NEW YORK LAW SCHOOL
THE 48TH ANNUAL ROBERT F. WAGNER NATIONAL LABOR AND EMPLOYMENT LAW MOOT COURT COMPETITION

RECORD ON APPEAL

Case No. 55-2023

PAUL EDGECOMB,

Petitioner,

v.

COLD MOUNTAIN PENITENTIARY,

Respondent.

ON WRIT OF CERTIORARI FROM THE FOURTEENTH CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

PAUL EDGECOMB,

Appellant,

v.

COLD MOUNTAIN PENITENTIARY,

Appellee.

Before: Chief Circuit Judge GONZALEZ; Circuit Judge SCAVONE, and Circuit Judge TOBEY.
Opinion for the Court filed by Chief Judge GONZALEZ.
Dissenting opinion filed by Circuit Judge SCAVONE.
Decided: November 20th, 2023.

MEMORANDUM OPINION OF THE COURT

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ON APPEAL FROM THE
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WAGNER

***Chief Circuit Judge* GONZALEZ:**

BACKGROUND

Paul Edgecomb is a correctional officer at Cold Mountain Penitentiary ("Cold Mountain") located in the State of Wagner. Edgecomb had been employed as a correctional officer for about three years when he converted to the Seers of the Face of God ("SFG") religion on March 31st, 2022. Shortly thereafter, he married and had a child with a woman who is a life-long member of the SFG. The SFG is a popular religion within the State of Wagner. Many of Wagner's early settlers were members of the SFG. Edgecomb began to immerse himself in the SFG religion and culture. He occasionally attended their religious services on Saturdays and participated in monthly recruiting events. Members of the SFG believe it is a sin to work on Saturdays. According to the SFG, Saturdays are meant to focus exclusively on religious observance. SFG members are instructed to pray, reflect, and engage in activities which spread the message of the SFG.

As a junior correctional officer, Edgecomb is required to work daily shifts Wednesday through Sunday each week. Prior to getting married, working on Saturdays was not an issue for Edgecomb because he had not yet converted to the SFG religion. However, by the time Edgecomb married his wife, he had converted to the SFG religion. Shortly after the wedding, Edgecomb notified his supervisor, Warden Hal Moores, that in order to abide by his religious beliefs, he would no longer be able to work on Saturdays. Moores told Edgecomb he would try to accommodate his scheduling requests and promised to approve any shift swaps between Edgecomb and other employees for his Saturday shifts. Edgecomb stated that his religious views prohibit him from asking a coworker directly to trade shifts with him because that would, in effect, be asking the coworker to commit a sin for him. Moores replied that Edgecomb could upload his Saturday shifts to the online employee portal and allow those shifts to be claimed by coworkers—without soliciting them to engage in sinful conduct.

The online portal is used by all employees at Cold Mountain. Employees log on to the portal each Friday to submit their timesheets. The home page of the portal shows available shifts that an employee can claim and work, if they wish. Edgecomb placed his four scheduled Saturday shifts on the online portal, but only managed to get two of these shifts covered by other employees. Moores asked if Edgecomb could use his vacation days for the uncovered shifts, but Edgecomb refused. Edgecomb failed to show up for the Saturday shifts that were unclaimed by his coworkers. Cold Mountain still paid Edgecomb for those unworked shifts.

Since Edgecomb's coworkers did not claim all of his Saturday shifts, the prison was forced to incentivize other officers to take these shifts. The prison offered twice the typical overtime pay rate for those who covered Edgecomb's shifts. Saturdays at the prison already had the absolute minimum number of correctional officers necessary to safely operate Cold Mountain. Many employees request to have Saturday off for both secular and religious reasons. If the prison were

to pay the double overtime rate to incentivize workers to take Edgecomb's Saturday shifts the entire year, the prison would spend far more on personnel costs than it had budgeted for.

While Edgecomb was not immediately fired for skipping his assigned shifts, disciplinary reports were added to his employee record. Supervisors noted in separate reports that "Edgecomb deliberately missed work on May 25th, 2022," and that "Edgecomb deliberately missed work on July 2nd, 2022." There were no comments attached to these reports regarding Edgecomb's requests for religious accommodations. In June 2022, performance reviews were added to Edgecomb's employee record stating that "Edgecomb is a reserved worker and does not cooperate well with other personnel," and that "[Edgecomb] occasionally misplaces prison documents." The only reports on his record prior to his religious accommodation requests were that he "[o]ccasionally shows up late."

Edgecomb asked Moores to personally reach out to other employees to cover his Saturday shifts. However, Moores only directly emailed one employee, Percy Wetmore. Moores never received a response from Wetmore and never followed up with him. Moores also sent out a mass email to all correctional officers employed at Cold Mountain stating that employees need to step up and take shifts listed on the online portal when the prison is short-staffed.

As an alternative accommodation for Edgecomb, Moores offered him a position in a smaller department at Cold Mountain known as the "Green Mile." The Green Mile exclusively houses prisoners serving death sentences. Since the Green Mile houses the most dangerous inmates at Cold Mountain, Green Mile personnel obtain a higher security clearance than the other prison employees. Green Mile personnel must receive additional firearms training, de-escalation training, and emergency aid training. The work at the Green Mile is much more demanding than the work Edgecomb was currently performing at Cold Mountain. Staff at the Green Mile with Edgecomb's experience and background make around $60,000 per year before taxes. However, officers at the Green Mile rarely have the opportunity to receive overtime or holiday pay due to sufficient staffing in that department. While Edgecomb's gross rate of pay at Cold Mountain was approximately $50,000 per year before taxes, he often worked available overtime and holiday shifts which resulted in gross pay of approximately $70,000 per year.

Because the Green Mile is a smaller department with plenty of staff, officers would have greater availability to cover Edgecomb's Saturday shifts if necessary. However, Moores still could not guarantee Edgecomb that he would never be scheduled to work a Saturday shift on the Green Mile, he could only presume that it would be far less frequent. Moores reiterated his willingness to help Edgecomb find other officers to fill those Saturday shifts.

Ultimately, Edgecomb chose to decline the position at the Green Mile due to the lack of opportunity for overtime and holiday pay, and because Moores still couldn't promise that Edgecomb wouldn't be scheduled to work on Saturdays. Edgecomb also expressed concern about

the potential to develop mental health issues in the future, due in large part to the trauma that stems from working with inmates on death row.

Since his first day of work at Cold Mountain, Edgecomb raised concerns with how the prison handles meal breaks. Having previously worked as a security guard for a private company, he is accustomed to having a one-hour, uninterrupted lunch break. The company where Edgecomb previously worked was located in the downtown area of Derry—a major city in the State of Wagner—near many restaurants and public parks. However, once he began working at Cold Mountain, the nearest town with restaurants and public parks was Castle Rock, a fifteen-minute drive from the penitentiary. At Cold Mountain, Edgecomb had one-hour for his lunch break and the security clearance required to exit and enter the prison takes around ten minutes each way. Thus, if Edgecomb wanted to go to Castle Rock for lunch, he would only have ten minutes to enjoy his meal. If Edgecomb wanted to leave the prison and eat lunch in his car, he would have forty minutes to enjoy his meal. For this reason, most correctional officers at Cold Mountain bring and eat their lunch on the premises.

Edgecomb's duties entailed working in an office with one other employee. Closed circuit television (CCTV) monitors, showing various areas of the prison, are located in this office. Edgecomb's main duties were to observe the CCTV monitors, fill out reports, and complete other paperwork. When Cold Mountain employees have their lunch break, most use the designated communal room. The room is outfitted with couches, chairs, a big table, and a vending machine. Many employees eat their lunch here. The room also has CCTV monitors on the walls, so some employees work from the communal room even when they are not on their lunch break.

Because there are CCTVs in the communal room, Edgecomb felt as if he was never "off-duty" while at work—particularly during his lunch breaks. Whenever he entered the communal room to enjoy his lunch, he was constantly bothered and reminded of his duties by the huge monitors on the walls. Edgecomb estimates that he was burdened on his lunch break by work-related requests from other employees two to four times each week. He was constantly answering questions, locating files, and observing the monitors for other officers while they used the restroom or smoked a cigarette. Each interruption lasted about two to ten minutes. Due to the constant interruptions, Edgecomb decided to wear headphones during his lunch break. He hoped that by wearing headphones and watching Netflix, other employees would respect his time off. While this helped to reduce the number of interruptions, Edgecomb reported that he was still pestered by his colleagues one to three times each week for about two to ten minutes each time.

Cold Mountain's employee handbook allows employees on their lunch break to use their phones, watch TV, read a book, or engage in other personal activities. However, the handbook prohibits employees from taking naps during their lunch break. This is due to the "Emergency Sirens Response" policy, which states that "[a]ll available Cold Mountain Penitentiary correctional officers present at the institution must be prepared to respond to the emergency sirens at any moment." Use of the emergency sirens is reserved for prison escapes, riots, and fights.

