

Labor & Employment Alert
June 2015

U.S. Supreme Court Rules Employers Must Accommodate Religious Employees and Employment Applicants Even Without Request for Accommodation

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On June 1, 2015, the United States Supreme Court issued a ruling in the case of EEOC v. Abercrombie & Fitch Stores, Inc. clarifying employer obligations with regard to religious discrimination. The Court held that employers need not have actual knowledge of an employee's or applicant's religious belief or practice in order to be liable for religious discrimination under Title VII. **Unconfirmed suspicion of the possible need for a religious accommodation**, the Court found, was **sufficient to hold an employer liable under Title VII**.

In this case, retailer Abercrombie and Fitch decided not to hire an applicant who wore a head scarf to an interview for a sales staff position at one of its stores. The court found that the manager interviewing the candidate assumed the applicant would need to wear the scarf for religious reasons while working, but did not confirm her assumption with the applicant, or receive a request for a religious accommodation from the applicant. The applicant scored well in her interview, but headwear was not permitted under Abercrombie's dress policy. The manager asked her district manager how to proceed and the district manager instructed her not to hire the applicant due to the conflict with the dress policy.

The Equal Employment Opportunity Commission (EEOC) brought suit under Title VII for religious discrimination. Title VII prohibits discrimination "because of" religion, which is defined to include "all aspects of religious observance and practice, as well as belief." Generally, an employer is required to accommodate an employee's or applicant's sincerely held religious beliefs unless such accommodation would constitute an undue hardship.

In this case, the question was whether an employee or applicant needs to explicitly request an accommodation in order for an employer to be liable for failure to accommodate under Title VII. Several federal appeals courts have held that no explicit request is required. The Tenth Circuit in this case held otherwise, ruling in favor of Abercrombie.

The Supreme Court reversed the Tenth Circuit's decision, holding that an employer does not need to have actual knowledge of an employee's or applicant's religious belief or practice in order to be liable for religious discrimination. Justice Antonin Scalia, writing for the majority, explained that Title VII prohibits "actions taken with the motive of avoiding the need for accommodating a religious practice." He explained further, "Title VII does not demand mere

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neutrality with regard to religious practices – that they be treated no worse than other practices. Rather, it gives them favored treatment, affirmatively obligating employers not ‘to fail or refuse to hire or discharge any individual . . . because of such individual’s’ ‘religious observance and practice.’” Under the Court’s ruling, this favored-treatment obligation is triggered not just by actual knowledge of an employee’s or applicant’s religious belief or practice, but also by unconfirmed suspicion of said belief or practice.

Employers are advised to carefully evaluate policies and practices in light of the Supreme Court’s decision. This decision serves as a reminder for those with hiring and managerial authority that **employers may be required, under both federal and state law, to accommodate an employee’s religious practices or beliefs, even where those practices or beliefs conflict with employer rules or policies.** Such issues frequently arise where attendance expectations may conflict with religious obligations, or where employer dress requirements may conflict with religious obligations or standards of behavior. The Abercrombie decision further highlights that employers cannot avoid liability simply by claiming or maintaining ignorance of the religious belief or practice, or by arguing lack of intent. As the Court wrote, “[a] request for an accommodation, or the employer’s certainty that the [religious] practice exists, may make it easier to infer motive, but it is not a necessary condition of liability.” Employers may wish to consider additional training on religious accommodation generally, and more specifically in the context of interviewing and hiring practices.

This client alert was written by Attorney Lena-Kate Ahern. If you have any questions, please contact Lena-Kate Ahern or the attorney responsible for your account, or call (617) 479-5000.

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