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The Reasonable Accommodation Standard Imposed by Title VII of the Civil Rights Act of 1964

Molly Moran

I. **Introduction**

In 2018, almost 3,500 people filed charges with the Equal Employment Opportunity Commission alleging religious-based discrimination in violation of Title VII of the Civil Rights Act of 1964 (the (Act).[1] The Act was enacted to prevent workplace discrimination against employees and applicants based on a variety of classifications including religion, sex, and race. A vitally important piece of legislation, Title VII of the Civil Rights Act of 1964 was designed to promote equality in the workplace.[2] It imposes an affirmative duty on employers to not discriminate against employees and potential employees.[3] Further, if a conflict between an employee's religious observance or practice arises and work requirements, the employer has an affirmative duty to reasonably accommodate, once it has been notified of such conflict.[4] However, the federal circuit courts do not agree on what constitutes a reasonable accommodation.

Since its enactment, federal courts have disagreed about this standard. A recent decision by the Eleventh Circuit deepened a divide among circuit courts as to the burden imposed on employers in religious discrimination cases.[5] The Supreme Court has decided several Title VII cases, but it has not defined what constitutes a reasonable accommodation, instead providing

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[1] *Religion-Based Charges (Charges filed with EEOC)*, U.S. Equal Employment Opportunity Commission, https://www.eeoc.gov/eeoc/statistics/enforcement/religion.cfm (last visited November 9, 2019).
[2] *Landmark Legislation, The Civil Rights Act of 1964*, https://www.senate.gov/artandhistory/history/common/generic/CivilRightsAct1964.htm (last visited Nov. 14, 2019).
[3] See e.g. *EEOC v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2034 (2015); *TWA v. Hardison*, 432 U.S. 63, 66 (1977); *Patterson v. Walgreen Co.*, 727 F. App'x. 581, 584-85 (11th Cir. 2018) (cert. denied); *Baker v. Home Depot*, 445 F.3d 541, 546 (2d Cir. 2006).
[4] See e.g. *Hardison*, 432 U.S. at 66; *Patterson*, 727 F. App'x. at 584-85; *Baker*, 445 F.3d at 546.
[5] *Patterson*, 727 F. App'x at 590.

guidance on religious accommodation questions.[6] Therefore, circuit courts differ in interpretations of the Act. Some courts have determined that, in order to reasonably accommodate an employee's conflict, an employer is obligated to eliminate the conflict.[7] Other courts, however, do not interpret the Act as establishing a hardline rule and instead focus on whether the accommodations offered were "reasonable," even if they do not eliminate the conflict.[8] Finally, some circuits have left it to the jury to determine the reasonableness.[9] Thus, the federal circuits lack a uniform standard for determining whether an employer's attempts to accommodate an employee's religious conflict comply with Title VII.

This note will establish that, despite the division among circuit courts and the lack of clarity offered by the Supreme Court, Title VII of the Civil Rights Act of 1964 imposes a duty on an employer to reasonably accommodate conflicts that arise between employment duties and its employees' religious practices and beliefs. Reasonable accommodations, however, do not equate to elimination. Part II of this note gives the background on the Civil Rights Act of 1964 and the requirements established by the Act. Part III delves into the case law, including the Supreme Court cases as well as the differing interpretations of the circuit courts. Finally, Part IV argues that Title VII does not impose a duty on employers to eliminate the conflict in order to satisfy the affirmative duty imposed by the statute. Although there is not a hardline rule to determine what constitutes a reasonable accommodation, the ordinary meaning of the text, the legislative history, and Supreme Court cases all fail to support the notion that an employer is required to eliminate a conflict to comply with Title VII.

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[6] *Hardison*, 432 U.S. at 63; *Ansonia Board of Education v. Philbrook*, 479 U.S. 60, 62 (1986).
[7] See *Morrissette-Brown v. Mobile Infirmary Med. Ctr.*, 506 F. 3d 1317, 1322 (11th Cir. 2007); *Baker*, 445 F.3d at 546; *Opuku-Boateng v. California*, 95 F.3d 1461, 1467 (9th Cir. 1996).
[8] See *Patterson*, 727 F. App'x at 586; *Sánchez-Rodriguez v. AT&T Mobility P.R., Inc.*, 637 F.3d 1, 12 (1st Cir. 2012); *Cooper v. Oak Rubber Co.*, 15 F.3d 1375, 1378 (6th Cir. 1994).
[9] See *Tabura v. Kellogg USA*, 880 F.3d 544, 554 (10th Cir. 2018); *Sturgill v. UPS*, 512 F.3d 1024, 1033 (8th Cir. 2008).

II. BACKGROUND ON TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

After a moderate Civil Rights Act failed to pass in 1957, President John F. Kennedy proposed a more sweeping Civil Rights Act in 1963, H.R. 7152.[10] Following President Kennedy's assassination, President Lyndon B. Johnson advocated for the adoption of the Act.[11] Following a vote in favor of the bill by the House of Representatives, the bill faced staunch opposition in the Senate, particularly from southern senators, and was debated for 60 days.[12] Ultimately, the Civil Rights Act of 1964 was signed into law on July 2, 1964.[13] The Act was challenged shortly thereafter, but the Supreme Court upheld its constitutionality.[14] Almost a decade after the Civil Rights Act of 1964 was passed, the Equal Employment Opportunity Act of 1972 was signed.[15] This 1972 Act was created primarily to give power to the EEOC to judicially enforce Title VII, thereby broadening the scope and power of the Act.[16] The amendment also radically expanded its coverage by reaching government workers.[17]

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[10] See *Civil Rights Act of 1964*, Nat'l Park Serv. https://www.nps.gov/articles/civil-rights-act.htm (last updated: Mar. 22, 2016).

[11] See Daniel B. Rodriguez & Barry R. Weingast, *The Positive Political Theory of Legislative History: New Perspectives on the 1964 Civil Rights Act and Its Interpretation*, 151 U. Ps. L. Rev. 1417, 1456 (2003); Serena J. Hoy, *Interpreting Equal Protection: Congress, the Court, and the Civil Rights Acts*, 16 J. L. & Politics 381, 393 (2000); *Delivering on a Dream: The House and the Civil Rights Act of 1964*, U.S. House of Representatives, https://history.house.gov/Exhibitions-and-Publications/Civil-Rights/1964-Essay/ (last visited Oct. 29, 2019);

[12] See Daniel B. Rodriguez & Barry R. Weingast, *The Positive Political Theory of Legislative History: New Perspectives on the 1964 Civil Rights Act and Its Interpretation*, 151 U. Ps. L. Rev. 1417, 1471-73 (2003); Serena J. Hoy, *Interpreting Equal Protection: Congress, the Court, and the Civil Rights Acts*, 16 J. L. & Politics 381, 395-96 (2000).

