color, national origin, or sex-based conduct may be to an individual’s identity, employers have no obligation to accommodate such conduct. That Congress saw fit to amend Title VII to protect religious conduct, when it has made no similar effort to protect other trait-based conduct, is a clear indicator that it considers religious expression fundamentally different from other forms of identity expression. In effect, Congress deemed religious conduct immutable—something a person cannot (or should not be expected to) change about themselves.\(^{336}\)

Courts that do not require full accommodation essentially take the position that religious conduct is mutable—a matter of choice or mere preference.\(^{337}\) Justice Sandra Day O’Connor said as much in *Estate of Thornton v. Caldor, Inc.*, a case in which the Supreme Court struck down a Connecticut statute that granted employees the absolute right to not work on their Sabbath.\(^{338}\) She reasoned in her concurrence that the law was unconstitutional because it gave Sabbath observers “the right to select the day of the week in which to refrain from labor.”\(^{339}\) In response, Professor McConnell quipped that “[i]t would come as some surprise to a devout Jew to find that he has ‘selected the day of the week in which to refrain from labor,’

\(^{335}\) See Kaminer, *supra* note 34, at 454 (“The federal courts explicitly distinguish between mutable and immutable traits—or status and conduct—when deciding most Title VII cases.”).

\(^{336}\) See Clarke, *supra* note 35, at 28 (explaining how more contemporary notions of immutability focus on the centrality of a trait to a person’s identity rather than whether the person was born with the characteristic).

\(^{337}\) See Kaminer, *supra* note 34, at 479 (“In making this determination [that less than full accommodation is required], these courts are essentially stating that it is reasonable to require a religious employee to alter or compromise on his religious conduct, which is only possible if religious conduct is mutable. Therefore, in holding that employees who have to alter their religious conduct have been ‘reasonably accommodated,’ courts clearly imply that religious conduct is mutable.”).


\(^{339}\) *Id.* at 711 (O’Connor, J., concurring).
since the Jewish people have been under the impression for some 3,000 years that this choice was made by God.”

Two problems arise when courts consider religious conduct mutable. First, if religious conduct is merely a choice, a court may be inclined to require the employee to compromise their beliefs rather than receive a full accommodation. This is precisely what happened in *Sturgill*, where the Eighth Circuit held that “[b]ilateral cooperation under Title VII . . . requires accommodation by the employee, and a reasonable jury may find in many circumstances that the employee must either compromise a religious observance or practice, or accept a less desirable job or less favorable working conditions.” The court framed its observation that an employee may need to compromise their religious beliefs as part of the “bilateral cooperation” that Title VII requires. Such requirement does not derive from the statute but rather stems from the Supreme Court’s observation in *Ansonia* that some courts had noted that “‘bilateral cooperation is appropriate in the search for an acceptable reconciliation of the needs of the employee’s religion and the exigencies of the employer’s business.’” In any event, cooperation is not synonymous with compromise, as several courts have recognized, particularly when it comes to a person’s religious beliefs. In *Ansonia*, the Supreme Court did not suggest or even insinuate that an employee has any obligation to compromise their religious beliefs in the name of bilateral cooperation. The accommodation at issue in that case, use of unpaid leave for days

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341. *Sturgill* v. United Parcel Serv., Inc., 512 F. 3d 1024, 1033 (8th Cir. 2008). See Roblyer, supra note 16, at 1699 (arguing that the *Sturgill* court “treated these beliefs as easily alterable characteristics comparable to an employee’s desire to leave work early on bowling league night or take a family trip to the beach”).

342. *Sturgill*, 512 F. 3d at 1033.


344. See, e.g., Crider v. Univ. of Tenn., Knoxville, 492 F. App’x 609, 613 (6th Cir. 2012) (holding that religious accommodation requires cooperation but not compromise on the part of the employee).