Although no prisoner attempted an escape during Edgecomb's time at Cold Mountain, the prison has had issues in the past. Nearly ten years ago, a prisoner escaped through a hole in the wall concealed by a poster. The correctional officers on duty responded slowly to the discovery of the escape. Since this incident, the prison strictly adheres to and enforces the "Emergency Sirens Response" policy.

During Edgecomb's time at Cold Mountain, the emergency sirens were activated seven times—four of which occurred during Edgecomb's lunch break. Two of those four instances required him to report for duty as back up and engage in crowd control to assist in the de-escalation of gang-related fights in the yard. Both times, the incident lasted the entirety of Edgecomb's lunch break. The third time the sirens were used during his lunch break, Edgecomb was instructed to search the prison for an unaccounted-for inmate. The inmate had not attempted to escape but instead had been found collapsed in the prison yard due to heat exhaustion. The fourth time the sirens were activated during his lunch break, all correctional officers were instructed to report to the cafeteria. Edgecomb stayed in the communal room and continued watching Netflix on his phone. The emergency situation was resolved, and Edgecomb was never contacted about his whereabouts or disciplined for his failure to respond to the emergency siren.

Edgecomb became frustrated after months of having his lunch break interrupted, even when he was wearing headphones. On one occasion, a co-worker asked Edgecomb to watch the monitors while the co-worker took a phone call, and Edgecomb declined. Later that evening, Edgecomb was verbally reprimanded by his supervisors for "not being a team player." In response, Edgecomb suggested that he should be paid for his lunch breaks. If so, he told them that he would never decline to view the monitors and he would always be ready to respond to the emergency sirens. His supervisors balked at the idea, stating "no one gets paid during lunch, and you won't be an exception."

On Friday, March 10, 2023, Edgecomb received a new schedule which showed him working a Saturday shift on April 1st—three weeks away. He put this shift up on the portal, hoping a colleague would pick it up, and he continued working at Cold Mountain. That same Friday after work, he learned that his newborn son had fallen ill with a rare disease. Over the weekend, he confided in his longtime friend and lawyer, Jack Torrance, about what he should do. Edgecomb's wife was a law student at the time and therefore was unable to dedicate the amount of time needed to take care of their son. Torrance advised Edgecomb to use his leave entitlement under the Family and Medical Leave Act (FMLA), since his situation was exactly what the FMLA is intended to cover. Edgecomb was relieved and he returned to work intending to request FMLA leave. Before asking his supervisors, he mentioned his situation to some coworkers in the communal room. In response, one said, "I'd be surprised if they let that happen. I would not take that leave if I were you." Another coworker said, "I didn't even use my leave when my daughter was born." Other coworkers offered similar statements discouraging Edgecomb from seeking FMLA leave.

Edgecomb approached a supervisor, Annie Wilkes, inquiring about his ability to take FMLA leave. Wilkes said "all employees have twelve weeks of FMLA leave available, but we are really short staffed right now. What's going on?" Edgecomb told her his situation, and Wilkes said "My son fell ill once. I was so lucky my wife was able to help since work was too busy for me to take leave. I highly advise against using this leave, you would let all of us down." Wilkes then took an important phone call, and Edgecomb left her office.

Based on Edgecomb's conversations with his coworkers and with Supervisor Wilkes he felt pressure to refrain from taking his available FMLA leave. Additionally, Edgecomb felt pressure to perform better at work after showing up late for another shift. Due to these circumstances, Edgecomb hired a professional caretaker for his son, which cost $1,400 per week. Edgecomb worked for two weeks while his son was ill before feeling the financial effect of hiring a professional caretaker. He fired the caretaker after spending $2,800 for her services. He also wanted to be there in person to help care for his child. When he showed up for work on March 27th, 2023, he walked into Wilkes's office and sternly let her know of his intention to take FMLA leave. Wilkes appeared disappointed, but pulled up Edgecomb's file and let him know that he had twelve weeks of available FMLA leave. Wilkes then stated, "I would try your best to avoid using this leave." Edgecomb left her office and submitted the paperwork to request an FMLA leave, which was granted. Edgecomb began his leave on April 3rd, 2023.

Edgecomb used all twelve weeks of his granted FMLA leave, through June 23rd, 2023. Edgecomb spent the first ten weeks of his leave primarily caring for his sick son. By the tenth week his son's condition had started to improve. By the eleventh week, his wife finished her semester and was able to dedicate more time to help Edgecomb care for their son's needs, Edgecomb spent the eleventh and twelfth weeks helping her adjust to this caretaking role.

Upon returning to work on June 26th, 2023, Edgecomb noticed that things were different at the prison: coworkers talked to him less, he was given less responsibility, and he was no longer bothered during his lunch break. While he was happy with these better working conditions, he felt that something was wrong. Edgecomb worked diligently for more than three weeks, until showing up to a shift ten minutes late during a thunderstorm on July 20th, 2023. Immediately after entering his office, he was terminated by Moores, while Wilkes watched menacingly in the background. He was told that this termination was due to his tardiness and absenteeism. Edgecomb was stunned. He mentioned the thunderstorm and asked them to give him a second chance. Moores stated that his record had been on his desk for quite a while now, and it was only a matter of time before Edgecomb slipped up and was fired.

Edgecomb was furious, as he felt that he was one of the most responsible correctional officers at Cold Mountain. He believed he was fired for using his FMLA leave, despite being entitled to such leave.

<u>Cold Mountain Penitentiary Employee Handbook</u> Policies in Relevant Part:

§ 3.00 Emergency Sirens Response

All available Cold Mountain Penitentiary correctional officers present at the institution must be prepared to respond to the emergency sirens at any given time. The emergency sirens are only to be used in the event of a large-scale prison fight, riot, or when there is good cause to believe an inmate is engaged in a prison escape effort.

§ 3.14: Uniform

(A) All Cold Mountain Penitentiary personnel must remain in full uniform whenever present in the facility. This is to ensure the safety and the efficient operation of the institution. Any person not in appropriate uniform will be stopped and questioned about their business at the institution. Correctional officers must also ensure their firearm, baton, and flashlight are firmly secured on their person at all times to ensure no item is taken by an inmate or other non-authorized person.

(B) Correctional officers must remain in uniform during lunch breaks, even if they take their lunch off-site.

(C) Any time an officer is in uniform, including while off-duty or off-site, the officer must refrain from all conduct unbecoming of a correctional officer, including but not limited to: "catcalling," lewd and offensive language, contemptuous yelling, intoxication, gambling or discussion of gambling, or any discussion regarding personal sexual activity. An officer is permitted to consume alcohol and smoke cigarettes in uniform provided it is not excessive, in the view of children, or inside a vehicle.

§ 3.33 Alertness

All Cold Mountain Penitentiary personnel must always be alert and awake during the entirety of their shifts. This includes during any lunch breaks, smoke breaks, or during "down-time" in the shift. Employees spending their lunch breaks inside the prison are permitted to spend their breaks as desired, as long as they do not fall asleep and remain reasonably able to respond to the emergency siren. This ensures the safety of all officers and inmates.

§ 3.55 Attendance

Failure to appear for any scheduled shifts without approval from a supervisor will result in an absence recorded on the employee's personnel file. Two unapproved absences may result in termination and five unapproved absences must result in termination.

§ 3.64 Lunch Break

Lunch breaks shall not be compensated under any circumstances and must be no longer than one hour for each standard shift. A worker may choose when to take their lunch break after informing their supervisor.

§ 3.77 Exiting and Entering the Penitentiary

All Cold Mountain Penitentiary personnel must follow the security procedures upon entrance and exit to the facility. No exceptions will be made. Security procedures are not an excuse for tardiness, absent extraordinary delay in procedure. If Cold Mountain Penitentiary personnel exit the facility for lunch or other breaks, they must inform their supervisor.

PROCEDURAL HISTORY

On July 31st, 2023, Paul Edgecomb filed a Complaint with the U.S. District Court for the Northern District of Wagner against Cold Mountain Penitentiary, asserting four claims: (1) a claim under Title VII of the Civil Rights Act of 1964 ("Title VII") for failure to provide a reasonable accommodation for his religious practice; (2) a claim under the Fair Labor Standards Act ("FLSA") for failure to compensate him for work performed during meal periods; (3) a claim under the Family and Medical Leave Act ("FMLA") for interfering with his ability to take FMLA leave; and (4) a claim under the FMLA for retaliating against him for exercising his rights under the FMLA.

After discovery was completed, Cold Mountain Penitentiary filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56, asserting that Cold Mountain reasonably accommodated Edgecomb's religion, that his meal breaks were not compensable under the FLSA, that his rights under the FMLA were not interfered with, and that he was not subjected to retaliation under the FMLA.