[13] 42 USCS § 2000e (2019).

[14] *Heart of Atlanta Motel v. United States*, 379 U.S. 241 (1964) (upholding the constitutionality of the Civil Rights Act of 1964 against a challenge that the statute exceeded Congress' power to regulate commerce).

[15] Equal Employment Opportunity Act of 1972, 92 Pub. L 261, 86 Stat. 103 (1972).

[16] See Kirstin Sommers Czubkowski, *Equal Opportunity: Federal Employees' Right to Sue on Title VII and Tort Claims*, 80 U. Chi. L. Rev 1841, 1845 (2013).

[17] *Id.*

Duties Created by the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 restricts the ability of employers to discriminate based on various classifications. It was created to prevent race, color, religion, sex, or national origin from inhibiting an individual's job opportunities and growth.[18] Subsequent amendments to the Act also created methods for rectifying such discrimination.[19] Following the enactment, an employer cannot hire nor fire an employee, or discriminate in other respects, "because of such individual's race, color, religion, sex, or national origin."[20] The Act prohibits employers from setting terms of employment, including compensation or privileges, based on these categories.[21] Furthermore, an employer cannot "limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."[22]

The statute now provides that 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."[23] This language was added in 1972, along with other modifications, to explicitly define the term religion as Congress intended it to be read within the statute.[24] The Act, thus, does not merely forbid an employer from treating employees differently based on religion; instead, it requires that employers take steps to accommodate believes to the extent that work duties interfere with religious practices.

[18] § 2000e.
[19] *Id.*
[20] § 2000e-2(a)(1).
[21] *Id.*
[22] § 2000e-2(a)(2).
[23] § 2000e(j).
[24] Pub. L. No. 92-261, 86 Stat. 103 (1972).

Under the statute, a wide variety of religious discrimination cases have been litigated across the country.[25] Employees or potential employees have filed suit alleging religious discrimination in a variety of situations, including a Seventh Day Adventist who was fired for refusing to work past sundown on Fridays,[26] a member of the Worldwide Church of God who was forced to take time off without pay for religious observance,[27] and a member of the Gospel Fellowship Church who was offered part-time employment when he notified his employer he could not work on Sundays.[28]

As noted by courts litigating these conflicts, "the purpose of the reasonable accommodation provision is to "foster bilateral cooperation in resolving an employee's religion-work conflict."[29] The Supreme Court noted the emphasis of the Act and history of the Act is on eliminating discrimination.[30] Thus, the goal of the Act, eliminating discrimination, guides litigation and court interpretations surrounding alleged religious discrimination.

The origins of the duty to accommodate can be traced to Equal Employment Opportunity Commission regulations, interpreting the Act.[31] In *Riley v. Bendix Corp.*, the court noted that the "Commission believes that the duty not to discriminate on religious grounds . . . includes an obligation on the part of the employer to make reasonable accommodations to the religious needs of employees and prospective employees where such accommodation can be made without undue hardship on the conduct of the employer's business."[32] This view, however, was not generally accepted, and, after the Supreme Court failed to resolve the question,[33] Congress

[25] § 2000e-5.
[26] *Sturgill*, 512 F.3d at1027-29.
[27] *Ansonia*, 479 U.S. at 62-64.
[28] *Baker*, 445 F.3d at 543-45.
[29] *Sturgill,* 512 F.3d at 1031, citing *Ansonia*, 479 U.S. at 69.
[30] *Ansonia*, 479 U.S. at 69.
[31] *Riley v. Bendix Corp.*, 464 F.2d 1113, 1115 (5th Cir. 1972).
[32] *Id*. quoting 29 C.F.R. § 1605.1.
[33] *Dewey v. Reynolds Metal Co.*, 402 U.S. 689 (1971).

amended the 1964 Act in order to essentially codify those regulations by adopting the current language. [34] Since that enactment, Congress has not amended the Act to define what constitutes a reasonable accommodation or what would be considered an undue hardship.

Title VII imposes obligations on the employer as well. Because the Act creates positive responsibilities for the employer, courts have noted that the employer has an affirmative duty to reasonably accommodate the employee's religious practices and observances, once the employee notifies the employer of the need for accommodation.[35] It is the responsibility of the employee to alert the employer of a religious conflict.[36] An employer can refuse to accommodate the conflict if it can demonstrate that all available accommodations would result in an undue hardship.[37] When examining whether an employer has abided by Title VII, courts find that if an accommodation is reasonable, the employer has satisfied the requirements.[38] The inquiry stops there.[39] What constitutes reasonable is fact specific and employers, though offered guidelines, are not limited to specific actions.[40] The employer needs to consider whether the alternatives for accommodation would disadvantage the employee in terms of opportunities, including compensation or privileges of employment, when determining whether the accommodation offered was reasonable.[41]

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[34] 45 FR 72610 §1605.3.
[35] *Opuku-Boateng*, 95 F.3d at 1467.
[36] *Cooper*, 15 F.3d at 1378 citing *Smith v. Pyro Mining Co.*, 827 F.2d 1081, 1085 (6th Cir. 1987). See also, *Sánchez-Rodriguez*, 637 F.3d at 13 citing *Cloutier v. Costco Wholesale Corp.,* 390 F.3d 126, 133 (1st Cir. 2004). An employee who seeks an accommodation, and sues when it is denied, bears the burden of establishing a prima facie case of discrimination by "showing that he holds a sincere religious belief that conflicts with an employment requirement; that he has informed his employer of the conflict; and that he was discharged or disciplined for failing to comply with the conflicting requirement."
[37] *Sánchez-Rodriguez,* 637 F.3d at 8. See § 2000e(j). If the employee establishes a prima facie case of discrimination, the burden shifts to the employer to "demonstrate[] 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."
[38] *Patterson*, 727 F. App'x. at 586.
[39] *Ansonia*, 479 U.S. at 68.
[40] § 1605.2(c)(2).
[41] *Id.*

The CFR outlines several categories which are considered types of reasonable accommodations, including shift swaps, voluntary substitutes, flexible scheduling, and lateral transfers and change of job assignments.[42] The regulation notes that this is not an all-inclusive list of what could constitute a reasonable accommodation.[43] When detailing the types of adjustments that could be considered reasonable accommodations, the regulation suggests employers "promote an atmosphere in which substitutions are favorably regarded," provide a "bulletin board or other means for matching voluntary substitutes with positions for which substitutes are needed," "floating or optional holidays," "staggered work hours," and "use of lunch time in exchange for early departure" among others.[44] Neither the regulations nor the Act provide an exhaustive list nor define what constitutes a reasonable accommodation, thereby creating a standard that is subject to interpretation.