345. See Keith S. Blair, Better Disabled Than Devout? Why Title VII Has Failed to Provide Adequate Accommodations Against Workplace Religious Discrimination, 63 ARK. L. REV. 515, 542 (2010) (“[I]t would be incongruous with Title VII to require an employee to compromise a religious belief in order to accommodate a religious conflict.”).
not worked, did not require the accommodation seeker to compromise his beliefs in the slightest. The only compromise required was wholly secular: the teacher would not be paid for the days he did not work.346 Thus, bilateral cooperation is not a call for employees to compromise their religious beliefs, nor should it be construed as a basis for offering an employee less than a full accommodation. Bilateral cooperation means an employee may need to be open to certain changes in the terms or conditions of their employment in exchange for receiving a full accommodation.347

The second problem with courts failing to recognize the immutability of religious conduct is that it opens the door for judicial scrutiny of the reasonableness of an employee’s religious beliefs and invites courts to replace the employee’s determination about how to worship with their own judgment on the matter.348 This is essentially what courts do whenever they deem an accommodation reasonable that does not eliminate the employee’s conflict. For instance, in Richards v. Walden Security, the district court determined that the reasonableness of an employer’s offer to allow an employee to keep a quarter-inch beard, when his religion prohibited him from shaving at all, was “best decided by the fact finder.”349 The court’s message to the employee was clear: the reasonableness of his religious belief was not for him, but for a jury, to decide. If the jury were to determine the employer’s offer was reasonable, it would in effect be telling the employee that his belief against shaving was unreasonable and that keeping a short beard should be good enough.350 This, of course, is preposterous and runs contrary to the longstanding recognition that courts should eschew

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346. Ansonia, 479 U.S. at 70.

347. Such changes, however, must not “unnecessarily disadvantage the employee’s terms, conditions, or privileges of employment.” COMPLIANCE MANUAL, supra note 66, at § 12-IV.A.3.

348. See Roblyer, supra note 16, at 1702 (“How far must an employee compromise a belief? Must the employee compromise only beliefs that are not all that important (and who will determine which ones are central and which ones merely corollary)? Will employers and courts dictate to believers which of their beliefs are protected from compromise and which are outside legal protection? . . . Will employees who observe many religious holidays be required to choose the ones they think they absolutely must observe? Worse, will the employer or court judge which ones they should cease and which ones they can observe?”).


350. See EEOC v. JBS USA, LLC, 115 F. Supp 3d 1203, 1229 (D. Colo. 2015) (noting the employer’s argument that although the prayer opportunities it offered to Muslim employees were “not perfect,” they were “reasonably” close to Islamic prayer times.”).
inquiry into an employee’s religious beliefs and practices whenever possible. This aversion to judicial inquiry into religion can be traced back to this country’s founding. John Adams once declared that “[n]othing is more dreaded than the [n]ational [g]overnment meddling with [r]eligion[,]”352 and James Madison observed that “[t]he Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate.”353 By permitting employers to provide less than full accommodations, courts usurp “a religious [individual’s] right to shape [their] own faith”354 and impose their own view on how a person should obey their God.355

As this Part demonstrates, requiring full accommodation is consistent with the nature of religious devotion. For many religious individuals, partial obedience is not an option; their religions require full devotion—“a complete surrender” to their God.356 For these individuals, “faith is not a garment to be slipped on and off; it is a quality of the human spirit, from which it is inseparable.”357 Obedience is not simply a choice or a preference; it is essential to

351. See NLRB v. Cath. Bishop, 440 U.S. 490, 502 (1979) (warning that “the very process of inquiry” regarding religious belief can violate the Establishment Clause); Univ. of Great Falls v. NLRB, 278 F. 3d 1335, 1341 (D.C. Cir. 2002) (referring to religious examination and inquiry by courts and other governmental entities as “offensive” (quoting Mitchell v. Helms, 530 U.S. 793 (2000)).

352. Letter from John Adams to Benjamin Rush (June 12, 1812), in OLD FAMILY LETTERS, SER. A 391, 393 (Alexander Biddle ed., 1892).


355. See Amicus Curiae Brief of Robert P. Roesser in Support of Petitioner at 9-10, Patterson v. Walgreen Co., 140 S. Ct. 685 (2020) (No. 18-349), 2018 WL 5078029, at *9-10 [hereinafter Amicus Brief—Roesser] (“The conclusion is logically inescapable that those courts [that endorse partial accommodation] are making a judgment as to what should be reasonable for the employee to believe. . . . Th[e] type of judgment about ‘reasonable,’ when measuring religious requirements, conflicts with the First Amendment’s Establishment Clause. It impermissibly entangles courts and judges—and by extension Congress—when courts interpret Title VII to require insensitive religious inquiries.”).

