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Labor and Employment Law

Court Eases Ability to Bring Religious Discrimination Claims

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The U.S. Supreme Court recently made it easier for applicants and employees to bring religious discrimination lawsuits. EEOC v. Abercrombie & Fitch Stores, Inc. Under Title VII, employers cannot refuse to hire an applicant in order to avoid accommodating a religious practice, unless the accommodation creates an undue hardship on the organization. The question in Abercrombie was whether an employer who lacked actual knowledge of the need for accommodation could be sued for its failure to provide the accommodation. In siding with the applicant, the Court held actual knowledge is not required. Instead, an applicant need only show that an employer's decision to deny employment was motivated by a suspected need for accommodation.

In this case, the applicant was a practicing Muslim who wears a headscarf as part of her religious practice. She applied for a job at Abercrombie and Fitch and was denied employment because the company considered her headscarf a violation of its dress policy, called the "Look Policy." The company admitted she was otherwise qualified, and believed she wore her head covering for religious purposes. At no time during the interview was there any discussion about her headscarf, or if it was worn as part of her religious practice, or if she needed an exception to the Look Policy.

The District Court ruled in favor of the applicant, but the Tenth Circuit reversed. It held that an employer cannot be charged with failing to accommodate a religious practice without actual knowledge of the need for religious accommodation. The Supreme Court reversed and

stated that "actual knowledge" of a need to accommodate a religious practice is not required. Instead, a plaintiff must only show that a need for religious accommodation was a "motivating factor" in the employer's decision. The Court went on to explain the difference between "knowledge" and "motive." It that an employer who acts with the motive of avoiding an accommodation violates the law even if it has no more than an unsubstantiated suspicion that accommodation will be needed. It cites the example of an employer denying employment to someone it believes, but is not certain, is an orthodox Jew, because of its concern that the applicant will not be able to work Saturdays.

It is now clear that an employer's suspected need for accommodation cannot serve as the basis for denying employment, and any such accommodation must be provided unless it results in an undue hardship. The Court drove home the point that acts based on suspected needs for accommodation are enough to violate the law, and an applicant need not expressly state the need for a religious accommodation in order to gain coverage under the law.

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