Although the employer has the burden to reasonably accommodate an employee's conflict, the employer is not required to do so if accommodations would inflict undue hardship on it. The Act provides that an employer must accommodate the employee's conflict unless the accommodation would create "an undue hardship on the conduct of the employer's business."[45] Somewhat surprisingly, the Supreme Court found that requiring an employer to bear "more than a de minimis cost" would constitute a hardship.[46] The CFR, citing the Supreme Court's standard, notes that de minimis cost should be determined on a case-by-case basis.[47] Various factors specific to the case should be considered, including the cost of premium wages necessary for substitutes, the size and operating cost of the employer, and the number of individuals who

[42] § 1605.2(d).
[43] *Id.*
[44] *Id.*
[45] § 2000e(j).
[46] *Hardison*, 432 U.S. at 84.
[47] § 1605.2(e) citing *Hardison*, 432 U.S. at 84.

would require accommodations.[48] Thus, similar to the reasonable accommodation standard, the Act does not create a hardline rule for what constitutes an undue hardship.

While not directly addressing the definition of reasonable accommodation, the Supreme Court has ruled on Title VII cases pertaining to religious discrimination and has clarified some obligations imposed on both employers and employees.[49] In *Trans World Airlines, Inc. v. Hardison*, the Supreme Court examined the history of Title VII to determine whether the accommodations offered by an airline were reasonable.[50] The Court stipulated that, "like the EEOC guidelines, the statute provides no guidance for determining the degree of accommodation that is required of an employer."[51] Hardison, a sales clerk for TWA and member of the Worldwide Church of God, was fired after refusing to work on his Sabbath in accordance with his church's teachings.[52] His proposed accommodations included working a four-day work week instead of five, finding someone to swap shifts, and switching positions were not mutually accepted.[53]

The Court found that the employer acted reasonably in attempting to find the employee another job and authorizing the union steward to search for someone to switch shifts.[54] While acknowledging the alternatives suggested by the court of appeals, the Court also found that the company could not "be faulted for having failed to work out a shift or job swap" given the collective bargaining agreement in place.[55] The Court noted that the alternatives suggested by the lower court would require the employer to bear more than a de minimis cost because it would

[48] § 1605.2(e).
[49] See *Hardison*, 432 U.S. at 63; *Ansonia*, 479 U.S. at 60.
[50] *Hardison,* 432 U.S. at 71-74.
[51] *Id.* at 74.
[52] *Id.* at 66-69.
[53] *Id.* at 77.
[54] *Id.* at 77.
[55] *Id.* at 78-79.

be required to pay for an additional employee to work on Saturday or it would have to give the employee preferential treatment over other employees.[56] This would result in an undue hardship, which Title VII specifies is not necessary.[57]

In *Ansonia Board of Educ. v. Philbrook*, the Supreme Court commented on the congressional intention behind the statute, finding that the statute "did not impose a duty on the employer to accommodate at all costs."[58] Philbrook was a high school teacher and member of the Worldwide Church of God, which required members to refrain from working during specified holy days.[59] The school board allowed three missed days for religious observances but Philbrook needed to miss six days.[60] The Court found that the suggestion of taking unpaid leave to enable the employee to observe the remaining religious holidays would eliminate the conflict.[61] The Court, however, then said that, despite eliminating the conflict, unpaid leave may not be a reasonable accommodation if employees were allowed to take paid leave for all other reasons, beyond religious ones.[62] The Court also noted that "Senator Randolph, the sponsor of the amendment that became [the statute], expressed his hope that accommodation would be made with 'flexibility' and a desire to achieve an adjustment."[63]

Philbrook does establish that, if the employer does offer a reasonable accommodation, the duty is satisfied even if the employee would prefer a different accommodation. If, however, an employer does not offer a reasonable accommodation, in order to satisfy the burden created by Title VII, it must show that it did not offer a reasonable accommodation because doing so

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[56] *Hardison,* 432 U.S at 84.
[57] *Id.* at 84-5.
[58] *Ansonia,* 479 U.S. at 70.
[59] *Id.* at 62.
[60] *Id.* at 63.
[61] *Id.* at 70.
[62] *Id.*
[63] *Id.* at 69.

would have created an undue hardship. Case law has further defined an undue hardship, creating potentially a lower bar for employers, although a hardline rule is impractical. In *Hardison*, the Court found the potential for unequal treatment of employees based on religion could constitute an undue hardship when combined with the additional costs the employer would bear to pay for a replacement on Saturday.[64] Courts have considered a wide range of factors when determining whether an accommodation would create an undue hardship, including cost in efficiency or wage expenditures, loss of production, and the cost of replacing a worker.[65] The Supreme Court found that the employer would bear an undue hardship if it was required to give the employee the requested day off and incur a cost by paying for his substitute.[66] In addition to considering the hardship on the employer, courts have suggested that the hardship imposed on other employees by the accommodation may be considered.[67] Courts have noted that it is unlikely Congress intended to allow for shift swaps or accommodations for some employees at the expense of contractual rights of other employees.[68]

III. CIRCUIT SPLIT DEFINING WHAT CONSTITUTES A REASONABLE ACCOMMODATION

Given the lack of clarity provided by Title VII in terms of what constitutes a reasonable accommodation, courts have interpreted the statute in different ways, thereby requiring different levels of accommodation from employers. Some courts require an employer to offer reasonable accommodations, but do not require the employer to completely eliminate the conflict. Other courts leave it to the jury to determine whether an accommodation should be considered

[64] *Hardison*, 432 U.S. at 84.
[65] *Tabura*, 880 F.3d at 557-58.
[66] *Hardison*, 432 U.S. at 84.
[67] *Opuku-Boateng*, 95 F.3d at 1468.
[68] *Cooper*, 15 F.3d at 1380.

reasonable. Finally, other courts require that an employer completely eliminate the burden to comply with the requirements of Title VII. Thus, the federal courts lack a uniform standard with which to judge whether an employer has complied with Title VII.