356. See L. Nelson Bell, Victory Through Surrender, CHRISTIANITY TODAY (Jan. 15, 1971), https://www.christianitytoday.com/ct/1971/january-15 (“One of the paradoxes of the Christian life is that victory must be preceded by surrender, not a once-for-all act of submission of the will to Jesus Christ but a daily surrender of heart, mind, and body to the Lordship of Christ.”).

357. John Witte, Jr., Introduction, in CHRISTIANITY AND HUMAN RIGHTS, 8, 42 (John Witte, Jr. & Frank S. Alexander eds., 2010) (quoting the Ecumenical Orthodox Patriarch Bartholomew).
their very being. An accommodation that only partially eliminates the conflict fails to recognize this reality. It runs counter to the nature of religious devotion by allowing employers and courts to impose their own views of how a person should observe their religion. For the religiously devout, “close enough” is not enough. An accommodation that only partially resolves their conflict is no accommodation at all; they are still forced to choose between their employer and their God.

IV. POTENTIAL IMPLICATIONS

As it stands, whether an employee is entitled to a full accommodation depends largely on where they reside. In some circuits, the answer is yes; in others, the answer is no—and in still others, the answer is yet to be determined. Thus, the most immediate implication of a full-accommodation rule would be to create a uniform right to religious accommodation that no longer depends on geography. A full-accommodation requirement would not guarantee that an employee would always receive an accommodation that eliminates the conflict between their job and their religion, as Title VII exempts employers from providing accommodations that would impose undue hardship.358 But in situations where an employee can be accommodated without undue hardship, a full-accommodation requirement would ensure the employee is able to maintain their employment without having to compromise their religious beliefs. The employee may have to make certain secular concessions, such as taking unpaid leave or moving to a less desirable shift, as a tradeoff for full accommodation. This is not a perfect solution, but at least the employee would not be put in a position of having to decide whether to compromise their religious beliefs to keep their job.

Despite the clear benefits of a full-accommodation rule for employees, there is potentially one major drawback. Ironically, a full-accommodation rule could result in fewer accommodations. This is because it would generally be more costly for an employer to offer a full accommodation than a partial accommodation. Because of this additional cost, an employer may opt to provide no accommodation at all, if it could establish undue hardship by demonstrating that a full accommodation would impose

“substantial increased costs in relation to the conduct of its particular business.”

Returning to the hypothetical posed in the Introduction, suppose a Christian employee requests Sundays off so he can observe his Sabbath. If the employer grants the request, the employee would be fully accommodated, but the employer would have to pay another employee eight hours of overtime to cover the shift each week. If the employer could instead give the employee Sunday mornings off to attend his church services and require him to work a later shift, the employee would not be fully accommodated, but the employer would avoid the substantial financial cost of overtime because it could have him swap shifts with somebody already scheduled to work that day. If full accommodation were required, the employer could refuse to accommodate, assuming the cost of accommodation would be substantial under *Groff*. Consequently, the accommodation seeker would arguably be in a worse position than if the employer had offered a partial accommodation, because now he would receive no accommodation at all. If this is the case, is a full-accommodation requirement wise?

For at least three reasons, the answer is resoundingly “yes.” First, it may not be the case that the employee is actually worse off by receiving no accommodation instead of a partial accommodation. As discussed throughout this Article, for the religiously devout, a partial accommodation is no accommodation at all because it still forces the employee to choose between their religion and their job. The employee in this hypothetical may not feel the offer to let him work a later Sunday shift is helpful at all, since he would still be forced to violate his Sabbath.

Second, the concern that a full-accommodation requirement would result in fewer accommodations may be at least partially resolved by the Supreme Court’s clarification in *Groff* that undue hardship means “substantial increased cost” rather than anything

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360. Financial cost is not the only way to establish undue hardship. Loss of coworker morale may also be grounds for denying an accommodation. See generally Dallan F. Flake, *Bearing Burdens: Religious Accommodations That Adversely Affect Coworker Morale*, 76 OHIO ST. L.J. 169 (2015). Thus, if the shift swap in this hypothetical adversely impacted coworker morale, it may be possible for the employer to establish undue hardship.

