

U.S. Supreme Court Sides with EEOC in Abercrombie & Fitch Religious Accommodation Case

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In an 8-1 decision issued today, the United States Supreme Court found that Abercrombie & Fitch violated Title VII of the Civil Rights Act by refusing to hire Samantha Elauf, a Muslim woman who wore a headscarf to her job interview. Title VII is the federal law that prohibits religious-based employment discrimination. Title VII also requires employers to make reasonable accommodations for employees' and applicants' sincerely held religious beliefs.

The United States Equal Employment Commission ("EEOC") sued Abercrombie & Fitch on Elauf's behalf, alleging that the company refused to hire Elauf because her headscarf would violate the company's "Look Policy," which prohibits employees from wearing "caps"-a term the policy did not define-as too informal for Abercrombie's desired image. During the case's trial, Abercrombie's store manager testified that she approved Elauf's hiring after interviewing her, but expressed concerns to a district manager about Elauf's headscarf. The district manager instructed the store manager not to hire Elauf because the Look Policy prohibits employees from wearing any head gear, religious or otherwise. Elauf had not actually requested an accommodation, although both the store manager and district manager (correctly) assumed that Elauf wore the headscarf for religious reasons.

The EEOC prevailed at trial, but the United States Court of Appeals for the Tenth Circuit reversed, holding that Abercrombie & Fitch could not be held liable because Elauf did not actually request an accommodation that would allow her to wear the headscarf while working.

But the Supreme Court reversed, reinstating the finding in favor of Elauf. In the opinion (penned by Justice Antonin Scalia), the Supreme Court held that an applicant need not prove that the employer had actual knowledge of the need for accommodation. Title VII-the decision reasons-prohibits an employer from making "an applicant's religious practice, confirmed or otherwise, a factor in employment decisions." As a result, an applicant need not prove that he actually requested an accommodation to prevail. "Instead, an applicant need only show that his need for an accommodation was a motivating factor in the employer's decision." Because the store manager and district manager both admitted that the company refused to hire Elauf because of her religious practice-wearing of a headscarf-there was no need to prove that Elauf had requested an accommodation of her religious belief that the company refused to honor.

As this case demonstrates, an employer's neutral dress code must give way to employees' or applicants' sincerely held religious beliefs. An employer who refuses to make such an accommodation may avoid liability only by demonstrating that such an accommodation would impose an undue burden on the employer. Abercrombie & Fitch did not argue before the Supreme Court that accommodating Elauf's headscarf would have imposed an undue

burden.

Employers needing assistance in addressing religious-based accommodations should contact a member of Barley Snyder's [Employment Law Group](#).

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