A. Courts Requiring That an Employer Reasonably Accommodate a Conflict, but Not Eliminate It

A number of federal courts have ruled that an employer is not required to eliminate a conflict between a work obligation and an employee's religious practice or observance in order to comply with Title VII, but it must reasonably accommodate. Most recently, in *Patterson v. Walgreen Co.*, Patterson was fired after he failed to show up for work on several occasions on his Sabbath.[69] Walgreens allowed him to swap shifts, but Patterson could not always find someone to cover his shifts, and he turned down an offer from Walgreens to switch to a position that would decrease the likelihood he would have to work on Sabbath because Walgreens could not guarantee he would not have to work on it.[70] The court found that Walgreens offered reasonable accommodations and did not violate Title VII.[71] The Eleventh Circuit cited *Walden v. Centers For Disease Control & Prevention*, in which it had previously held that "a reasonable accommodation is one that 'eliminates the conflict between employment requirements and religious practices.'" However, because Walgreens offered accommodations that would have enhanced the likelihood of avoiding the conflict, even if not completely eliminating it, it was considered reasonable.[72] The court also noted that employers are not required to give employees a choice of accommodation or offer the preferred accommodation, so long as the accommodation

[69] *Patterson*, 727 F. App'x at 584-85.
[70] *Id.*
[71] *Id.*
[72] *Id*. at 587.

offered is reasonable.[73] *Patterson* furthered the standard implemented by several other circuits: that an employer is not required to eliminate a conflict to comply with Title VII.[74]

In addition to *Patterson*, other circuits have interpreted Title VII and Supreme Court cases to require employers to reasonably accommodate without necessarily having to eliminate the conflict. In *Sánchez-Rodriguez v. AT&T Mobility P.R., Inc.*, the First Circuit found that the combination of adjustments offered by AT&T constituted reasonable accommodations.[75] Although some of the options offered by the employer were not reasonable, such as offering to move the employee to a position with a lower salary, when looking at the combination of options, the accommodations could be considered reasonable.[76] The court found that because the employer offered "a series of attempts by [the employer] to accommodate," the employer had met the standard required, even if the offered accommodations did not necessarily eliminate the conflict.[77] The court noted that the totality of circumstances and combination of approaches should be examined; however, the court did not leave it to a jury to determine reasonableness.[78] In *Cooper v. Oak Rubber Co.*, the Sixth Circuit found that the employer failed to reasonably accommodate its employee, a Seventh Day Adventist, because it accommodated one of her concerns but failed to accommodate her objection to working on the Sabbath.[79] The court noted an employer cannot address only one of the religious concerns, but it did not indicate that the employer would be required to completely eliminate the conflict in order to comply with the

[73] *Id.* at 588.
[74] *Id.* at 587.
[75] *Sánchez-Rodriguez,* 637 F.3d at 13.
[76] *Id.* at 12-13.
[77] *Id.*
[78] Id. citing *Hudson v. Western Airlines*, Inc., 851 F. 2d 261, 266 (9th Cir. 1988); quoting *Sturgill v. UPS*, 512 F.3d 1024, 1030 (8th Cir. 2008) ("What is reasonable depends on the totality of the circumstances and therefore might, or might not, require elimination of a particular, fact-specific conflict.")
[79] *Cooper*, 15 F.3d at 1379.

Act.[80] It found that the use of vacation days to avoid working on Sabbath could not be the only accommodation offered, but the use of vacation days in combination in conjunction with other solutions may be acceptable.[81] Thus, these courts interpreted Title VII, as well as *Hardison* and *Ansonia*, to require that an employer reasonably accommodate a conflict but not as having created a hardline rule.

Some lower courts have determined that whether an employer has reasonably accommodated a religious conflict is a question for the jury. However, these circuits have noted that it incorrect to instruct the jury that the conflict must be eliminated in order to be considered reasonable.[82] In *Sturgill v. UPS*, the Eighth Circuit held that the reasonableness of an accommodation was for the jury to determine.[83] The court rejected the employee's contention that the employer was required to eliminate the conflict while also rejecting the employer's contention that it was merely required to offer a religion-neutral way for the conflict to be minimized.[84] The court held that there might be some cases where the only reasonable accommodation requires elimination of the conflict.[85] However, mirroring the logic of the Eleventh and Sixth Circuits, the court clarified that the lower court was incorrect to instruct the jury that "'an accommodation is reasonable if it *eliminates* the conflict,'" instead holding reasonableness is a fact specific inquiry.[86] The court held that, in "close cases," the jury should determine whether the accommodations were reasonable, given the factual aspect of the question.[87] In *Tabura v. Kellogg USA*, the Tenth Circuit remanded the case after the district

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[80] *Id.*
[81] *Id.*
[82] *Tabura*, 880 F.3d at 550; *Sturgill*, 512 F.3d at 1031.
[83] *Sturgill*, 512 F.3d at 1033.
[84] *Id*. at 1030.
[85] *Id.* at 1033.
[86] *Id.* 1030.
[87] *Id.* at 1033.

court granted the employer summary judgment, noting that determining the reasonableness of an accommodation is a fact-specific inquiry that is made on a case-by-case basis.[88] In declining to adopt the employees' suggested per se rule requiring the accommodation to "totally" or "completely" eliminate the conflict, the court states that "Title VII expressly requires only that an employer reasonably accommodate an employee's religion."[89] The employer was not required to guarantee the employees would never have to work on Saturday, but it would not be a reasonable accommodation to swap them off of only some Saturday shifts.[90] The court commented that the "elimination" language used by the employees and various courts stemmed from language used in *Ansonia*, noting, however, that the *Ansonia* court did not hold that an accommodation would categorically be considered unreasonable if it did not eliminate the conflict.[91] Finally, finding that the reasonableness of the offered accommodations was a disputed material fact, the court ruled it was for the jury to determine.[92] Even when courts leave it to the jury to determine the reasonableness of the accommodations offered, the jury is not required to find that the employer eliminated the conflict to comply with the Act.