On September 4th, 2023, the District Court granted Cold Mountain Penitentiary's motion for summary judgment on all of Edgecomb's claims. The District Court found that although the accommodations offered by Cold Mountain did not eliminate the conflict, they still reasonably accommodated Edgecomb. The District Court also found that Edgecomb's meals were not compensable under the FLSA because, although he was not completely removed from his duties, Edgecomb was the primary beneficiary of his meal breaks. The District Court concluded that Edgecomb's rights under the FMLA were not interfered with since there was no "actual denial" of his rights under the FMLA. Finally, the District Court determined that Edgecomb could not meet the but-for causation standard required for retaliation under the FMLA. The District Court concluded that there was no genuine dispute as to any material fact and that Cold Mountain was entitled to judgment as a matter of law on all of Edgecomb's claims. As such, the court issued an order granting summary judgment in favor of Cold Mountain. Edgecomb timely filed a notice of appeal with the district clerk.

Edgecomb filed a timely appeal with the Court of Appeals for the Fourteenth Circuit on September 26th, 2023. For the reasons set forth below, we **AFFIRM** the decision of the District Court.

DISCUSSION

As an appellate court, we "review orders granting summary judgment *de novo*, assessing whether the district court properly concluded that there was no genuine issue of material fact and that the moving party was entitled to judgment as a matter of law." *Donnelly v. Greenburgh Cent. Sch. Dist. No. 7*, 691 F.3d 134, 141 (2d Cir. 2012).

I. RELIGIOUS ACCOMMODATIONS UNDER TITLE VII.

Title VII of the Civil Rights Act of 1964 requires that employers reasonably accommodate the sincerely held religious beliefs of employees, so long as the accommodation does not cause the employer an undue hardship on the conduct of the employer's business. *See* 42 U.S.C. § 2000e(j). A plaintiff bringing suit for an employer's failure to reasonably accommodate an employee's sincerely held religious beliefs must establish a *prima facie* showing that: "(1) he holds a sincere religious belief that conflicts with an employment requirement; (2) he has informed the employer about the conflict; and (3) he was discharged or disciplined for failing to comply with the conflicting employment requirement." *Smith v. Pyro Min. Co.*, 827 F.2d 1081, 1085 (6th Cir. 1987). After the plaintiff has established a *prima facie* case, "the burden shifts to the employer to show that it made a reasonable accommodation of the religious practice *or* show that any accommodation would result in undue hardship." *Sanchez-Rodriguez v. AT & T Mobility Puerto Rico, Inc.*, 673 F.3d 1, 12 (1st Cir. 2012) (emphasis in original) (citation omitted).

If the employer proves that a reasonable accommodation was provided to the employee, the judicial inquiry ends and there is no need for the employer to establish that any suggested accommodation would constitute an undue hardship. *Smith*, 827 F.2d at 1085. On the other hand, if the employer did not reasonably accommodate the employee's sincerely held religious belief, it is incumbent on the employer to provide the requested accommodation that would result in an undue hardship on the employer's business. *Id.*

The parties do not dispute that Edgecomb has established a *prima facie* showing. However, Cold Mountain contends that they provided Edgecomb with several reasonable accommodations and therefore did not violate Title VII.

A. *Religious Accommodation Standard Under Title VII.*

This Court adopts the standard shared by our sister circuit courts—the Fourth, Eighth, and Tenth Circuits—which do not require that the reasonable accommodation offered by the employer eliminate the conflict between the employee's religious belief and the employer's workplace requirement or expectation, only that the religious accommodation be reasonable. *See E.E.O.C. v. Firestone Fibers & Textiles Co.*, 515 F.3d 307 (4th Cir. 2008); *see also Sturgill v. United Parcel Serv., Inc.*, 512 F.3d 1024 (8th Cir. 2008), *Tabura v. Kellogg USA*, 880 F.3d 544 (10th Cir. 2018).

The dissent asserts that the standard adopted is wrong and antithetical to the purpose of Title VII. However, the Supreme Court's decisions in *Groff v. DeJoy*, 600 U.S. 447 (2023) and

Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60 (1986) support our assertion that an accommodation must only be reasonable; the accommodation does not need to eliminate the conflict between the religious practice and job requirement in its entirety. The Supreme Court relied on legislative history and found that reasonable accommodations are to be made with flexibility and bilateral cooperation between the employer and employee. *Ansonia*, 479 U.S. at 69. In *Ansonia*, the Supreme Court rejected the assertion that an employer needs to accept an employee's preferred reasonable accommodation unless undue burden is shown, arguing that such a rule would give an incentive to the employee to hold out for their preferred accommodation after an employer has already offered a reasonable one. *Id.* As the Eighth Circuit explained:

> "[b]ilateral cooperation under Title VII requires employers to make serious efforts to accommodate a conflict between work demands and an employee's sincere religious beliefs. But it 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."

Sturgill, 512 F.3d at 1033. This Court would run the risk of undermining that collaborative process by placing the onus of accommodation solely on the employer.

Statutory analysis also supports our interpretation of Title VII. The inclusion of the word "reasonably" is a modifier of the word "accommodate." *Firestone Fibers*, 515 F.3d at 313. Congress could have required employers to provide complete accommodation absent undue hardship by using the term "total" accommodation, but they did not. *Id.* Congress could also have left out any qualifying adjective. *Id.* By including the term "reasonably," Congress expressed that an employer must only be required to "reasonably accommodate," rather than *completely* accommodate, absent undue hardship. *Id.* In short, an employer is not required to "unreasonably" accommodate an employee's religious practices.

The dissent misinterprets the recent Supreme Court opinion in *Groff v. DeJoy*, 600 U.S. 447 (2023). The dissent relies excessively on the following from *Groff*: "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." *Groff*, 600 U.S. at 473. However, in *Groff*, a carrier with the United States Postal Service ("USPS") sought an accommodation for his religious observance on Sundays. *Id.* at 454. On appeal in *Groff*, the Third Circuit applied a reading of *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977) that defined an undue hardship as a "more than . . . de minimis cost" to the employer. *Groff*, 600 U.S. at 473. The Third Circuit felt bound by that reading and held that the USPS met its burden to show that the accommodations sought would be an undue hardship. *Id.* at 456.

The Supreme Court rejected the Third Circuit's reading of "undue hardship" explaining that the "more than . . . de minimis" language in *Hardison* was never intended to be read literally, and instead undue hardship would be understood as meaning 'substantial' as referred to in

Hardison. *Id.* at 467. The Court explained that this misapprehension by the lower courts has led to other misapplications of Title VII analysis. *Id.* at 471–72. The Third Circuit's misapplication of *Hardison* may have led the court to not consider other possible accommodations, such as incentivizing other workers to take the shifts with higher pay or securing a larger pool of employees available to cover shifts. *Id.* at 473. "Faced with an accommodation request like Groff's, it would not be enough for an employer to conclude that forcing other employees to work overtime would constitute an undue hardship. Consideration of other options, such as voluntary shift swapping, would also be necessary." *Id.* This court is not making a distinction between "an employer reasonably accommodating an employee's religious practice" and "an accommodation merely being reasonable" as the dissent contends, but rather explaining that courts should consider all reasonable accommodations and not dismiss them preemptively based on the erroneous belief that they would be a nontrivial cost.

The world is complicated, and religion often conflicts with secular market forces. *Firestone Fibers*, 515 F.3d at 313. Therefore, the statute's use of the word "reasonably" is intended to be flexible to balance the interests of employees and employers alike. *Id.*

B. *Totality of the Circumstances Standard.*

A reasonable accommodation is determined by the totality of the circumstances and does not require elimination of the specific conflict. *Sturgill v. United Parcel Serv., Inc.*, 512 F.3d 1024, 1030 (8th Cir. 2008). Accommodations should not be analyzed in isolation, because they are not offered in isolation and therefore must be analyzed together. *Sanchez-Rodriguez v. AT & T Mobility Puerto Rico, Inc.*, 673 F.3d 1, 13 (1st Cir. 2012). Religious accommodations under Title VII include, but are not limited to, agreeing to approve any schedule changes, offering a comparable position, and refraining from disciplinary action when the employee fails to appear for scheduled shifts that conflict with their religious views. *Id.* Providing a forum for the employee to post their shifts where other employees can see the post and choose to cover the shift can also be a reasonable accommodation. *See Morrissette-Brown v. Mobile Infirmary Med. Ctr.*, 506 F.3d 1317, 1322–23 (11th Cir. 2007).

