

Title VII Accommodations for Fossil-Free Retirement Funds

Workers with a moral aversion to investing in or profiting off of fossil fuel often find that their employer-sponsored 401(k) or 403(b) retirement plans offer no climate-friendly options. As a result, those workers are forced to choose between abandoning their moral commitments and sacrificing the security of their retirement – including benefits they have earned as part of their compensation package. Recent Supreme Court precedent in the area of workplace religious accommodations provides an avenue for such workers to compel their employers to offer acceptable retirement fund options. While the claim is novel and has not been fully litigated, ClientEarth believes that, under current U.S. law, many employees have a legal right to fossil-free retirement options.

Legal Basis for the Accommodation

Religious accommodation requirements under Title VII, in light of recent Supreme Court precedent, provide an opportunity for employees with sincere beliefs regarding environmental stewardship to seek employer accommodations to allow them invest in pension options that align with their moral/religious beliefs.

Title VII of the Civil Rights Act of 1964 (“Title VII”) makes it unlawful for an employer “to discriminate against any individual with respect to his compensation, terms, conditions, or privileges [of] employment, because of such individual’s . . . religion.” Employers are required to provide religious accommodations to workers unless doing so would impose “undue hardship” on the employer. 42 U. S. C. §2000e(j) (1970 ed., Supp. II).

Historically, the burden for employers to show ‘undue hardship’ was quite low. Businesses did not have to provide religious accommodations if the burden of doing so was more than *de minimis*. However, in 2023, the Supreme Court revisited the issue in *Groff v. DeJoy* and determined that the *de minimis* standard is inappropriate. Instead, the Court held that statutory language “undue burden” means that employers must provide religious accommodations unless doing so would “result in substantial increased costs in relation to the conduct of [the employer’s] particular business.” *Groff v. DeJoy*, 600 U.S. 447, 470 (2023).

This change is significant for employees who have religious/moral convictions against investment in environmentally destructive activities. If employees want retirement options that align with their religious/moral convictions, they may now seek a religious accommodation from their employer under the ‘substantial’ burden standard now applied. Furthermore, where an employer accommodates a request by adding, for example, a fossil-free fund to its menu of retirement plan options, other employees will also have the option to select that fund. In practice, this means that a single accommodation should provide access to fossil-free funds for all employees at any given company.

What Counts as “Religious”?

Commitments to creation care grounded in scripture or a papal encyclical like *Laudato si’* are self-evidently religious in nature. However, Title VII’s protections do not extend only to those with conventionally or formally religious beliefs. Both agency regulations and longstanding caselaw recognize that protected “religious practices” “include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.” 29 CFR 1605.1. Idiosyncratic and heterodox beliefs are protected just as strongly as orthodox ones. Additional guidance from the EEOC and various commentators on employment law suggests that employers generally should not question the sincerity of employee beliefs, nor can inconsistent religious practice of the individual requesting

accommodation be a basis for denial. So long as a belief is espoused sincerely and in good faith, it should be accommodated where possible.

Process

First, the employee seeking accommodation makes a formal request for an accommodation under Title VII. This is typically done through a letter to management or through a formal process at some larger employers. Once it receives a request, an employer must either provide the accommodation sought, propose an alternative accommodation, seek more information, or deny the request. If the request is approved or an adequate alternative accommodation is offered, then the employee has access to an acceptable retirement fund option, as do others in the company. If the employer requests further information, that information should be provided and, ultimately, should inform the employer's decision. If the employer fails to provide a suitable accommodation, the employee may pursue redress through an administrative agency and/or via a lawsuit.

ClientEarth attorneys are available to help employees craft their accommodation requests and to guide them through any further steps as needed. As a non-profit, we provide this service for free. Please contact us if you are interested in exploring how/whether you can request a fossil-free option for your retirement fund.

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