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Supreme Court Places Burden on Employers to Address Religious Accommodations

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Is an employer required to ask whether an applicant needs an accommodation? The Supreme Court answers yes.

In ***Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.***, 135 S.Ct. 2028 (2015), the Supreme Court addressed the religious discrimination claim of Samantha Elauf (Elauf), a practicing Muslim, who wore a headscarf in observance with her religion to a job interview. Elauf applied and was interviewed for a position at Abercrombie & Fitch (Abercrombie). Following the interview, the store's assistant manager gave Elauf a rating that qualified her to be hired but there was concern that Elauf's headscarf would conflict with the store's "Look Policy," which prohibits "caps." Abercrombie & Fitch, 135 S.Ct. at 203[1]. The district manager determined that Elauf's headscarf would violate the Look Policy, and Elauf was not extended a job offer. As a result, the EEOC filed a complaint against Abercrombie, claiming religious discrimination in violation of Title VII. The district court granted the EEOC summary judgment and awarded Elauf $20,000. The Tenth Circuit reversed the decision and instead, awarded Abercrombie summary judgment. The EEOC appealed.

In its opinion authored by Justice Scalia, the United States Supreme Court recognized the two categories of unlawful employment practices: disparate treatment1 (intentional discrimination) and disparate impact.[2] This case involved an allegation of disparate treatment, which prohibits certain motives, regardless of the state of the actor's knowledge. Abercrombie argued that the court adopt the Tenth Circuit's interpretation that would require an employer to have actual knowledge of a conflict between an applicant's religious practice and a workplace policy. In the alternative, Abercrombie argued that a claim based on the failure to accommodate an applicant's religious practice must be raised as a disparate-impact claim rather than a disparate treatment claim, reasoning that a neutral policy cannot constitute intentional discrimination. The Supreme Court rejected both arguments, relying on the definition of religion in Title VII, which includes "all aspects of religious observance and practice, as well as belief." Id. at 2033. The court held that the intentional discrimination provision prohibits certain motives, regardless of the state of the actor's knowledge. "[A]n employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions." Id. The court further concluded that religious practice is a protected characteristic that cannot be accorded disparate treatment and therefore must be accommodated.

In his concurrence, Justice Alito noted that he would have interpreted Title VII to require proof that Abercrombie knew that Elauf wore the headscarf for religious reasons and that the evidence of Abercrombie's knowledge was sufficient to reverse the entry of summary judgment in favor of Abercrombie. Justice Thomas concurred in part and dissented in part, noting that the application of a neutral policy, such as Abercrombie's "Look Policy," cannot constitute intentional discrimination for purposes of Title VII's intentional discrimination provision.

The decision in this case provides guidance for employers who must accommodate an applicant's or employee's religious needs. The Court essentially concluded that it is not the plaintiff's burden to prove a failure to accommodate, but rather the burden is on the employer. Employers should take note that they may now be liable for the failure to accommodate an employee's religious practice or observance, even if the employer only suspects that the practice is religious in nature. Employers should take the imitative during the employment screening process to inquire whether a unique appearance characteristic is related to a religious practice. Employers cannot simply rely upon an applicant volunteering that information.

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1 Defined as "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual's race, color, religion, sex or national original." 42 U.S.C. § 2000 e(j).

2 Defined as "to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex or national origin." 42 U.S.C. § 2000 e(j).

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