Cold Mountain accommodated Edgecomb by preemptively agreeing to any shift switch between Edgecomb and other employees. Cold Mountain even provided a way for Edgecomb to find coworkers to switch shifts with him—a method which did not require him to ask his coworkers directly to cover his Saturday shifts. Cold Mountain was cognizant of Edgecomb's religious practices by reducing the chance that Edgecomb would be put in the position of asking his coworkers to commit sins for him. The employee portal is used by all employees to submit their timesheets; therefore, they had the ability to easily see and take Edgecomb's Saturday shifts. Additionally, Edgecomb was offered an alternate position with comparable pay at the Green Mile. Even though the potential ceiling for yearly income is higher for Edgecomb's original position at the prison, that potential higher income is not guaranteed, especially considering Edgecomb's record of absenteeism and tardiness. Also, despite Cold Mountain's policy allowing termination

of employment due to absenteeism after only a second unauthorized absence, management chose not to pursue any disciplinary action against Edgecomb at that time.

Therefore, we affirm the decision of the District Court and hold that the accommodations Cold Mountain offered Edgecomb were reasonable given the totality of the circumstances.

II. COMPENSABLE MEAL BREAKS UNDER THE FLSA.

The federal courts have categorically rejected the Department of Labor's ("DOL") bright-line rule that, under the Fair Labor Standards Act ("FLSA"), for an employee to be entitled to compensation for their meal period, the employee must be completely removed from their job duties. *Babcock v. Butler Cnty.*, 806 F.3d 153, 156 (3d Cir. 2015). The courts have instead opted to adopt the predominant benefits test which states a court must determine whether the employee or the employer received the predominant benefit of the meal period. *Id.* This is a fact-specific inquiry that requires the court to look at the totality of the circumstances. *Id.* The "predominant benefits" test is a flexible, realistic standard. *Roy v. Cnty. of Lexington, S.C.*, 141 F.3d 533, 545 (4th Cir. 1998). This court will follow the decisions of our sister circuit courts and adopt the predominant benefits test.

Supreme Court precedent also supports the predominant benefits test as the Court has applied a fact-specific inquiry in determining whether idle time could constitute working hours under the FLSA. In *Armour & Co. v. Wantock*, the employees were private firefighters tasked with protecting the employer's factory. *Armour & Co. v. Wantock*, 323 U.S. 126, 127 (1944). During regular work hours, the firefighters were expected to clean, inspect, and maintain their equipment. *Id.* However, after clocking out, the firefighters were required to remain on call and be prepared to act in the event of an emergency. *Id.* The Court addressed the question of whether time spent waiting to act could constitute work under the FLSA and determined that idle time can be a form of work depending on "[w]hether time is spent *predominantly* for the employer's *benefit* or for the employee's is a question *dependent upon all the circumstances of the case*." *Id.* at 133 (emphasis added).

In *Skidmore v. Swift & Co.*, the Supreme Court relied on *Armour* and reaffirmed the need for a flexible analysis, stating that the Court may not "lay down a legal formula to resolve cases so varied in their facts as are the many situations in which employment involves waiting time." *Skidmore v. Swift & Co.*, 323 U.S. 134, 136 (1944). The same rationale applies to compensable meal periods. The facts of these cases vary significantly and the predominant benefits test is a flexible standard that allows courts to make fair and reasoned determinations.

Edgecomb had significant freedom to spend his lunch break as he pleased. Edgecomb was able to go to the nearby town and enjoy his break outside of the prison. Additionally, Edgecomb could have chosen to stay in his car in the parking lot to enjoy his lunch period undisturbed. Edgecomb was required to go through a security process to exit and reenter the prison, which used up a nontrivial amount of his lunch hour. However, the security process benefits Edgecomb as well

as Cold Mountain since the process keeps Edgecomb safe. The security process prevents correctional officers from bringing in contraband from the outside that could risk the officer's safety, especially if it were to fall into the hands of an inmate. Furthermore, although Edgecomb was required to remain in uniform, Edgecomb was only limited by a fair code of conduct while in the uniform. Edgecomb was still allowed to consume alcohol and smoke while on his breaks, given some basic, common-sense restrictions.

To the extent Edgecomb's lunch periods were interrupted, it was not significant enough to be compensable. Edgecomb was never seriously reprimanded for failing to briefly cover another employee. Although Edgecomb was told he was not "a team player," Cold Mountain management never told Edgecomb he was required to cover coworkers during his break. There is nothing in the employee handbook to suggest that declining a coworker's request for assistance is misconduct that would result in discipline.

While the emergency sirens' interruptions are more significant intrusions, those interruptions are highly infrequent. Indeed, only four times during Edgecomb's tenure did the emergency sirens ever get used. In one of those instances, Edgecomb did not respond, continued his meal period without interruption, and was not reprimanded or disciplined.

Therefore, we affirm the decision of the District Court and hold that Edgecomb's lunch breaks were not compensable under the FLSA.

III. FMLA INTERFERENCE CLAIM.

The FMLA provides that "[i]t shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this subchapter." 29 U.S.C. § 2615(a)(1). The term "interfere" is not defined by the FMLA. We agree that interference with FMLA rights is only actionable if a plaintiff is "denied benefits to which he or she was entitled under the FMLA." *Ross v. Gilhuly*, 755 F.3d 185, 191–92 (3d Cir. 2014). Holding that employees can bring FMLA interference claims when they receive all of the leave they request is inconsistent with the FMLA's purpose of "balanc[ing] the demands of the workplace with the needs of families." 29 U.S.C. § 2601(b)(1). In this case, Edgecomb was eligible for FMLA leave, he was granted such leave and he used the full twelve weeks permitted under the FMLA. Thus, there was no way Cold Mountain could have interfered with his rights under the FMLA.

To establish an FMLA interference claim, "an employee must show that: (1) [he] was eligible for the FMLA's protections; (2) [his] employer was covered by the FMLA; (3) [he] was entitled to take leave under the FMLA; (4) [he] provided sufficient notice of [his] intent to take leave; and (5) [his] employer denied [him] FMLA benefits to which [he] was entitled." *Goelzer v. Sheboygan Cty., Wis.*, 604 F.3d 987, 993 (7th Cir. 2010). In addition to this standard for demonstrating a *prima facie* claim of FMLA interference, the plaintiff must also show "prejudice" to be awarded relief under the FMLA. Prejudice is typically demonstrated by showing any actual economic harm resulting from a violation of the statute. 29 U.S.C. § 2617(a); *Lutes v. United*

Trailers, Inc., 950 F.3d at 368 (7th. Cir. 2020) (citing *Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81, 89 (2002) (explaining that the FMLA "provides no relief unless the employee has been prejudiced by the violation")). The plaintiff need only demonstrate that he took leave under the FMLA to establish the first four elements. *Goelzer*, 604 F. 3d at 993 (holding that the first four elements of an FMLA interference claim are not in dispute if plaintiff alleges he took FMLA leave).

Here, Edgecomb admittedly took FMLA leave for twelve weeks in 2023. Edgecomb formally applied for FMLA leave and was granted the maximum amount of leave to which he was entitled under the law. He was not prejudiced since he used all twelve weeks of FMLA leave and returned to the same position with equal pay and benefits at the conclusion of his leave. Edgecomb was never denied a benefit, and thus he is unable to succeed on an FMLA interference claim.

This court concludes that claimants asserting FMLA interference claims under § 2615(a)(1) must show an "actual denial" of benefits in addition to showing monetary harm. We are not alone in our interpretation. Most circuit courts hold that plaintiffs must "show … that [they were] entitled to a benefit that was denied by [their] employer." *Ramos v. Delphi Behav. Health Grp., LLC*, No. 21-11218, 2022 U.S. App. LEXIS 12021, at *7 (11th Cir. May 4, 2022); *see Callison v. City of Philadelphia*, 430 F.3d 117, 120 (3d Cir. 2005) ("[FMLA interference claims are] only about whether the employer provided the employee with the entitlements guaranteed by the FMLA."; *see also Graziadio v. Culinary Inst. of Am.*, 817 F.3d 415, 424 (2d Cir. 2016) (requiring FMLA interference plaintiff to show "that [he was] denied benefits to which [he was] entitled under the FMLA").

Notwithstanding the majority position that an actual denial of benefits is required to prevail on an FMLA interference claim, the Seventh Circuit recently held that mere discouragement from the use of FMLA leave can constitute interference under § 2615(a)(1), even if an employee is granted all the leave they request. *Ziccarelli v. Dart*, 35 F.4th 1079, 1086 (7th Cir. 2022). We decline to follow *Ziccarelli*, since it incorrectly stated the prior holdings of that court to suggest that Seventh Circuit precedent "use[s] varying language that has led to some confusion." *Id.* at 1085 (discussing *Lutes v. United Trailers, Inc.*, 950 F.3d 359 (7th Cir. 2020); *Preddie v. Bartholomew Consol. Sch. Corp.*, 799 F.3d 806 (7th Cir. 2015)).