361. *Groff*, 600 U.S. at 469.
“more than a de minimis cost.”362 Full accommodation will almost always result in more than a de minimis cost (the old standard for undue hardship), whereas a partial accommodation may not do so. Suppose a restaurant server requests to leave work fifteen minutes early on Wednesday nights to attend a Bible study class. If the employer allows this every week, it will result in the server’s coworkers having to cover his tables for an hour or more each month—more than a de minimis cost. But if the employer could instead permit the employee to leave early just once per month, his coworkers would only have to cover his tables for fifteen minutes more per month—less than a de minimis cost. If the de minimis standard were still applicable, a full-accommodation requirement might dissuade the restaurant from offering any accommodation: a full accommodation would impose more than a de minimis cost, and a partial accommodation would not be reasonable. The server arguably would be worse off than if the restaurant had given him the option of leaving early once per month. By contrast, under the heightened “substantial increased cost” standard for undue hardship now in place, a full-accommodation requirement does not change the server’s likelihood of receiving an accommodation. If requiring coworkers to cover the server’s tables for fifteen minutes per week would not amount to a substantial increased cost, a full-accommodation requirement would not decrease the likelihood of accommodation. Instead, such a requirement would ensure the server does not have to choose between his job and his religion.

A third possible response to this problem is for courts to follow EEOC guidance. The Commission takes the position that “[i]f all accommodations eliminating such a conflict would impose an undue hardship on an employer, the employer must reasonably accommodate the employee’s religious practice to the extent that it can without suffering an undue hardship, even though such an accommodation would be ‘partial’ in nature.”363 The EEOC supports this position by referencing Knight v. Connecticut Department of Public Health, a Second Circuit case that upheld a partial accommodation as reasonable.364 The employee requested permission to evangelize at all times, including with customers, but

362. Id. (quoting Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 84 (1977)).
363. COMPLIANCE MANUAL, supra note 66, at § 12-IV.A.3; see also Amicus Brief—Patterson, supra note 182, at 1.
the employer denied this request based on undue hardship. The employer instead offered to allow the employee to evangelize whenever she was not discussing state business with customers. Although the accommodation did not fully eliminate the conflict, the court deemed the accommodation reasonable based on the rationale that something is better than nothing.

The EEOC’s approach has some logical appeal, but it sends the wrong message—and, in fact, no court has ever even referenced it in a published opinion. The approach is problematic because it undermines the EEOC’s overarching position that an accommodation must eliminate work conflict to be reasonable. Essentially, the EEOC takes the view that an accommodation must fully eliminate the conflict, unless the employer would be unduly burdened, in which case the accommodation need only be partial. This signals that religious conduct is not immutable, and that whenever a full accommodation would impose undue hardship, it is the employee who must compromise their religious beliefs by accepting a partial accommodation.

As I have argued elsewhere, an alternative approach would be for courts to incentivize employers to offer to accommodate the employee as much as they can without suffering undue hardship, even though the accommodation would not fully eliminate the conflict between the employee’s job and religion. The employee could then choose whether to accept the accommodation, in which case they would waive any claim for failure to accommodate, or they could reject the accommodation and bring suit. The prospect of immunity could motivate many employers to offer the best accommodation possible, thus allowing employees to choose for themselves whether a partial accommodation is better than no accommodation. Under this approach, an employee would not be forced to compromise their religious beliefs but would remain free to challenge the reasonableness of the employer’s accommodation efforts.

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365. Id. at 161.
366. Id. at 168.
367. Id.
368. Restoring Reasonableness, supra note 31, at 1721.
369. Id.
CONCLUSION

This Article is filled with examples of individuals who were forced to make the “cruel choice” between their job and their religion because their employers offered them accommodations that only partially eliminated the conflict between their religious beliefs and their jobs.\(^{370}\) Like millions of religiously devout workers, they believed they must be fully obedient to their understanding of God’s will or risk their eternal salvation. These employees declined their employers’ proposals and lost their jobs because of their faithfulness.