B. Courts Requiring That an Employer Eliminate a Conflict

Some circuits interpret the Civil Rights Act of 1964 and Supreme Court cases to require employers to completely eliminate the employee's religious conflict in order to comply with the statute's reasonable accommodation requirement. In *Baker v. Home Depot*, the Second Circuit held that an employer's offer to move an employee's shift later in the day was an unreasonable accommodation as it did not eliminate the conflict.[93] Baker, a member of the Gospel Fellowship

[88] *Tabura*, 880 F.3d at 551.
[89] *Id.*
[90] *Id.* at 550.
[91] *Id.* at 551.
[92] *Id.* at 555.
[93] *Baker*, 445 F.3d at 548.

Church which restricted members from working on their Sabbath, refused to work on Sundays.[94] The only accommodation offered by his employer was being assigned to a later Sunday shift to enable him to attend church services in the morning.[95] The court considered the accommodation unreasonable because, although it would enable the employee to attend church, he would still be required to work on his Sabbath, so the conflict was only partially addressed.[96] Similarly, in *EEOC v. Ilona of Hungary*, the Seventh Circuit held that an employer did not offer a reasonable accommodation when its only offered solution to an employee who asked for Yom Kippur off was to offer another day off, thereby not eliminating the conflict.[97]

In *Opuku-Boateng v. California*, the Ninth Circuit held that the employer is required to eliminate the conflict in order for it have reasonably accommodated the religious conflict.[98] When a temporary employee, a member of the Seventh Day Adventist Church notified his employer that he could not work on his Sabbath, he was denied permanent employment.[99] The court held that "where the negotiations do not produce a proposal by the employer that would eliminate the religious conflict, the employer must either accept the employee's proposal or demonstrate that it would cause undue hardship were it to do so."[100] Because the court found that, although the employer was willing to negotiate, it did not offer an accommodation, nor did it accept the employee's suggestion, it thereby violated Title VII.[101]

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[94] *Id.* at 543-44.
[95] *Id.* at 545.
[96] *Id.* at 547. See also, *EEOC v. Ilona of Hung.*, 108 F.3d 1569, 1576 (7th Cir. 1997); *Hudson,* 851 F. 2d at 266 (finding that "all that is required" of an employer is providing "'the means through which [the employee] could have eliminated her religious conflict while preserving her employment status.'")
[97] *Ilona of Hung.*, 108 F.3d at 1576.
[98] *Opuku-Boateng*, 95 F.3d at 1467.
[99] *Id.* at 1465-66.
[100] *Id.* at 1467.
[101] *Id.* at 1469.

In *Morrissette-Brown v. Mobile Infirmary Med. Ctr.*, the court, citing *Philbrook*, asserted that the Supreme Court equates a reasonable accommodation to one that eliminates the conflict.[102] In this case, the employer permitted the employee to swap shifts with other employees, thereby enabling her to avoid the conflict altogether.[103] Several circuit courts have interpreted Title VII and the Supreme Court cases as establishing a burden on employers to eliminate a conflict to comply with the statute.

IV. EMPLOYERS ARE NOT REQUIRED TO ELIMINATE THE CONFLICT

Employers are required only to reasonably accommodate, not eliminate, the conflict in order to comply with Article VII. The language of the statute itself merely demands that employers reasonably accommodate employees' religious conflicts. The statute does not define accommodation; the statute, moreover, does not contain the word eliminate, nor does the language suggest elimination and accommodation are synonymous. In addition, neither the legislative history nor amendments to the Civil Rights Act of 1964 equate the duty imposed on employers to accommodate a religious conflict with a duty to eliminate that conflict. Finally, the Supreme Court has not interpreted the Act to establish a hardline rule that an employer must eliminate the conflict. Rather, the Court has not yet defined what a reasonable accommodation means, nor has it created a test to determine what constitutes a reasonable accommodation. Therefore, an employer is required to reasonably accommodate its employees' religious conflicts, but Title VII does not require an employer to eliminate the conflict.

A. Neither the Act nor Its Legislative History Create a Burden to Eliminate the Conflict

Title VII does not require an employer to eliminate the conflict between an employee's religious practice or observance and a work commitment in order to comply with the statute.

[102] *Id.* at 1322.
[103] *Id.* at 1323.

The word “eliminate” does not appear in the Act as it pertains to discrimination in workplaces.[104] Instead, the statute merely commands employers to reasonably accommodate its employees’ religious observances and practices, absent an undue hardship.[105] The Supreme Court has noted that, where possible, statutes should be read based on their plain meaning and ordinary language.[106] In *Bond v. United States*, the Court stated “in settling on a fair reading of a statute, it is not unusual to consider the ordinary meaning of a defined term.”[107] In *FCC v. AT&T, Inc.*, the Court noted that “when a statute does not define a term, we typically ‘give the phrase it’s ordinary meaning.’”[108] Following a grant of summary judgment in favor Walgreens by the United States District Court for the Middle District of Florida and an affirmation by the Eleventh Circuit, the Court invited the Solicitor General to file a brief expressing the views of the United States in the *Patterson* case.[109] Taking up this theme, in the United States’ amicus brief for *Patterson*, the United States uses various sources to define accommodate as “to make suitable,” “adjust, ” “adapt.” [110] The United States also cites the ADA’s interpretation of the term accommodate, which “conveys the need for effectiveness.”[111] However, none of the definitions for accommodate equate an accommodation to an elimination. Based on an ordinary reading of

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[104] §§ 2000e -2(a),(j)
[105] § 2000e(j)
[106] See *Bond v. United States*, 572 U.S. 844, 861 (2014); *FCC v. AT&T, Inc.*, 562 U.S. 397, 403 (2011) quoting *Johnson v. United States*, 599 U.S. 133, 138 (2010). See also, Brief for the United States as Amicus Curiae at 9, supporting Petitioner, *Patterson*, 727 F. App’x (No. 18-349) (“‘the terms should be interpreted as taking their ordinary, contemporary, common meaning.’”)
[107] *Bond,* 572 U.S. at 861.
[108] *FCC,* 562 U.S. at 403 quoting *Johnson*, 599 U.S. at 138.
[109] *Patterson v. Walgreen Co. – Petition for certiorari denied February 24, 2020*, Supreme Court of the United States Blog https://www.scotusblog.com/case-files/cases/patterson-v-walgreen-co/ (last visited March 30, 2020).
[110] Brief for the United States as Amicus Curiae at 9-11, supporting Petitioner, *Patterson*, 727 F. App’x (No. 18-349) (quoting American Heritage Dictionary of the English Language 8 (1969).) The United States argued that *cert* should be granted but in a limited scope. The US did not think the Court should clarify whether an employer needs to eliminate a conflict to comply with Title VII nor should it comment on whether an undue hardship analysis could include speculative hardships. The US recommended the Court only revisit the *Hardison* decision which created the de minimis cost standard.
[111] *Id.* at 10 (citing the Americans with Disabilities Act of 1990 (ADA), Pub. L. No. 101-336, 104 Stat. 327 (42 U.S.C. 12101 et seq.)

the statute, Congress did not intend to force employers to completely eliminate a conflict based on religion. Instead, the plain meaning of the word accommodate indicates that both parties are required to work towards a resolute and adapt to a conflict effectively. In some cases, to effectively address a conflict, an employer may eliminate it. However, the Act does not require an employer to eliminate a conflict to make the situation suitable for an employee.