The Seventh Circuit's prior precedent could not be more clear. In line with a majority of courts, *Lutes* held that FMLA interference plaintiffs must show that "[their] employer denied . . . FMLA benefits to which [they are] entitled." *Lutes*, 950 F.3d at 362. In *Preddie*, the Court stated that an FMLA interference plaintiff must show his "employer denied [or interfered with] . . . FMLA benefits to which he was entitled." *Preddie*, 799 F.3d at 816. The *Preddie* court was the first court to include "[or interfered with]" as the fifth element of an FMLA interference claim, and it does so with no explanation. *Id.* The *Ziccarelli* decision excluded these brackets in its citation of *Preddie*, misleading the reader into believing that multiple courts use this language. *Ziccarelli*, 35 F.4th at 1084. Notably, both the plaintiffs in *Preddie* and in *Lutes* never formally applied for

FMLA leave, and thus were never denied any benefits. *Lutes*, 950 F.3d at 367, *Preddie*, 799 F. 3d at 818.

The *Preddie* court's reasoning stems from its improper reliance on non-binding DOL regulations. *Preddie*, 799 F.3d at 818. The court examined 29 C.F.R. § 825.220(c), specifically relying on the statement that "employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions." *Ziccarelli*, 35 F.4th at 1086. *Preddie*'s reliance on this regulation is improper. Not only did the court fail to analyze the legal relevance of this regulation under the Supreme Court's decision in *Chevron, U.S.A. Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984), but the court also failed to recognize that 29 C.F.R. § 825.220(c) refers to FMLA retaliation under § 2615(a)(2), a different subsection of the FMLA from the interference prohibition in § 2615(a)(1). *Preddie*, 799 F.3d at 818.

Ziccarelli was correct in its determination that "*Chevron* deference does not apply" to 29 C.F.R. § 825.220(c) since "[s]ection 2615(a)(1) is not ambiguous about whether denial is required to show a violation." *Ziccarelli,* 35 F.4th at 1085. The statute unambiguously requires a denial of benefits. Even after acknowledging that *Chevron* deference does not apply, *Ziccarelli* improperly holds that the DOL regulation should still be considered persuasive. *Id.* at 1087. Further, the *Ziccarelli* court mischaracterizes the current state of the law by stating "there is no genuine intra- or inter-circuit split on whether denial is essential." *Id.* While rare cases in the Seventh Circuit may employ the negative factor standard, other courts routinely dismiss FMLA interference claims brought by plaintiffs who were never actually denied benefits. *See Massey-Diez v. Univ. of Iowa Cmty. Med. Svcs.*, 826 F.3d 1149, 1158–60 (8th Cir. 2016); *see also Fu v. Cons. Edison Co. of New York, Inc.*, 855 F. App'x 787, 791 (2d Cir. 2021) (per curiam), *D'Ambrosio v. Crest Haven Nursing & Rehab. Ctr.*, 755 F. App'x 147, 154 (3d Cir. 2018). The Eleventh Circuit considers such claims legally frivolous. *Norman v. H. Lee Moffitt Cancer Ctr. & Rsch. Inst.*, No. 21-12095-D, 2021 U.S. App. LEXIS 34734, at *3 (11th Cir. Nov. 22, 2021) (Newsom, J. in chambers). By ignoring the mountains of precedent requiring "actual denial" and mischaracterizing the current state of the law, the *Ziccarelli* court makes it clear they impose their own policy preferences onto the FMLA.

The purpose of the FMLA cannot be satisfied if employers are held liable when they grant all the leave requested by their employees and do not deny the employee any benefits promised by the FMLA. We refuse to side with the minority of courts which hold that employees may sue their employer when they receive the full amount of leave requested under the FMLA,[1] when they

[1] *See McFadden v. Ballard Spahr Andrews & Ingersoll, LLP*, 611 F.3d 1, 6 (D.C. Cir. 2010).

receive more than the maximum amount of leave prescribed by the FMLA,[2] or for employees who are ineligible for FMLA leave.[3]

Therefore, we affirm the decision of the District Court and hold that Cold Mountain did not interfere with Edgecomb's FMLA protections because he was never denied any benefits.

IV. FMLA RETALIATION CLAIM.

In addition to prohibiting employers from interfering with an employee's FMLA rights, the FMLA prohibits employers from retaliating against employees for exercising their FMLA rights. *See* 29 U.S.C. § 2615(a)(2).

Courts analyze FMLA retaliation claims under the burden-shifting framework established by *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *See Laing v. Fed. Express Corp.*, 703 F.3d 713, 717 (4th Cir. 2013). "The *McDonnell Douglas* framework requires the plaintiff first to establish a prima facie case of FMLA retaliation by proving three elements: '(1) [the plaintiff] engaged in a protected activity; (2) [his] employer took an adverse employment action against [him]; and (3) there was a causal link between the two events.'" *Fry v. Rand*, 964 F.3d 239, 244–45 (4th Cir. 2020) (citing *Hannah P. v. Coats*, 916 F.3d 327, 347 (4th Cir. 2019)). If a claimant satisfies their burden of proving a *prima facie* claim of retaliation, the burden then shifts to the employer to produce a "legitimate, nonretaliatory reason for taking the employment action at issue." *Hannah P.*, 916 F.3d at 347. If the employer meets its burden of proof, the burden then shifts back to the claimant, who bears the ultimate burden of proving that they were subjected to retaliation *vel non*. *Fry*, 964 F.3d at 245 (citations omitted).

While Edgecomb may be able to establish a *prima facie* claim of retaliation under this framework, Cold Mountain has satisfied its burden of articulating legitimate, nonretaliatory reasons for firing Edgecomb, having terminated him for clearly documented performance and attendance reasons. The question here is what standard of proof Edgecomb must satisfy and whether he satisfies that standard.

Under the *McDonnell Douglas* framework, the plaintiff bears the "ultimate burden of persuading the court that [he] has been the victim of intentional retaliation." *Foster v. University of Maryland-Eastern Shore*, 787 F.3d 243, 252 (4th Cir. 2015). To meet this burden, Edgecomb must "establish both that the employer's reason was false and that [retaliation] was the real reason for the challenged conduct." *Id.* To establish that retaliation was the "real reason" he was fired requires Edgecomb to show that he would not have been terminated but-for his employer's retaliatory animus. *Fry*, 964 F.3d at 246.

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[2] *See Adams v. Anne Arundel Cnty. Pub. Sch.*, 789 F.3d 422, 427 (4th Cir. 2015) (analyzing an FMLA interference claim for an employee who was granted more than twelve weeks of FMLA leave).

[3] *See Duckworth v. Pratt & Whitney, Inc.*, 152 F.3d 1, 9 (1st Cir. 1998) (holding that an employee who is not currently eligible for FMLA leave can bring an FMLA interference claim).

We agree that but-for causation is the appropriate standard of proof regarding an FMLA retaliation claim. In *Univ. of Tx. Sw. Med. Ctr. v. Nassar*, the Supreme Court held that "Title VII retaliation claims require proof that the desire to retaliate was the but-for cause of the challenged employment action." *Univ. of Tx. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 352 (2013); *see also Gross v. FBL Fin. Sys., Inc.*, 557 U.S. 167 (2009) (holding that but-for causation is the appropriate standard of proof in age discrimination claims under the Age Discrimination in Employment Act ("ADEA")). Although Title VII and the ADEA are different from the FMLA, Congress made clear that the FMLA's retaliation provision "is derived from Title VII of the Civil Rights Act of 1964 and is intended to be construed in the same manner." S. REP. NO. 103-3, at 34 (1993), reprinted in 1993 U.S.C.C.A.N. 3, 36. Since the text of § 2615(a)(2) is largely silent on which causation standard applies, we can reasonably conclude that Congress intended to import the same but-for causation standard from Title VII, on which § 2615(a)(2) is based.

Noting that determining the "true reasons for an adverse employment decision is often a hard business," the Supreme Court recently provided clarity on the but-for standard of causation. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1744 (2020). This standard "directs us to change one thing at a time and see if the outcome changes. If it does, we have found a but-for cause." *Id.* at 1739.

Applying the but-for causation standard, and undertaking the analysis suggested by *Bostock* when applying that standard, reveals that Edgecomb has failed to satisfy his burden of proof. The evidence that Edgecomb has presented fails to prove that his utilization of FMLA leave was the but-for cause of Cold Mountain's decision to terminate him. Cold Mountain demonstrated that it terminated Edgecomb for performance and attendance reasons, and the record shows that these deficiencies existed both before and after he took FMLA leave. Edgecomb's employee record highlights several lawful reasons for his termination. He missed multiple shifts in clear violation of Cold Mountain's attendance policy, which states that two unexcused absences may result in termination. Also, he was previously written up for being late, for misplacing prison documents, and for not being a cooperative colleague. Evidence that performance issues are extensively documented prior to taking FMLA leave is relevant in holding that an employer did not have "retaliatory animus." *Fry*, 964 F.3d at 246. Edgecomb was eventually terminated after showing up late to another shift, three weeks after he took his FMLA leave. The record clearly shows that Edgecomb was *en route* to being terminated, regardless of his use of FMLA leave.

