

CLIENT ALERT

Supreme Court Holds That Motivation—Not Knowledge—is Key Factor in Religious Accommodation Case

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In a long awaited employment law decision, the U.S. Supreme Court ruled, 8-1, in favor of a job applicant who was denied a job at an Abercrombie & Fitch Co. clothing store because the head scarf she wore for religious reasons would violate its dress code policy. In so holding, the Court determined that in order to prevail on a religious disparate treatment claim, the applicant only needed to show that the need for an accommodation was a motivating factor in the employer's decision, not that the employer had actual knowledge of the need for an accommodation. *EEOC v. Abercrombie & Fitch Stores Inc.*, No. 14-86 (6/1/2015). Opinion available [here](#).

The case arose when Samantha Elauf, then 17 years old, was denied a sales job at an Abercrombie Kids in Tulsa, Oklahoma. Elauf was wearing a head scarf, or hijab, at the job interview but did not specifically say that as a Muslim, she wanted the company to give her a religious accommodation. The company denied Elauf the job on the grounds that wearing the scarf violated its "look policy" for members of the sales staff, a policy intended to promote the brand's East Coast collegiate image.

The Equal Employment Opportunity Commission (EEOC) filed suit on Elauf's behalf, alleging that Abercrombie violated Title VII of the Civil Rights Act of 1964, which prohibits a prospective employer from refusing to hire an applicant because of the applicant's religious practice when the practice could be accommodated without undue hardship. The EEOC prevailed in the federal district court, but the Tenth Circuit reversed, awarding Abercrombie summary judgment on the ground that liability for failure to accommodate attaches only when the applicant provides the employer with actual knowledge of the need for an accommodation.

The Supreme Court reversed and remanded. In an opinion authored by Justice Scalia, the Court ruled that Elauf was not required to ask for a religious accommodation, rather she need only show that her need for an accommodation was a motivating factor in the employment decision.

The Court first noted that Title VII's disparate treatment provision requires Elauf to show that Abercrombie failed to hire her "because of " her religion (which includes a religious practice). The Court then determined that in the context of a Title VII, the "because of" standard means religion was a "motivating factor" in the employment decision. The Court added that Title VII does not contain a "knowledge requirement," but instead prohibits "certain 'motives,' regardless of the state of the actor's knowledge." Noting that "motive" and "knowledge" are separate concepts, the Court explained that an "employer who has actual knowledge of the need for an accommodation does not violate

Title VII by refusing to hire an applicant if avoiding that accommodation is not [the employer's] *motive*. Conversely, an employer who acts with the motive of avoiding accommodation may violate Title VII even if [it] has no more than an unsubstantiated suspicion that accommodation would be needed.” Thus, in a disparate treatment claim based on a failure to accommodate a religious practice, “an employer may not make an applicant’s religious practice, confirmed or otherwise, a factor” in the employment decision.

Moreover, the Court found that a neutral employment policy could constitute “intentional discrimination” under Title VII. The Court remarked that Title VII gives “favored treatment to religious practices, rather than demanding that religious practices be treated no worse than other practices.” Therefore, when an applicant requires a religious practices accommodation, an employer may not respond that a failure to hire was due to an otherwise-neutral policy.

In a concurring opinion, Justice Alito stated that Title VII liability would require proof that Abercrombie knew Elauf wore her headscarf for religious reasons. Nevertheless, he suggested that the evidentiary record likely showed that Abercrombie’s knowledge was sufficient to defeat summary judgment. Justice Alito submitted that in an intentional discrimination case, an employer should not be liable for taking adverse action because of a religious practice, if the employer does not know that the practice is religious.

The sole dissenter, Justice Thomas, opined that “mere application of a neutral policy cannot constitute ‘intentional discrimination.’” Justice Thomas concluded that the EEOC could prevail in this case only if Abercrombie engaged in intentional discrimination, and because Abercrombie’s actions were the application of its neutral “look policy,” its conduct could not therefore be intentional.

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