In addition, the statute does not require an employer to allow an employee to choose the preferred accommodation.[112] Thus, the employee is not allowed to select her preferred accommodation, which may be the one that eliminates the conflict, so long as the offered resolution is reasonable. Other employment-based legislation that is designed to prevent discrimination similarly embraces a flexible standard rather than a hardline rule.[113] The Americans with Disabilities Act (ADA) was enacted to eliminate discrimination against individuals with disabilities and provide an enforcement mechanism to prevent discrimination in daily life.[114] Similar to Title VII, the ADA requires employers to reasonably accommodate employees.[115] The ADA also does not define what constitutes a reasonable accommodation, but instead offers examples of what can be considered a reasonable accommodation.[116] This requirement is further explained as a broad one but a requirement that does contain limitations.[117] An employer does not have to modify facilities or services to create complete parity in working conditions between disabled and non-disabled employees; the employer also does not need to excuse past performance issues.[118] Thus, parallels can be drawn between the two federal statutes

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[112] *Patterson*, 727 F. App'x. at 586.
[113] *Americans with Disabilities Act of 1990*, Pub. L. No. 101-336 104 Stat. 327, 330.
[114] *Id.* at 329.
[115] *Id.* at 331.
[116] *Id.*; *US Airways, Inc. v. Barnett*, 535 U.S. 391, 393 (2002) (holding that the employee's proposed accommodation was not reasonable because it conflicted with a seniority system.)
[117] Jonathan R. Mook, *Americans with Disabilities Act: Employee Rights and Employer Obligations*, § 6.01.
[118] *Id.* citing *Vande Zande v. Wisconsin Dep't of Admin.,* 44 F.3d 538, 546 (7th Cir. 1995).

in which Congress pointedly did not define reasonable accommodation, enabling it to be a flexible standard.[119]

In addition to the statute itself, the legislative history suggests that the reasonable accommodation standard is flexible, rather than a strict requirement that employers must eliminate a conflict. The purpose of Title VII is to ensure workers are not discriminated in the hiring process, and while employed, based on their race, color, religion, sex, or national origin.[120] As originally enacted, Title VII did not impose any accommodation requirements on employers, instead just prohibiting religious discrimination.[121] The Act is not designed to place the burden entirely on employers.[122] Instead, it is designed to promote "bilateral cooperation" between employers and employees.[123] Thus, it is an unfair reading of the Act to place the onus entirely on the employer by forcing it to completely remove the burden. While the employer does not have to accommodate if it would create an undue hardship, the Act does not equate eliminate and accommodate. Instead, the employer is required to offer an effective solution to allow both the employer and employee to adapt. Although the undue hardship provision can be viewed as a safeguard to ensure employers do not have to accommodate at all costs, that is only the second

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[119] See *Vande Zande,* 44 F.3d at 542. The court noted that accommodation means that an employer "must be willing to make changes" but also founded that reasonable qualifies or, "in a sense weakens," the term. The court found that, even within its capabilities, an employer was not required to go to extreme lengths to completely enable the employee to work. *See also Merrit v. Boise Cascade Corp.*, 1999 U.S. App. LEXIS 39589 (5th Cir. 1999) (affirming dismissal of plaintiff's claims because the employer accommodated the employee after he returned to work far longer and more fully than needed.)
[120] § 2000e; § 1614.101(a); see Michael D. Moberly, *Bad News for Those Proclaiming The Good News?: The Employer's Ambiguous Duty to Accommodate Religious Proselytizing*, 42 Santa Clara L. Rev. 1, 8-9 (noting the primary goal of the legislation was to eliminate racial discrimination and religion was added as somewhat of an afterthought.)
[121] See *EEOC v. Townley Eng'g & Mfg. Co.*, 859 F.2d 610, 613 (9th Cir. 1988) ("As originally enacted, Title VII of the Civil Rights Act of 1964 simply prohibited employment discrimination on the basis of religion."); *Smith v. Pyro Mining Co.*, 827 F.2d 1081, 1087 (6th Cir. 1987) ("Title VII, as enacted in 1964, prohibited religious discrimination in employment, but went no further.")
[122] Pub. L. No. 92-261, 86 Stat. 103 (1972).
[123] *Sturgill*, 512 F.3d at 1031, citing *Ansonia*, 479 U.S. at 69.

step of the analysis.[124] Based on the purposes of the statute, it can be inferred that Congress did not intend to unduly hinder an employer's ability to conduct business by forcing it to fully eliminate every conflict that arose. In some cases, depending on an employee's religious practice or observance, a reasonable accommodation may result in the elimination of the conflict, resulting in an examination of whether that accommodation results in an undue hardship. However, just because some accommodations result in an elimination of the conflict, the Act does not establish that as the mandatory standard for all employers. Elimination may be sufficient to comply with Title VII, but it is not necessary.

