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Employment Decisions Motivated by a Suspicion of a Religious Accommodation may Violate Title VII

Employers and HR professionals: Beware. If you have even a mere suspicion that a person may require a religious accommodation, employment decisions motivated by that suspicion may leave your business liable for discrimination.

Title VII of the Civil Rights Act of 1964 prohibits employers from firing, failing to hire, or otherwise discriminating against an individual when religion is a motivating factor, unless the employer can show that it is unable to accommodate the "religious observance or practice without undue hardship." 42 U.S.C. § 2000e(j). Claims based on this law are often referred to as "disparate treatment" claims.

On June 1, 2015, the United States Supreme Court issued a decision that clarified the law regarding these disparate treatment claims. In E.E.O.C. v. Abercrombie & Fitch Stores, Inc., the Court held that clothing retailer Abercrombie & Fitch ("A&F") was liable under Title VII for failing to hire an applicant based on its suspicion that the applicant would require a religious accommodation that would violate A&F's employee-appearance policy.

In Abercrombie, seventeen-year-old Samantha Elauf, a practicing Muslim, interviewed for a job at A&F. During the interview, Samantha wore a headscarf, but never stated that she wore the headscarf for a religious reason, nor did she ask for a religious accommodation. After the interview, Heather Cooke, an assistant store manager at A&F, gave Samantha a rating that qualified her to be hired. Ms. Cooke, however, was concerned that Samantha's headscarf would violate A&F's employee-appearance policy, which prohibited headwear. As a result, Ms. Cooke spoke with her district manager and informed him "that she believed [Samantha] wore her headscarf because of her faith." Ms. Cooke was then directed not to hire Samantha because the headscarf would violate the employee-appearance policy.

Thereafter, the Equal Employment Opportunity Commission filed a lawsuit on Samantha's behalf. The trial court ruled in Samantha's favor, but the Tenth Circuit Court of Appeals reversed that decision because it believed that an employer could not be liable for failing to accommodate a religious practice unless the applicant provided the employer with actual knowledge of the need for the accommodation.

Subsequently, the United State Supreme Court, in an eight-to-one decision, ruled in Samantha's favor. The Court held that actual knowledge of the religious accommodation is not required to violate Title VII. Instead, any time a religious accommodation is a "motivating factor" in an employer's decision, regardless of whether the need for that accommodation is based on actual knowledge or a mere suspicion, the employer may be liable for discrimination under Title VII. In other words, "an employer who acts with the motive of avoiding an accommodation may violate Title VII even if [it] has no more than an unsubstantiated suspicion that [an] accommodation would be needed."

Employers and HR professionals need to understand the significance of this decision. Neutral employment policies will not save an employer from liability if its employment decisions are motivated by a desire to avoid religious accommodations, even potential religious accommodations. Indeed, the Court in Abercrombie explained that Title VII does not just require "neutrality with regard to religious practices… . Rather, it gives them favored treatment, affirmatively obligating employers not 'to fail or refuse to hire … because of religious practice or observance.'" Thus, while an employer is entitled to have policies similar to A&F's no-headwear policy, when an applicant requires a religious accommodation, the employer must understand that "Title VII requires otherwise-neutral policies to give way to the need for an accommodation."

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