More than fifty years ago, Congress sought to protect religious employees from this very dilemma by amending Title VII to require employers to “reasonably accommodate” employees’ religious practices in the absence of undue hardship.\(^ {371}\) Some courts interpret the reasonable accommodation requirement to mean an accommodation must fully eliminate the conflict between an employee’s job and their religious beliefs, while others maintain that an accommodation can be reasonable even if it only partially eliminates the conflict.\(^ {372}\) This Article argues that an accommodation is only reasonable if it fully eliminates the conflict. Indeed, a full-accommodation rule is indispensable to protecting employees from having to choose between their religious beliefs and their jobs, thus fulfilling Congress’s intent.

Further, this Article demonstrates that a full-accommodation rule is consistent with the plain meaning of the term “reasonably accommodate.”\(^ {373}\) It also comports with legislative intent, as the religious accommodation amendment was proposed by a senator whose purpose was to protect Sabbatarians like himself from having to perform work on their holy day.\(^ {374}\) Moreover, although the Supreme Court has never directly addressed this issue, there is much in its accommodation jurisprudence—particularly after Abercrombie—to suggest the Court reads Title VII’s religious

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370. Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 87 (1977) (Marshall, J., dissenting) (“[A] society that truly values religious pluralism cannot compel adherents of minority religions to make the cruel choice of surrendering their religion or their job.”).
372. See supra Section I.C.
373. See supra Section II.A.
374. See supra Section II.B.
accommodation provision as requiring full accommodation.\textsuperscript{375} And while the Supreme Court’s position may be implicit, the EEOC has left no doubt where it stands. The agency has long maintained that an accommodation that merely lessens the employee’s conflict is not reasonable.\textsuperscript{376}

There are multiple justifications for a full-accommodation rule, but perhaps the most important reason is that the requirement captures the reality of religious devotion for millions of people of faith.\textsuperscript{377} Religious conflicts are fundamentally different from secular conflicts; to the believer, such conflicts may put their very salvation at risk. In \textit{EEOC v. University of Detroit}, the Sixth Circuit sided with Robert Roesser, an engineering professor who lost his job after turning down a partial accommodation.\textsuperscript{378} More than thirty years later, Professor Roesser filed an amicus brief urging the Supreme Court to grant certiorari in a case similar to his own.\textsuperscript{379} In the brief, he offered this insight into why a full-accommodation rule is vital:

\textit{Amicus} submits this brief to highlight the national importance of this case for Catholics, Seventh-day Adventists, and all other employees of faith who believe that they must be fully obedient to their understanding of God’s will. Partial accommodation is partial obedience to God. \textit{Amicus} would not render partial obedience, even though it cost him his faculty position. \textit{Amicus} desires to uphold the hard fought vindication of his rights rendered so many years ago in the Sixth Circuit.\textsuperscript{380}

As Professor Roesser argues, the only way to reasonably accommodate an employee who believes they must be fully obedient to their religious precepts is to grant them an accommodation that fully eliminates the conflict between their religion and their job. Anything less simply will not do.

As the American workforce continues to grow more religiously diverse,\textsuperscript{381} conflicts between employers’ work requirements and

\textsuperscript{375} \textit{See supra} Section II.C.
\textsuperscript{376} \textit{See supra} Section II.D.
\textsuperscript{377} \textit{See supra} Part III.
\textsuperscript{378} \textit{EEOC} v. \textit{Univ. of Detroit}, 904 F.2d 331, 335 (6th Cir. 1990).
\textsuperscript{379} Amicus Brief—Roesser, \textit{supra} note 355, at 2.
\textsuperscript{380} \textit{Id}.
\textsuperscript{381} \textsc{Diana L. Eck}, \textsc{A New Religious America} 1–6 (1st ed. 2001) (explaining that although the United States has always been a country of many religions, the immigrations of the last several decades have expanded the diversity of religious life exponentially).
employees’ religious beliefs will likely become even more commonplace. If we are ever to approach Senator Randolph’s goal of “assur[ing] that freedom from religious discrimination in the employment of workers is for all time guaranteed by law[,]” 382 requiring employers to provide full accommodations, in the absence of undue hardship, is a critical starting point.