In addition, in 1972, Congress implemented a series of modifications to the Civil Rights Act, some of which clarified the existing Act and some of which built upon the Act to be more inclusive. [125] Prior to the 1972 amendment, several courts interpreted Title VII to not require a reasonable accommodation for religious beliefs.[126] Senator Jennings Randolph, who proposed the amendments, believed that "the persons on both sides of this situation, the employer and the employee, . . . are just building upon a conviction, and hopefully, understanding and a desire to achieve an adjustment."[127] His amendments were unanimously approved in the Senate and approved in the House.[128] Some commentators argue that this amendment created a higher standard for employers that requires them to eliminate the conflict and avoid disadvantaging an

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[124] § 2000e.
[125] Pub. L. No. 92-261, 86 Stat. 103 (1972); 118 Cong. Rec. 705 (1972) (statement of Sen. Randolph) (noting that he was a Seventh-Day Baptist and his observance of the Sabbath began at sundown on Friday and ended at Sunday on Saturday.)
[126] See Michael D. Moberly, *Bad News for Those Proclaiming The Good News?: The Employer's Ambiguous Duty to Accommodate Religious Proselytizing*, 42 Santa Clara L. Rev. 1, 12 (2001) (citing *Reid v. Memphis Publishing Co.*, 468 F.2d 346, 348-49 (6th Cir. 1972) ("quoting lower court's conclusion that there is 'no duty on the part of an employer to accommodate an employee's or potential employee's religious belief'"); *Dawson v. Mizell*, 325 F. Supp. 511, 514 (E.D. Va. 1971) ("'Religious discrimination should not be equated with failure to accommodate.'")
[127] 118 Cong. Rec. 706 (1972).
[128] See 118 Cong. Rec. 7169, 7573 (1972).

employee in any way.[129] When defining the term religion, Congress did not create a definitive standard in terms of what is expected from an employer when an employee raises a religious conflict.[130] Instead, Congress set the bar at reasonable accommodation; there is nothing within the notes from the amendment to indicate that Congress intended the bar to be any higher or requirements to be any stricter than reasonable.[131] Therefore, the Act creates merely an obligation to reasonably accommodate, nothing further.

Finally, the CFR emphasizes only the need to reasonably accommodate a conflict; it does not set a threshold for what constitutes reasonable. In clarifying "the obligation imposed by the Civil Rights Act of 1964," the CFR does not mention a duty to eliminate the conflict created by an employee's religious practices or observances and work obligations.[132] The language in the section does not draw a hardline and, instead, offers a variety of potential solutions to enable an employer to reasonably accommodate.[133] Absent is the implication that an employer should be forced into action to fully ameliorate the conflict; rather, the regulations emphasize easing the burden on employees with religious conflicts.[134] The regulations even note that "[i]n a number of cases, the securing of a substitute has been left entirely up to the individual seeking accommodation."[135] The regulation encourages employers to facilitate such swaps.[136] It emphasizes the expectation that both the employee and employer will work to create a solution

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[129] Dallan Flake, *Restoring Reasonableness to Workplace Religious Accommodations* 4 (Feb. 15, 2020) (unpublished comment) (on file with author). Flake notes that reasonableness is a standalone requirement under Title VII, however, his interpretation is too far-reaching and places too significant of an onus on employers. His interpretation requires the accommodation completely eliminate the conflict, not cause the employee to suffer adverse employment action, and not unnecessarily disadvantage the employee's terms of conditions of employment.
[130] *Id.*
[131] *Id.* See *Ansonia*, 479 U.S. at 72 (quoting the sponsor of the amendment to the Act, Senator Rudolph, who hoped the "accommodation would be made with 'flexibility' and 'a desire to achieve an adjustment.'")
[132] § 1605.2.
[133] *Id.*
[134] § 1605.2(d).
[135] § 1605.2(d)(i).
[136] *Id.*

that enables the employee to continue to work for the employer.[137] It does not establish a threshold for reasonableness. Based on the regulations, an inference that an employer is expected to eliminate the religious conflict is an overstatement of the burden placed on employers.

B. The Supreme Court Did Not Create a Standard that Requires the Employer to Eliminate the Conflict

Several circuit courts have rightly interpreted Title VII of the Civil Rights Act to mean that an employer has an affirmative duty to reasonably accommodate an employee's religious practices and observances once informed of them; an employer, however, is not required to eliminate the conflict to have reasonably accommodated the conflict. Although the Supreme Court has not definitively defined reasonable accommodation in the Title VII context, the Court has addressed religious conflicts arising under Title VII.[138] In these cases, the Court has not established a hardline rule for when an accommodation will be considered reasonable.[139] In *Ansonia*, the Court found "no basis in either the statute or its legislative history for requiring an employer to choose any particular reasonable accommodation."[140] In this case, the Court analyzed a potential accommodation, saying it eliminated the conflict; however, the Court indicated that this accommodation would not be considered reasonable as it still discriminated based on religion.[141] Although the Court used the term eliminate in this case, it did not establish this as the standard to determine reasonable accommodations. The Court merely noted the potential accommodation had the effect of eliminating the conflict. A reading of *Ansonia* further

[137] *Id.*
[138] *Ansonia*, 479 U.S. at 62; *Hardison,* 432 U.S. at 66.
[139] *Ansonia*, 479 U.S. at 69.
[140] *Id.* at 68.
[141] *Id.* at 70.

supports the notion that an employer is not required to eliminate the conflict to comply with the Act as the Court notes that the employer is not required to give the employee a choice of accommodations and instead is able to choose an accommodation it prefers.[142] Neither legislative history nor the statute require an employer to choose a specific accommodation.[143] If an employer was required to eliminate the conflict to comply with the Act, the Supreme Court would not need to specify that employers retained the choice of accommodations. Finally, the Court rejects the standard outlined by the lower court which would give an employee "every incentive to hold out for the most beneficial accommodation, despite the fact that an employer offers a reasonable resolution of the conflict."[144] This furthers the point that Title VII calls for bilateral cooperation and the onus is not entirely on the employer. If the statute required elimination, the employee would not have to wait for the most beneficial accommodation, because all offered would end with the same result. Thus, the Supreme Court, in *Ansonia*, did not determine that an accommodation must eliminate the conflict to be considered reasonable.

Similarly, in *Hardison*, the Court did not establish a hardline rule. The Court notes that the EEOC did not define reasonable accommodation when amending its guidelines.[145] However, it found that, in this case, the employer made reasonable efforts to accommodate the conflict.[146] The employer held several meetings with the employee during which it tried to find solutions and also authorized the union steward to find someone to switch shifts.[147] In addition, the employer tried unsuccessfully to find him another job.[148] Despite these failed attempts, the Court found these proffered accommodations reasonable and the employer could not "be faulted for

[142] *Id.* at 68.
[143] *Ansonia*, 479 U.S. at 68.
[144] *Id.* at 69.
[145] *Hardison,* 432 U.S. at 72.
[146] *Id.* at 77.
[147] *Id.*
[148] *Id.*

having failed to work out a shift or job swap" for the employee.[149] The Court did not mention a requirement to eliminate the conflict and instead focuses on the efforts of the employer to comply with the Act and reasonably accommodate its employee. Again, the Supreme Court analyzed whether an employer reasonably accommodated its employee within the meaning of Title VII and did not establish a requirement to eliminate the conflict.

