

## Supreme Court rules on religious accommodation in the workplace



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The Supreme Court's recent decision, *Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.*, decided June 1, 2015, determined that an employer may be liable under Title VII of the Civil Rights Act of 1964 for refusing to hire an applicant based on a religious practice, even if the employer does not have actual knowledge that the applicant requires a religious accommodation.

Samantha Elauf (Elauf), a practicing Muslim who wears a head scarf as part of her religious convictions, applied for a position at Abercrombie & Fitch Stores, Inc. (Abercrombie). An assistant manager who interviewed Elauf rated her as qualified for hiring. However, the assistant manager did not offer Elauf the position because, after consulting with the store management, Abercrombie determined that Elauf's headscarf violated its "Look Policy" prohibiting the use of "caps." The assistant manager indicated she believed, but was not certain, that Elauf wore the headscarf because of her faith.

The EEOC sued Abercrombie on Elauf's behalf, arguing that Abercrombie's failure to hire amounted to religious discrimination through failure to accommodate her religion. The EEOC alleged that Abercrombie's conduct amounted to disparate treatment in violation of Title VII of the Civil Rights Act of 1964 because it refused to hire Elauf based on her religious observance of wearing the head scarf. Abercrombie argued, however, that the EEOC could not show disparate treatment without showing that Abercrombie had "actual knowledge" of the applicant's need for accommodation.

The Supreme Court disagreed, finding instead that "the applicant need only show that his need for an accommodation was a motivating factor in the employer's decision." The Supreme Court analyzed the term "because of" and determined that Title VII merely requires an individual to show that the protected characteristic was a "motivating factor" in the employment decision. This is a lower standard than the traditional "but-for" causation standard, which requires a showing that "but for" the discriminatory animus, the employee would not have been harmed.

The Supreme Court specifically noted that the statutory language of Title VII does not impose a requirement that the employer have knowledge of the applicant's need for accommodation. Significantly, the Court reasoned that Title VII prohibited a discriminatory *motive*, regardless of the employer's knowledge.

The Court concluded by stating that Title VII demands more than mere neutrality regarding religious practices; rather, it requires "favored treatment" to religious practices, imposing an affirmative obligation on employers not to fail or refuse to hire an applicant based on the applicant's religious observance and practice. The Court did, however, note in a footnote that in order for an employer to act with the requisite "motive" of discriminatory intent, the employer must at least suspect that the employee requires religious accommodation.

This decision will impact employer hiring practices as it places the obligation on employers to accommodate religious practices without a specific request, but rather based on at least some understanding or assumption of the need for such an accommodation.

