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## **New Religious Accommodation Guidance: Supreme Court Takes Second Look at Abercrombie's Look Policy**

**By Bethany C. McCurdy**

Last week, the Supreme Court decided a case that will affect how employers must handle potential religious accommodations. In the case of [\*Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores\*](#), the Supreme Court determined that Title VII of the Civil Rights Act of 1964 prevents employers from taking action against an employee or applicant based upon their suspicion or belief that an employee or applicant may need a religious accommodation, regardless if the employer has actual knowledge of the need or not, so long as the employer's action was motivated by its belief.

[As we wrote about previously](#), Samantha Elauf applied for a job at an Abercrombie store and wore a headscarf throughout her job interview. The store's assistant manager, Heather Cooke, interviewed Elauf and decided that although she was qualified for the position, her headscarf might violate the company's "Look Policy," which prohibited Abercrombie employees from wearing "caps" at work. The term "caps" was not defined by the policy. Cooke eventually sought guidance from a district manager and told him she believed Elauf wore her headscarf because of her religion. The district manager told Cooke the headscarf, like all other headwear, religious or otherwise, would violate the Look Policy. He then directed Cooke not to hire Elauf.

The EEOC subsequently sued on Elauf's behalf, and a federal district court decided in favor of the EEOC and Elauf. The United States Court of Appeals for the Sixth Circuit reversed and found for Abercrombie, and the case then went before the Supreme Court.

The crux of this case turned upon whether the law requires an employer to have actual knowledge of the individual's need for a religious accommodation. Abercrombie claimed it could not have violated the law by not hiring Elauf, because it did not have actual knowledge that she wore the headscarf due to a religious reason. The EEOC argued that Title VII did not require actual knowledge, but rather hinged upon what motivated the employer's action.

The Court agreed with the EEOC and held that "an applicant need only show his need for an accommodation was a motivating factor in the employer's decision." The wrinkle in this case is that Elauf did not actually articulate a need for the company to modify its Look Policy or state that she wore the headscarf as a religious observance, but rather Abercrombie acted upon its belief that she wore her headscarf for religious reasons, and that her need for a potential accommodation was based upon that religious practice. Thus, according to the Court, the company did not hire her *because of* her religion.

For employers this case presents challenges as the outcome now requires employers to apply a different standard in religious accommodation cases than accommodation cases under the Americans with Disabilities Act ("ADA"), which generally imposes a knowledge requirement. This distinction was also observed by the Court, which noted that while the ADA requires employers to accommodate "known physical or mental limitations," Title VII does not impose such a requirement.

The Court also noted the distinction between motive and knowledge, stating for example that an employer may have actual knowledge of an employee's religious belief, and as long as the employer does not take adverse action based upon that knowledge, there is no violation. Conversely, an employer may not actually know an employee follows a certain religious practice or belief, but perceives the employees to do so *and* the employer's action is motivated by that belief, then the employer violates Title VII.

For employers this case is significant. At its most basic level, employers cannot simply claim, in defense to a religious accommodation claim, that because they had no knowledge of the religious practice, they are not at fault. However, the decision leaves open the question of how much is required for an employer's action to be "because of" the religious practice. Here, it was clear the company suspected Elauf's practices were religious in nature. But

the Court expressly declined to address what the outcome would be if a company did not have at least a suspicion that a practice is a religious practice. Employers should exercise caution when faced with a situation in which they have encountered an applicant or employee and they believe a religious belief or practice is being followed that might affect an employer's policy or practice. Consulting legal counsel before taking any action in such situations would be prudent given this new ruling.

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