

Suspicious and Assumptions About an Applicants Religious Practices Can Lead to Title VII Liability for Employers

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Gerilynn Arrindell type url The Supreme Court recently ruled in E.E.O.C. v. Abercrombie & Fitch Stores, that a job applicant only had to show that the need for a religious accommodation was a motivating factor in the prospective employer's decision to not hire the applicant in order to prove a violation of Title VII of the Civil Rights Act, and not that the employer had actual knowledge of the applicants need for an accommodation based upon one's religious practice. Title VII prohibits a prospective employer from refusing to hire a applicant because of the applicant's religious practice when the practice could be accommodated without undue hardship.

Following an interview, Abercrombie refused to hire an applicant that was rated qualified after the Assistant Manager consulted the District Manager on whether the applicant's headscarf that was presumably worn due to the applicants faith would violate the companies Look Policy. The Look Policy prohibited employees from wearing "caps" - a term that is not defined in the policy.

Even absent having actual knowledge of applicants need for accommodations based on religious practice, the Supreme Court looked to the employers suspicions and assumptions to assess whether a Title VII violation had occurred. Specifically, the Supreme Court noted that the disparate treatment (i.e. intentional discrimination) provision of Title VII does not impose a knowledge requirement. Instead, it prohibits certain motives, regardless of the employers knowledge. Therefore, an employer may not make an applicant's religious practice, confirmed or presumed, a factor in employment decisions. Additionally, the Supreme Court indicated that Title VII requires that employers otherwise neutral policies must be relaxed if there is a need for an accommodation as an aspect of an applicants religious practice.

As a result of this ruling, it is advisable that employers take prompt action to do the following:

A) Carefully examine their dress code and appearance policies to ensure it does not impact employees who dress a certain way due to their religious practices;

B) Establish a religious accommodation policy. Employers need to advise and train employees on the process for requesting and providing accommodations; and

C) Train management on how to handle an applicant or employee whose religious belief may conflict with company policy or require an accommodation.

To ensure compliance with the latest Supreme Court ruling employers are encouraged to contact their attorney for other guidance.

E.E.O.C. v. Abercrombie & Fitch Stores, 135 S. Ct. 2028 (2015).