The outcome here would not change if Edgecomb decided to forgo his FMLA leave. His record still would have displayed his poor work performance, and he would have been fired after showing up late. Edgecomb's claims that his employer treated him differently after taking FMLA leave do not meet the but-for standard of proof required under the *McDonnell Douglas* framework.

Therefore, we affirm the decision of the District Court and hold that Edgecomb cannot prevail on an FMLA retaliation claim under § 2615(a)(2).

SCAVONE, *Circuit Judge*, dissenting:

Today the majority has adopted a variety of anti-worker legal frameworks that run afoul of Title VII, the FLSA, and the FMLA. The majority opinion allows an employer to require an employee to violate his religious convictions, to require the employee to work for free while on break, and to discourage the employee from using the benefits he is entitled to use.

I. RELIGIOUS ACCOMMODATION UNDER TITLE VII.

A. *Conflict Elimination in Religious Accommodations.*

Today's majority opinion stands for a principle that is facially and substantively absurd: a reasonable accommodation need not actually accommodate. Imagine if a court were to say that, under the American with Disabilities Act ("ADA"), an employer reasonably accommodated an employee dependent on a wheelchair by building half a ramp? Or, for a hearing-impaired employee, the employer agreed to provide the employee with an ASL interpreter who is only present half of the time? No respectable court would say that these are reasonable accommodations in the ADA context, and no respectable court should say so in the Title VII religious accommodation context. Unfortunately, that is the feat that today's majority has achieved.

The phrase "reasonable accommodation" is not defined in Title VII. *Morrissette-Brown v. Mobile Infirmary Med. Ctr.*, 506 F.3d 1317, 1321 (11th Cir. 2007). However, we need not look further than the Supreme Court to find the definition. In passing Title VII, Congress was understandably motivated to provide religious Americans the ability to observe their religious practices. *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 70 (1986). The Court found the employer provided a reasonable accommodation under Title VII because the accommodation "*eliminate[d] 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." *Id.* at 70 (emphasis added).

Although the Supreme Court in *Groff* was analyzing what the term "undue hardship" means within Title VII, the Supreme Court addressed the question of what constitutes a "reasonable accommodation" indirectly, stating 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." *Groff*, 600 U.S. at 473. The Court therefore makes a distinction between an employer reasonably accommodating an employee's religious practice and a particular accommodation or an accommodation merely being reasonable. The Court is stating that those two things are not the same, which is what the standard adopted by the majority assumes.

The "eliminate the conflict" standard is consistent with the ordinary meaning of the word "accommodate" which is "to furnish with something desired, needed or suited"; "to bring into

agreement or accord." *Groff v. DeJoy*, 35 F.4th 162, 169–70 (3d. Cir. 2022), *vacated*, 600 U.S. 447 (quoting *Accommodate*, Webster's Third New International Dictionary 12 (3d ed. 1993)).

The requirement that a religious accommodation under Title VII needs to eliminate the conflict is a principle adopted by several of our sister courts. *See Morrissette-Brown v. Mobile Infirmary Med. Ctr.*, 506 F.3d 1317 (11th Cir. 2007); *Baker v. Home Depot*, 445 F.3d 541 (2d Cir. 2006); *E.E.O.C. v. Ilona of Hungary, Inc.*, 108 F.3d 1569 (7th Cir. 1997). This court should follow the lead of these courts for the reasons set forth in their well-reasoned opinions.

Therefore, the correct interpretation of Title VII's religious accommodation requirement is that any such accommodation must eliminate the conflict between the employee's religious practice and that person's work for the employer.

B. *Application of the Correct Standard.*

An employee's loss of a benefit available to other employees (such as vacation time) who do not share the same religious beliefs is evidence that a reasonable accommodation has not been provided and evinces a Title VII violation. *See Cooper v. Oak Rubber Co.*, 15 F.3d 1375 (6th Cir. 1994). When a religious employee is expected to commit an act contrary to their religious views in order to be accommodated, that is similarly evidence that the employee has not been accommodated and that a Title VII violation has occurred. *See Smith v. Pyro Min. Co.*, 827 F.2d 1081 (6th Cir. 1987).

The majority failed to share some important context that shows just how unreasonable Cold Mountain Penitentiary's so-called accommodations were in this case. Although Edgecomb's supervisors said that they would approve any shift switches that Edgecomb could find, that would put Edgecomb in a position where he would have to violate his religious views and commit a sin by asking another person to work his Saturday shifts. Additionally, Cold Mountain telling Edgecomb he could use his vacation days to cover the days he cannot work because of his religious beliefs runs afoul of the entire purpose of Title VII, which is to provide additional protection to religious Americans and to accommodate their religious beliefs in the workplace.

Furthermore, the "comparable" position offered to Edgecomb is anything but. The position in the Green Mile is not comparable because the opportunity to work overtime and to earn holiday pay would be eliminated. Although that pay is not guaranteed in Edgecomb's original position, completely eliminating that earning opportunity by forcing Edgecomb to switch positions is, in effect, a pay cut and is not a reasonable accommodation under Title VII. Additionally, the job at the Green Mile is more demanding and dangerous, thus putting Edgecomb's safety and mental health at risk. It is not reasonable to expect Edgecomb to accept a lower quality of life and inferior working conditions as a reasonable religious accommodation under Title VII.

This court should have reversed the District Court's award of summary judgment to Cold Mountain, and remanded the issue of whether Cold Mountain provided Edgecomb with a reasonable accommodation for his religious practices for a jury trial.

II. COMPENSABLE MEALS UNDER THE FAIR LABOR STANDARDS ACT.

This Court should adopt the "completely relieved of duties" standard for compensable meals because that would be fully consonant with the purposes and requirements of the FLSA.

The "completely relieved from duties" standard announced by the DOL requires that an employee "must be completely relieved from duty for the purposes of eating regular meals. . . . The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating." 29 C.F.R. § 785.19. This Court should adopt the "completely relieved from duties" test as it is more consistent with the goals of the FLSA and to combat wage theft, both intentional and negligent.

"For far too long, circuits relied on [the predominant benefits test], that is nowhere to be found in any of the rules or regulations that are issued by the Wage and Hour Division." James D. LeVault, *Wage Theft: Pilfering Paychecks, One Lunch at A Time*, 38 N. Ill. U. L. Rev. 165, 190 (2017). There would no longer be any confusion between employees and employers as to when meal breaks are compensable under a bright line test. *Id.* It would make enforcement of the FLSA easier; indeed, treating 29 C.F.R. § 785.19 as non-binding would allow an employer that is aware of the law to know what they can get away with. *Id.*

Additionally, there is a tremendous public policy concern regarding wage theft. More than 1.3 million workers required assistance from the DOL's Wage and Hour Division over five years to recover more than $1.2 billion in back wages in that same time frame. *Id.* at 191. Although that is partly due to employer greed, "the vast majority is simply because employers and employees alike are unsure how to navigate the treacherous waters that exist because of the lack of clarity in what regulations to follow and what regulations not to follow." *Id.* The bright line "completely relieved of duties" test makes clear when meals are compensable, would safeguard employee's wages, and would even provide protection to employers from big class action lawsuits. *Id.*

There is an undeniable absurdity to the predominant benefits test. Under that test, a meal would not be compensable at all even where the employer incurs 49% of the benefit and the employee only obtains 51% of the benefit of that time. The predominant benefits test incentivizes employers to play by The Price is Right rules: try to get as close to the price as possible without going over. Under this test, an employer can attempt to give the employee as much work and responsibility as possible during their meal period without obtaining the predominant benefit of that meal period. This is clearly not what is meant by a meal period.

In this case, Edgecomb was never completely relieved of his duties since he was expected to respond to emergency sirens, was constantly interrupted by coworkers which led to a verbal

reprimand by management, and was subjected to relentless bombardment by the CCTV monitors in the Cold Mountain communal room.

Even under the predominant benefits test, an employee is not entitled to a compensated meal under the FLSA if the employee can enjoy mealtime adequately and comfortably and not engage in the performance of any substantial duties for the employer's benefit. *Ruffin v. MotorCity Casino*, 775 F.3d 807, 811 (6th Cir. 2015). An officer's lunch break may still be predominantly for the benefit of the employer where an officer is still expected to respond to emergencies, must end their meal break in the event of an emergency, must respond to calls for assistance from the public, must remain in uniform, must refrain from any conduct deemed inappropriate for an officer, and must follow significant limitations on where he can go and what he can do while on break. *See Alexander v. City of Chicago*, 994 F.2d 333 (7th Cir. 1993). Additionally, an employee being restricted by the employer to remain on site for the purpose of providing security is, in effect, providing free labor for the employer. *Reich v. Southern New England Telecommunications Corp.*, 121 F.3d 58, 65–6 (2d Cir. 1997).

