

CLIENT ALERT: Supreme Court Revives Job Applicant's Discrimination Claim Regarding Religious Headscarf

On June 1, 2015, the U.S. Supreme Court issued its decision in the case of *EEOC v. Abercrombie & Fitch Stores, Inc.* and definitively answered the question of whether an employer may be liable for religious discrimination under Title VII of the Civil Rights Act for its failure to accommodate a job applicant's religious practices, even if the employer does not have actual knowledge of the job applicant's need for accommodation.

Background

Job applicant Samantha Elauf went to an interview at the clothing store Abercrombie & Fitch wearing a traditional Muslim headscarf. Although she was qualified for the position, Elauf was not hired because the wearing of her headscarf violated the company's employee "Look Policy." According to the policy, all headwear, religious or otherwise, was prohibited. Abercrombie suspected that Elauf's headscarf was worn for religious purposes, but the company claimed that Elauf never told them she needed an accommodation.

The EEOC sued Abercrombie on Elauf's behalf, arguing that the failure to hire Elauf due to her headscarf was a violation of Title VII. The EEOC prevailed in the lower court, but the Tenth Circuit reversed, holding that an employer cannot generally be liable for failure to accommodate a religious practice until the applicant provides the employer with "actual knowledge" of the need for a religious accommodation. The Supreme Court granted certiorari.

Supreme Court Ruling

In an 8-1 decision, the Supreme Court reversed the Tenth Circuit's ruling in favor of Abercrombie and revived Elauf's religious discrimination claim.

Title VII prohibits an employer from failing or refusing to hire an individual **because of** such individual's religion unless the employer can demonstrate that it is unable to reasonably accommodate a religious observance or practice without "undue hardship." The question before the

Court was whether Title VII's prohibition applies only where an applicant has informed the employer of his need for an accommodation.

Abercrombie conceded that Elauf's headscarf qualified as a religious observance or practice and did not argue that accommodation would cause undue hardship. Instead, it argued that job applicants cannot show they were denied employment "because of" religion without first showing that the employer has "actual knowledge" of the applicant's religion or the need for an accommodation. In other words, Abercrombie argued, the burden of raising the religious conflict should be placed on the job applicant.

The Supreme Court disagreed. An applicant does not need to show that the employer had actual knowledge of the need for a religious accommodation. Rather, "an applicant need only show that his need for an accommodation was a ***motivating factor*** in the employer's decision." Because Abercrombie admittedly suspected a religious accommodation need was present, Elauf did not need to specifically inform Abercrombie of its religious meaning or request an accommodation in order to maintain her claim under Title VII.

Likewise, Abercrombie's argument that its Look Policy was neutral and therefore could not constitute "intentional discrimination" also failed. The Court noted that mere neutrality is not enough to defend against a claim of religious discrimination: "Title VII requires otherwise-neutral policies to give way to the need for a [religious] accommodation."

Key Takeaways

Employers should be mindful of possible conflicts between religious practices and company policies, even if a policy is universally applied. Employers cannot avoid liability under Title VII simply because a job applicant did not raise the need for a religious accommodation. Adverse employment action motivated by even unverified suspicion regarding an applicant's religion and/or need for a religious accommodation runs afoul of Title VII. As part of every interview process, employers should review all relevant job requirements and policies with applicants to provide them an opportunity to raise the need for an accommodation.

For any questions regarding religious accommodations or an employer's duties under Title VII, please contact your M&J attorney.

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