Numerous circuit courts have, based on a plain reading of the Civil Rights Act of 1964 and an interpretation of the Supreme Court decisions, have determined that an employer needs to reasonably accommodate an employee's conflict without establishing a threshold of what constitutes a reasonable accommodation. These courts analyzed the facts of individual cases to determine whether that employer reasonably accommodated its employee's conflict.[150] In *Patterson*, the court held that the employer was not required to guarantee that the employee would never work on his Sabbath because it offered several accommodations that attempted to reduce the likelihood he would be asked to work on his Sabbath.[151] Following the guidance of the CFR, the court noted that the employer facilitated the employee's attempts to swap shifts, but was not required to actively assist or ensure he could swap.[152] Because the employer offered accommodations that "enhanced the likelihood of avoiding" the conflict, it satisfied its duties under Title VII.[153] Similarly, in *Sánchez-Rodriguez,* the court noted the importance of examining the totality of the circumstances, echoing the flexibility approach highlighted in *Ansonia*.[154] Even where the court held that determining reasonableness is for the jury to determine, it has also noted that the standard for reasonableness does not equate to elimination.

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[149] *Id.* at 78-79. The Court did not specify, however, whether it was referring to an unreasonable accommodation or an undue hardship in this context.
[150] *Patterson*, 727 F. App'x at 587; *Sánchez-Rodriguez,* 637 F.3d at 13; *Cooper*, 15 F.3d at 1379.
[151] *Patterson*, 727 F. App'x At 587.
[152] *Id.*
[153] *Id.*
[154] *Sánchez-Rodriguez,* 637 F.3d at 13; *Cooper*, 15 F.3d at 12.

In *Tabura*, the court pointed out that *Ansonia* did not stand for the notion that an "accommodation could never be reasonable if it failed totally and under every conceivable fact scenario to eliminate every conflict or all tension."[155] Instead, the Supreme Court cases should be interpreted as finding a reasonable accommodation when the employer completely eliminates the conflict.[156] That does not mean that the employer must eliminate the conflict to act in accordance with the Act.[157]

Other courts, on the other hand, have interpreted the Supreme Court cases to impose a higher standard on employers than what Title VII dictates. Several circuits have created a standard that requires employers to eliminate the conflict, rather than just reasonably accommodating.[158] In *Ilona of Hungary*, the court cited *Ansonia* as the basis for requiring the employer eliminate the conflict between the employment requirement and the religious practice.[159] However, the court did not explain how it established the standard beyond merely citing to Supreme Court cases.[160] The court created a standard that neither the Supreme Court nor the statute dictates, thus increasing the burden placed on employers to satisfy the requirements of Title VII. Similarly, in *Baker*, the court cites *Ilona of Hungary* in finding that the employer is required to eliminate the conflict.[161] This court, however, fails to point to evidence supporting that standard, merely equating eliminating the conflict to a reasonable accommodation, without support from either statutory sources or case law from the Supreme Court. In *Morrissette-Brown*, the court notes that Title VII does not define reasonably accommodation and thus relies on case law to

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[155] *Tabura*, 880 F.3d at 551.
[156] *Sturgill*, 512 F.3d at 1031.
[157] *Id.*
[158] *Opuku-Boateng*, 95 F.3d at 1467.
[159] *Ilona of Hung.*, 108 F.3d at 1576.
[160] *Id.*
[161] *Baker*, 445 F.3d at 548.

determine the standard.[162] However, the court cites *Ansonia* to define the standard as eliminate.[163] This analysis again relies only on the mention of the word "eliminate" by the Supreme Court and in the context of a potential accommodation that was deemed not to be reasonable.[164] These courts interpreted a standard that, lacking both statutory and case law support, creates a higher burden on employers than the Civil Rights Act of 1964 imposes.

Title VII demands that an employer reasonably accommodate an employee's religious conflict, unless it can show that doing so would impose an undue hardship on the employer. Because neither reasonably accommodate nor undue burden is defined by the Act or the Supreme Court, lower courts are left to determine the standards. Courts appear to be more willing to find a reasonable accommodation imposes an undue hardship on the employer rather than finding that the employer reasonably accommodated the employee's religious conflict.[165] However, even if the undue hardship is an easier hurdle to clear, the Act still does not impose an obligation to eliminate the conflict, absent an undue hardship.

V. **CONCLUSION**

This note argued that Title VII of the Civil Rights Act of 1964 requires that employers reasonably accommodate conflicts between work obligations and employees' religious practices. The Act, however, does not require that employers must eliminate the burden to comply. Determining whether an employer is obligated to completely eliminate a conflict or reasonably accommodate it has significant implications for how employers handle religious accommodation. Title VII does not define what constitutes a reasonable accommodation and the Supreme Court

[162] *Morrissette-Brown*, 506 F. 3d at 1321.
[163] *Id.* at 1322.
[164] *Id.*
[165] See *Opuku-Boateng*, 95 F.3d at 1470 (holding that the accommodations would not have imposed an undue hardship because other employees were already required to work "undesirable weekend, holiday, and night shifts"); *Cooper*, 15 F.3d at 1379 (finding that the employer did not offer reasonable accommodations but it did not violate Title VII because any accommodation would have imposed an undue hardship on the employer.)

has not clarified the term, instead mentioning possible accommodations that could be considered reasonable. The Supreme Court denied *cert* to review *Patterson*.[166] The United States filed a brief amicus curiae and both Walgreens and Patterson filed supplemental briefs.[167] In denying cert, the Court noted "the case raises important questions about the meaning of Title VII's prohibition of employment discrimination."[168] The Court, however, then stated "that [*Patterson*] does not present a good vehicle for revisiting *Hardison*.[169] Thus, until the Supreme Court clarifies further, based on a plain reading of the text of the Act and the lack of a definitive standard provided by the Supreme Court, employers should operate under the assumption that they are not required to eliminate the conflict, so long as they provide reasonable accommodations to their employees.

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[166] *Patterson v. Walgreen Co. – Petition for certiorari denied February 24, 2020*, Supreme Court of the United States Blog https://www.scotusblog.com/case-files/cases/patterson-v-walgreen-co/ (last visited Marc. 28, 2020).
[167] *Id.*
[168] *Patterson v. Walgreen Co.*, 727 F. App'x. 581 (11th Cir. 2018), cert. denied, 140 S. Ct. 685 (2020) (Alito, J., concurring).
[169] *Id.*