Under the predominant benefits test, it seems clear that Cold Mountain received most of the benefit of Edgecomb's lunch breaks. Edgecomb was constantly interrupted. Given the nature of the interruption, it is absurd to say that he was able to enjoy his mealtime adequately and comfortably. If Edgecomb was in the prison during his mealtime, he was pestered by coworkers to briefly cover for them. Although he was not fired for declining to cover for them, he was verbally reprimanded by management. He was expected to respond to the emergency sirens and even though these interruptions were infrequent, they were significant and would be for the total benefit of Cold Mountain. It is difficult for anyone to be comfortable during their lunch break if they have to always be ready to respond to a prison riot. That constant readiness would be for Cold Mountain's benefit. If Edgecomb went off site, he would have such little time outside to enjoy his meal, considering the barriers to exit and reenter the prison and the distance of the nearby town, that the ability to leave for such a brief sojourn is hardly worth mentioning. Similarly, sitting and eating a meal in a parked car can hardly be said to be a comfortable, adequate, or restful break from work.

Additionally, Cold Mountain requires not only that Edgecomb remain in uniform, but that he also spends his lunch like a Puritan while he's at it. While some of the limitations are common sense, and in fact necessary, such as a ban on catcalling, the other provisions are so overbroad as to hinder Edgecomb's ability to enjoy his lunch. If Edgecomb decides to go to a sports bar for lunch and yells because an umpire made a bad call during a Yankees game, has Edgecomb besmirched the good Cold Mountain name by "contemptuously yelling" that the umpire needs to get his eyes, head, and career choice examined? If Edgecomb wants to discuss politics with a coworker and takes the minority opinion on an issue, is his language "offensive?" These are just a few examples of the significant restraints on Edgecomb's choice of how to spend his lunch. These limitations benefit Cold Mountain—not Edgecomb.

The majority attempts to rely on the fact that the employee handbook allows employees to go off-site, thereby concluding that it is not the employer's mandate that keeps employees onsite. Instead, the majority suggests this result is due to the "nature of the work." However, the other provisions in the employee handbook, and the other facts regarding the geography, create a constructive requirement that employees must remain at Cold Mountain's worksite. The requirement that employees must go through significant safety protocols to re-enter the facility if they were to decide to go off-site for lunch is for the benefit of the employer, since it is the employer's concern that the prison not have any contraband or unauthorized personnel. The procedure to re-enter the facility, the 30-minute round trip drive to the nearest town, and the risk of being reprimanded if not punctually back inside the facility, in effect requires the employee to stay on site. It would be illogical to go off-site for a 10-minute lunch, which itself would not be an adequate or comfortable meal break predominantly benefiting the worker. Simply stated, the majority erred in its analysis by relying on the incorrect legal standard to examine Edgecomb's claim under the FLSA.

This court should have reversed the District Court's award of summary judgment to Cold Mountain, and remanded the issue of whether Edgecomb was entitled to compensation for his meal breaks for a jury trial.

III. EMPLOYER DISCOURAGEMENT AND FMLA INTERFERENCE CLAIMS.

The FMLA provides employers with job-protected leave from work for family and medical reasons. Protections are built into the FMLA to prohibit employers from interfering with an employee's leave or retaliating against them for using their leave. Discouraging an employee from using FMLA leave interferes with their rights under the act and must not be permitted. Holding otherwise sends a message to employers that it is acceptable to interfere with FMLA leave in any way they please, so long as their interference falls short of an actual denial of benefits.

A. *FMLA's Clear Statutory Language.*

In its holding that an actual denial of benefits is required for plaintiffs to succeed on an FMLA interference claim, the majority opinion ignores the plain text of 29 U.S.C. § 2615(a)(1). "The text of § 2615(a)(1) makes clear that a violation does not require actual denial of FMLA benefits." *Ziccarelli v. Dart*, 35 F.4th 1079, 1085 (7th Cir. 2022).

Since this case involves a matter of statutory interpretation, the "starting point" is the statutory language. *Ardestani v. INS*, 502 U.S. 129, 135 (1991). Section 2615(a)(1) states that "[i]t shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this subchapter." 29 U.S.C. § 2615(a)(1). Congress would not have used the disjunctive "or" in § 2615(a)(1) if it intended to treat "interfere," "restrain," and "deny" the same. *See Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1143 (2018) (holding that use of the term "or" in a statute is "almost always" disjunctive). Requiring an actual denial would turn "interfere with, restrain, or" into surplusage.

Additionally, § 2615(a)(1) protects "the attempt to exercise" FMLA rights. 29 U.S.C. § 2615(a)(1). This shows Congress intended to extend relief for employees who do not formally request or receive FMLA leave. *See Burnett v. LFW Inc.* 472 F.3d 471, 478 (7th Cir. 2006) ("[E]mployee[s] need not expressly mention the FMLA" in their leave request[s]"). The majority's lack of statutory analysis in their opinion is no coincidence. Conducting such an analysis leads to one possible conclusion: § 2615(a)(1) does not require plaintiffs to prove an actual denial of benefits under the FMLA. The FMLA is intended to accommodate the "legitimate interests of employers." 29 U.S.C. § 2601(b)(3). Allowing employers to discourage their employees from taking FMLA leave cannot be considered legitimate or lawful conduct under the FMLA.

B. *Similarly Worded Statutes Support Edgecomb's Position.*

Congress's intent for § 2615(a)(1) to apply to discouragement is further evidenced by the National Labor Relations Act ("NLRA"). Section 2615(a)(1) is very similar to 29 U.S.C. § 158(a)(1) (also known as section 8(a)(1) of the NLRA), both in its wording and in its function. "The similarity of language [between statutes] is, of course, a strong indication that the two statutes should be interpreted pari passu." *Northcross v. Bd. of Ed. of Memphis City Sch.*, 412 U.S. 427, 428 (1973).

Section 158(a)(1) states "[i]t shall be an unfair labor practice for an employer . . . to interfere with, restrain, or coerce employees in the exercise of [their] rights…." 29 U.S.C. § 158(a)(1). That provision, like § 2615(a)(1), defines actions employers are prohibited from taking against their employees. These provisions are not identical, but multiple courts note the similarities in their wording. Section 2615(a)(1) differs by prohibiting denial rather than coercion, and it adds additional protection for plaintiffs who "attempt to exercise" their rights.

At the time Congress enacted the FMLA, most circuits recognized that employer actions which had a reasonable tendency to interfere with employees' rights, regardless of whether they affirmatively did so, constituted interference under the NLRA. *Gordon v. United States Capitol Police*, 778 F.3d 158, 165 (D.C. Cir. 2015). When Congress incorporates sections of a prior law into a new law, Congress "can be presumed to have knowledge of the interpretation given to the incorporated law…." *Lorillard v. Pons*, 434 U.S. 575, 581 (1978). The judicial interpretations of § 158(a)(1) "provide a strong indication that FMLA interference claims do not require effective interference, but only employer conduct that reasonably tends to interfere with the exercise of FMLA rights." *Gordon*, 778 F.3d at 165.

C. *DOL's Regulations Support Edgecomb's Position.*

Although *Ziccarelli* considered the DOL regulations persuasive in its holding, the court erred by stating that § 2615(a)(1) is not ambiguous and, therefore, decided not to afford those regulations deference. *Ziccarelli*, 35 F.4th at 1085 (discussing *Chevron, U.S.A. Inc. v. NRDC, Inc.* 467 U.S. 837 (1984)).

To determine whether 29 C.F.R. § 825.220(c) is afforded deference under *Chevron*, we must answer two questions. "First, always, is the question whether Congress has directly spoken to the precise question at issue." *Chevron*, 467 U.S. at 842–43. "[B]ecause the term 'interfere with' is susceptible to multiple interpretations . . . Congress has not spoken on the 'precise question' before us." *Egan v. Del River Port Auth.*, 851 F.3d 263 (3d Cir. 2017) (citing *Chevron*, 467 U.S. 837). The second step requires us to determine if the relevant regulation "is based on a permissible construction of the statute." *Chevron*, 467 U.S. at 843.

Here, Congress already empowered the DOL to "prescribe such regulations as are necessary to carry out" the FMLA's purpose. 29 U.S.C. § 2107(a). Regulations created based on an express authorization "are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute." *Chevron*, 467 U.S. at 844. In this instance, 29 C.F.R. § 825.220(c) is consistent with the FMLA's purposes of "entitl[ing] employees to take reasonable leave for medical reasons" without interference. *Bachelder v. Am. W. Airlines, Inc.*, 259 F.3d 1112, 1119 (9th Cir. 2001). The majority opinion erred in failing to rely upon 29 C.F.R. § 825.220(c) and failing to afford that regulation deference under *Chevron* because it is an entirely permissible construction of 29 U.S.C. § 2615(a)(1). The DOL appropriately exercised the authority it was granted by Congress when enacting the FMLA.

