

Supreme Court Clarifies Employers' Religious Accommodation Obligations

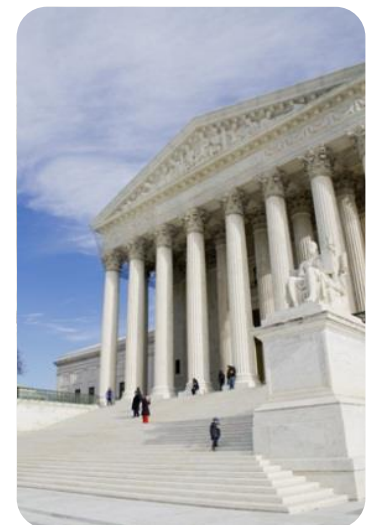
On June 1, the Supreme Court ruled that an employer may not refuse to hire a job applicant if the applicant's need for a religious accommodation was a motivating factor in that decision. Reversing a lower court ruling, the Court affirmed that an employer could be liable for intentional discrimination regardless of whether it had actual knowledge of the need for an accommodation. Employers will want to review their hiring practices in light of this decision, and make sure their hiring managers and interviewers are trained on handling religious accommodation issues.

Background

Title VII of the Civil Rights Act of 1964 prohibits, among other things, religious discrimination. It makes it unlawful for an employer to discriminate against an individual with respect to compensation, terms, conditions or privileges of employment because of his or her religion. Title VII imposes an obligation on an employer to reasonably accommodate an employee's or prospective employee's sincerely held religious beliefs, practices or observances if they could be accommodated without undue hardship.

Abercrombie & Fitch, which operates a line of retail clothing stores, had a "Look Policy" that prohibited all its sales-floor employees from wearing black clothing and "caps." Employees who failed to comply with the Look Policy, as set out in the employee handbook, were subject to disciplinary action up to and including termination. Samantha Elauf, a 17-year-old Muslim, applied for a sales position in one of the retailer's Oklahoma stores. She wore a t-shirt, jeans and a black headscarf to her job interview. While Elauf did not inform the interviewer that she was a Muslim or that she wore the headscarf for religious reasons, her interviewer assumed both to be the case. Elauf did not ask to be exempted from the store's Look Policy, and was not hired.

The EEOC filed suit, alleging that Abercrombie violated Title VII by refusing to hire Elauf "because she wears a hijab" and failing to "accommodate her religious beliefs by making an exception to the Look Policy." The district court sided with the EEOC,



[granting](#) summary judgment against Abercrombie. On appeal, the Tenth Circuit [reversed](#). Dismissing the case against Abercrombie, the court held that it was the job applicant's burden to put the store on notice that its policy conflicted with her religious practice and to ask for an accommodation. The EEOC appealed.

Supreme Court Weighs In

The question before the Court was whether Title VII's prohibition on refusing to hire an applicant to avoid reasonably accommodating a religious practice "applies only where an applicant has informed the employer of his need for an accommodation." In an 8-1 [decision](#), the Supreme Court said no. Noting that Title VII — unlike the Americans with Disabilities Act — does not impose a knowledge requirement, the Court reversed the Tenth Circuit opinion.

The Court enunciated the rule for intentional discrimination — or disparate treatment — claims based on a failure to accommodate a religious practice, saying: "An employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions." Thus, an applicant can succeed on such a claim by showing that the need for an accommodation was a "motivating" factor in the employment decision.

Distinguishing motive from knowledge, the Court made clear that even an employer with actual knowledge of the need for a religious accommodation would not violate Title VII by rejecting an applicant if avoiding accommodation is not its motive. Conversely, an employer that rejects an applicant to avoid accommodating a religious practice — even if based on "an unsubstantiated suspicion" of the need for an accommodation — may violate Title VII. The Court questioned in a footnote whether the motive requirement could be met without showing that "the employer at least suspects that the practice in question is a religious practice." However, it did not decide the issue since it was not presented in this case.

Finally, the Court concluded that Title VII gives religious practices "favored treatment," and imposes an affirmative obligation on employers "not 'to fail or refuse to hire or discharge any individual ... because of such individual's' 'religious observance and practice.'" Thus, in the majority's view, an otherwise neutral policy must give way to the need for an accommodation.

Comment. By contrast, the Court declined to grant pregnant workers "an unconditional most-favored-nation status" in its recent ruling under the Pregnancy Discrimination Act, which amended Title VII to prohibit discrimination on the basis of pregnancy, childbirth or related medical conditions. (See our [March 26, 2015 FYI Alert](#).)

In Closing

In light of this decision, employers may have to be more cautious during the interview process and in making hiring decisions. Before making such decisions, an employer that has reason to believe or suspect that an applicant may require an accommodation for a religious practice will want to consider whether the practice could reasonably be accommodated — regardless of whether the applicant has asked for an accommodation. An employer would be well served to avoid direct questions about religion and, instead, explain applicable policies or work rules and ask the applicant whether it would pose any problem to comply. If warranted, the employer may further engage the applicant to explore whether an accommodation may be needed and, if so, whether there is a workable one.

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