

Supreme Court Decides Employers Must Make Religious Accommodations Regardless of Knowledge of Need for Accommodation

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On June 1, 2015, the U.S. Supreme Court held, in *Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.*, that an employer violates federal anti-discrimination law where an applicant's need for a religious accommodation is a motivating factor in the employer's hiring decision. As the Court made clear, Title VII prohibits an employer from making employment decisions based on an individual's religious practices, regardless of whether the employer has actual knowledge of the individual's need for a religious accommodation. When an individual's perceived or actual religious practice conflicts with a neutral employment policy, this prohibition on discrimination requires that employers grant religious accommodations.

The plaintiff in the *Abercrombie* case was Samantha Elauf, a practicing Muslim who, consistent with her religious beliefs, wears a headscarf. Elauf applied for a job at an Abercrombie & Fitch store. The assistant manager who interviewed Elauf determined that Elauf was qualified for the job, but was concerned that Elauf's headscarf would violate the company's "Look Policy," which governs employee dress at Abercrombie stores and prohibits employees from wearing "caps." The assistant manager sought guidance from her district manager, telling him that she believed Elauf wore her headscarf because of her religion. The district manager told the assistant manager that all headwear, including Elauf's headscarf, violated the "Look Policy" and instructed her not to hire Elauf. The Equal Employment Opportunity Commission (the "EEOC") sued Abercrombie for religious discrimination on Elauf's behalf. After the EEOC secured a \$20,000 judgment for Elauf, the Tenth Circuit reversed on appeal, holding that an employer cannot be held liable for failing to accommodate a religious practice unless the applicant or employee first provides the employer with "actual knowledge" of her need for an accommodation. The EEOC appealed to the Supreme Court.

In an 8-1 decision, the Supreme Court reversed the Tenth Circuit. To succeed on a Title VII claim, the Court ruled, an applicant does not have to show that the employer had "actual knowledge" of her need for a religious accommodation. Rather, the applicant only needs to show that an applicant's need for an accommodation – whether known or only suspected by the employer – was a motivating factor in the employer's decision. "[T]he rule for failure to accommodate religious practice claims," the Court wrote, "is straightforward: An employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions." The Court also rejected Abercrombie's argument that its "Look Policy" is neutral and therefore cannot constitute intentional discrimination. Title VII, the Court reasoned, does not just demand neutrality toward religious practices. Rather, it affords religious practices "favored treatment." The law affirmatively obligates employers not to discriminate on the basis of an individual's religious practices, and it requires that employers grant religious accommodations to otherwise neutral workplace policies.

The *Abercrombie* decision provides important guidance for employers regarding religious accommodations. Employers cannot make employment decisions based on an individual's religious practice, whether actual or perceived. Nor can employers avoid liability for a discriminatory employment decision simply because an applicant or employee did not formally request an accommodation. Moreover, the decision makes clear that employers must make exceptions to neutrally written employment policies where they conflict with an individual's religious practices, unless doing so would present an undue hardship.

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