Cold Mountain interfered with Edgecomb's FMLA rights by actively discouraging him from taking FMLA leave on multiple occasions. He was prejudiced because his employer's discouragement caused him to "structure[] his leave differently" and hire a caretaker. *Lupyan v. Corinthian Colleges, Inc.*, 761 F.3d 314, 323 (3d Cir. 2014). By holding that an actual denial is required for an individual to prevail on an FMLA interference claim, this court empowers employers to actively discourage, insult, and mislead their employees. Allowing such acts surely does not align with the purposes of the FMLA.

This court should have reversed the District Court's award of summary judgment to Cold Mountain, and remanded the issue of whether Cold Mountain interfered with Edgecomb's FMLA leave for a jury trial.

IV. FMLA RETALIATION CLAIM.

A. *FMLA Retaliation Claims do not Require But-For Causation.*

Congress chose clear, "because of" language in Title VII's anti-retaliation provision to signal that a plaintiff must satisfy but-for causation to succeed on their claim. *Univ. of Tx. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 361 (2013). The court distinguished Title VII's anti-retaliation provision from Title VII's anti-discrimination provision, which prohibits discrimination when a plaintiff "demonstrates that race, color, religion, sex, or national origin was a *motivating factor*, for any employment practice …." 42 U.S.C. § 2000e-2(m) (emphasis added).

The FMLA, unlike Title VII's provisions, does not provide a causation standard "and thus does not unambiguously require the use of 'but-for' causation." *Egan v. Del River Port Auth.*, 851 F.3d 263, 273 (3d Cir. 2017). Section 2615(a)(2) states: "It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this subchapter." 29 U.S.C. § 2615(a)(2). The statute is silent and ambiguous regarding which causation standard must apply for claims brought under this statute. It contains no "because of" language, nor any other indication that but-for is the standard which must be applied.

Moreover, the DOL regulations that interpret § 2615(a)(2) state that employers "cannot use the taking of FMLA leave as a negative factor in employment actions." 29 C.F.R. § 825.220(c). The phrase "negative factor" in this regulation closely resembles the words "motivating factor" used by Title VII's anti-discrimination provision, which has a lesser causation standard. 29 C.F.R. § 825.220(c). Since 29 C.F.R. § 825.220(c) is a perfectly reasonable interpretation of § 2615(a)(2), we can conclude that a negative factor standard is proper for FMLA retaliation claims.

To succeed on a retaliation claim under the FMLA, the plaintiff does not need to prove that "retaliation was the only reason for [his] termination; [he] may establish an FMLA retaliation claim by 'showing that the protected conduct was a substantial or motivating factor in the employer's decision.'" *Goelzer v. Sheboygan Cnty.*, 604 F.3d 987, 995 (7th Cir. 2010) (quoting *Culver v. Gorman & Co.*, F.3d 540, 545 (7th Cir. 2005)). Plaintiffs may present direct or indirect evidence to support their claim. Under the direct method, the plaintiff must present evidence that his employer took a materially adverse action against him because he took FMLA leave. *Phelan v. Cook County.*, 463 F.3d 773, 787 (7th Cir. 2006). Under the indirect method, the plaintiff must show that he was treated less favorably than other similarly situated employees who did not take FMLA leave, even though he performed his job in a satisfactory manner. *Hull v. Stoughton Trailers, LLC*, 445 F.3d 949, 951 (7th Cir. 2006).

Edgecomb does not present evidence of other similarly situated persons treated more favorably than himself, so he must proceed under the direct method. Thus, he must show that his use of FMLA leave was a motivating factor in Cold Mountain's decision to terminate him. "A motivating factor does not amount to a but-for factor or to the only factor, but is rather a factor that motivated the defendant's actions." *Spiegla v. Hull*, 371 F.3d 928, 942 (7th Cir. 2004).

Edgecomb may offer "direct evidence" or "circumstantial evidence" to prove his employer acted with discriminatory motives. *Rudin v. Lincoln Land Cmty. Coll.*, 420 F.3d 712, 720 (7th Cir. 2005). Direct evidence typically involves a statement by the decision maker which tends to show discriminatory intent. Circumstantial evidence allows us to infer discrimination "through a longer chain of inferences . . ." *Lewis v. City of Chicago*, 496 F.3d 645, 651 (7th Cir. 2007).

In *Lewis v. Sch. Dist. # 70*, the court considered circumstantial evidence relevant in holding that the defendant acted with discriminatory intent. *Lewis v. Sch. Dist. # 70*, 523 F.3d 730, 742

(7th Cir. 2008). In that case, the employer criticized the requirements of the FMLA, expressed disdain towards the plaintiff's request to take leave, and provided little explanation for her termination. *Id*. In *Goelzer*, the employer made derogatory comments regarding the plaintiff's FMLA use and expressed doubts regarding her reason for taking leave in the first place. *Goelzer*, 604 F.3d at 996.

Edgecomb has presented both direct and circumstantial evidence of a discriminatory motive by Cold Mountain. The circumstances surrounding Edgecomb's termination were suspect. Upon inquiring about his FMLA eligibility, his supervisor advised against him using FMLA leave, stating that Edgecomb would let Cold Mountain down. Weeks later, after formally applying for FMLA leave, his supervisor looked disappointed and once again discouraged him from taking the leave. Additionally, his colleagues displayed disapproval of his intention to use his leave.

These circumstances are analogous to the circumstances in both *Goelzer* and *Lewis v. Sch. Dist. # 70*. Coupled with the fact that Edgecomb was terminated less than a month after returning from leave, these inferences sufficiently create a question of fact about whether Cold Mountain's decision to terminate Edgecomb was motivated by his use of FMLA leave, thus precluding summary judgment. Edgecomb also presents direct evidence that his supervisor was "watching menacingly" as Edgecomb was told he was fired for absenteeism. *Sch. Dist. # 70*, 523 F.3d at 742 (holding that being terminated for absenteeism related to FMLA is direct evidence of discriminatory intent). Based on the foregoing, the District Court erred in granting Cold Mountain summary judgment and the matter should have proceeded to a jury trial.

B. *Edgecomb Still Meets the But-For Standard Outlined in* Bostock.

Even if the but-for causation standard applies to FMLA retaliation claims, Edgecomb is still entitled to a jury trial and entry of summary judgment for Cold Mountain was inappropriate.

The majority misinterprets the meaning of "but-for cause." The Supreme Court has repeatedly stated that but-for causation does not require discrimination to be "the" but-for cause, but rather "a" but-for cause. *See Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1744 (2020); *see also Burrage v. United States*, 134 S. Ct. 881, 888–89 (2014). Noting that but-for cause is "a sweeping standard," the Supreme Court explained that the law is triggered so long as discrimination was one but-for cause of the decision to terminate. *Bostock*, 140 S. Ct. at 1739. Defendants cannot avoid liability by merely citing some other factor or reason that contributed to their decision to terminate. "If the employer intentionally relies in part on [the protected activity] when deciding to discharge the employee . . . a statutory violation has occurred." *Id.* at 1748.

There is substantial evidence in the record to conclude that Cold Mountain, at least in part, relied on Edgecomb's use of FMLA when it decided to terminate him. Edgecomb's supervisor, Wilkes, actively discouraged him from taking leave and she, along with other colleagues, expressed disdain when he formally applied for FMLA leave.

The majority fails to acknowledge that often, "events have multiple but-for causes." *Id.* at 1739. Under the majority's interpretation, it is sufficient for employers to point to any plausible alternative cause of termination to avoid liability, even when an employer clearly engages in FMLA retaliation. This cannot be deemed to be within the FMLA's interest of balancing "the demands of the workplace with the needs of families." 29 U.S.C. § 2601(b)(1).

The entry of summary judgment in Cold Mountain's favor was in error. This decision should be reversed and remanded for trial by jury.

No. 55-2023

IN THE SUPREME COURT OF THE UNITED STATES

PAUL EDGECOMB,

Petitioner,

versus

COLD MOUNTAIN PENITENTIARY,

Respondent.

ORDER GRANTING PETITION OF CERTIORARI

The petition for a *writ of certiorari* is **GRANTED**. The parties are directed to address only the following questions:

1. Whether an employer must eliminate the conflict between an employee's religious practice and the essential job duties to satisfy the religious accommodation obligation under Title VII of the Civil Rights Act.
2. Whether Petitioner was entitled to compensation for meal breaks under the FLSA.
3. Under 29 U.S.C. § 2615(a)(1), whether discouragement from using FMLA leave is sufficient for an FMLA interference claim, or must the employee actually be denied leave or other benefits under the FMLA.
4. What is the appropriate causation standard for FMLA retaliation claims under 29 U.S.C. § 2615(a)(2)?