

Employers Cannot Make Employment Decisions Based on Applicant's Religious Practice When the Practice Could be Accommodated Without Undue Hardship

Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.

Samantha Elauf applied for a position at clothing retailer Abercrombie & Fitch, and was interviewed by Heather Cooke, the store's assistant manager. Elauf, a practicing Muslim, wore a headscarf (or hijab) to her job interview. Cooke qualified Elauf to be hired, but was concerned that Elauf's headscarf would conflict with the store's dress code prohibiting "caps." Cooke sought the store manager's guidance to clarify whether the headscarf was a forbidden "cap," but did not receive a response. Cooke then sought guidance from Randall Johnson, the district manager. Cooke informed Johnson that she believed Elauf wore her headscarf because of her faith. Johnson told Cooke that Elauf's headscarf would violate the dress code, as would all other headwear, religious or otherwise, and directed Cooke not to hire Elauf.



In *Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.*, the EEOC claimed Abercrombie discriminated against Elauf by refusing to hire her because she wore a headscarf.

On June 1, 2015, the U.S. Supreme Court held that under federal law, Title VII of the Civil Rights Act of 1964, an employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions when the practice could be accommodated without undue hardship. The Court rejected Abercrombie's argument that an employer must have actual knowledge of the applicant's need for an accommodation. The Court held that to prevail in a Title VII disparate-treatment (or "intentional discrimination") claim, an applicant need show only that his/her need for an accommodation was a motivating factor in the employer's decision, not that the employer had knowledge of his/her need.

Employers should also be aware that California's Fair Housing and Employment Act's definition of "religious creed" covers religious dress and grooming practices.

Employers should review their dress code policies, as well as their hiring practices, to

ensure they are in compliance with state and federal law.

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