Insights: Alerts

Supreme Court Holds That Adverse Employment Action Based on Mere Suspicion of Need for Religious Accommodation May Violate Title VII

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Title VII of the Civil Rights Act of 1964, as amended, prohibits employment discrimination based on religion. To that end, Title VII requires an employer to reasonably accommodate an employee's religious beliefs or practices in the workplace, unless doing so would result in an undue hardship on the employer's business operations. Applying these principles in *EEOC v. Abercrombie & Fitch Stores, Inc.*, the Supreme Court of the United States recently held that under Title VII, an employer generally cannot make an applicant's religious practices that may require accommodation a factor in hiring and other employment decisions. The prohibition applies when an employer has actual knowledge of the employee's religious practices, but, perhaps most importantly, the prohibition also applies when an employer merely suspects that an employee has a religious practice that may require accommodation.

The Supreme Court's Decision in *EEOC v. Abercrombie & Fitch Stores, Inc.*

Samantha Elauf, a practicing Muslim who wears a headscarf, applied for a position in an Abercrombie & Fitch store. At the time Elauf applied, sales employees were required to comply with the Abercrombie "Look Policy," a workplace dress code. The Look Policy prohibited employees from wearing "caps," which were deemed too informal for Abercrombie's desired image. Following an interview with the store's assistant manager, Elauf was rated "qualified," but the assistant manager was concerned that Elauf's headscarf violated the Look Policy. Seeking guidance on whether a headscarf was a prohibited "cap" under the dress code, the assistant manager informed the district manager that she believed Elauf wore the headscarf because of her religion. The district manager told the assistant manager that the headscarf would violate the Look Policy, as would all headwear, religious or otherwise, and directed her not to hire Elauf.

The U.S. Equal Employment Opportunity Commission ("EEOC") sued Abercrombie on Elauf's behalf and argued that its refusal to hire Elauf was religious discrimination under Title VII. The district court found Abercrombie liable and awarded Elauf $20,000. On appeal, the Tenth Circuit Court of Appeals reversed and held that an employer cannot be held liable under Title VII for failure to accommodate a religious practice unless the employer has actual knowledge of the employee's or applicant's need for accommodation. The EEOC appealed to the Supreme Court of the United States.

On June 1, 2015, the Supreme Court reversed the Tenth Circuit and held that, to establish intentional religious discrimination under Title VII, an employee (or applicant) need only show that his or her religious practice, confirmed or otherwise, was a factor in the employer's decision. The Supreme Court rejected the argument that an employer must have actual knowledge that an employee's need for accommodation is grounded in his or her religion before an employee can establish intentional religious discrimination. Rather, an employer who merely suspects that an

employee's practice is grounded in religion and takes adverse action based on such suspicion may violate Title VII. The majority decision drew a distinction between motives and knowledge, ruling that Title VII's prohibition on intentional discrimination prohibits certain motives, regardless of whether the employer has actual knowledge to support the motive. The majority reasoned that an employer who refuses to hire someone based on the desire to avoid an accommodation may run afoul of Title VII, even if the employer has no more than an "unsubstantiated suspicion" that an accommodation would be necessary.

The majority decision also rejected the argument that an employer cannot intentionally discriminate based on an employee's religion when applying otherwise neutral workplace policies to an employee's religious practices. Justice Scalia, writing for the majority, recognized that employers may impose, for example, a no-headwear policy, as a matter of course. However, once an applicant or employee needs an accommodation due to her religious practices, "Title VII requires otherwise-neutral policies to give way to the need for accommodation."

Practical Implications

The *Abercrombie* ruling makes clear that an employer can be held liable for religious discrimination under Title VII if the employer acts on the mere suspicion that an applicant or employee may need an accommodation for a perceived religious practice. The employee or applicant need not affirmatively request an accommodation, or even notify the employer of his or her religious practices, in order to trigger Title VII's protections.

While it is not possible for employers to predict every instance in which an applicant or employee may need a religious accommodation, the *Abercrombie* decision suggests that employers should be prepared to address and document efforts to accommodate religious practices that may conflict with dress codes and other neutral workplace policies. Employers especially should bear this in mind during the hiring process, when an applicant is less likely to request an accommodation because he or she likely has no prior relationship with the employer. Employers should also consider whether existing dress code policies and practices may expose them to claims of religious discrimination, and, where appropriate, train supervisors and hiring managers to identify the need for religious accommodations and to raise accommodation issues with the appropriate employer representative for resolution.