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U.S. Supreme Court Rules that Job Applicant's Wearing of Religious Headscarf Enough to Put Employer on Notice of Need for Religious Accommodation

Yesterday's U.S. Supreme Court ruling against Abercrombie & Fitch has implications in hiring and workplace discrimination that employers must not ignore.

The Court ruled in favor of the Equal Employment Opportunity Commission (EEOC), which sued the clothing company Abercrombie & Fitch on behalf of a Muslim woman, Samantha Elauf, who was denied a sales job because she wore a religious headscarf. In the 8-1 decision, the Supreme Court held that an employer need not have actual knowledge of the need for a religious accommodation in order to be held liable for religious discrimination.

Elauf wore a religious headscarf ("hijab") to her job interview. She did not state that she was a practicing Muslim during the interview, nor did she say she wanted the company to give her a religious accommodation. Company witnesses said they believed Elauf wore the headscarf because of a religious belief, and the company refused to hire her because the headscarf violated the company's dress code policy, which prohibits the wearing of "caps." The EEOC filed suit on Elauf's behalf, alleging religious discrimination in violation of Title VII. The District Court ruled in favor of the EEOC, but the U.S. Court of Appeals for the Tenth Circuit reversed the decision, holding that an employer can only be liable for failure to accommodate when the applicant provides the employer with actual notice of the need for an accommodation.

The Supreme Court reversed the decision of the Tenth Circuit and held that an applicant need only 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 accommodation. It was therefore of no consequence that Elauf did not state that she required a religious accommodation. The Supreme Court also rejected Abercrombie's argument that because the policy itself was neutral, it could not be held liable for intentional discrimination, stating, "Title VII requires otherwise-neutral policies to give way to the need for an accommodation."

Employers are required by law to make reasonable accommodations for applicants and employees with sincerely held religious beliefs unless the accommodation would impose an undue burden. Therefore an otherwise neutral policy may need to be adjusted to accommodate an employee's religious belief. For more information or if you have questions about your dress code or other policies, please contact Tracy A. Walsh, at twalsh@wglaw.com or 215.825.7224 or Brett A. Zahorchak, at bzahorchak@wglaw.com or 267.519.4976.