Title VII of the Civil Rights Act of 1964 makes it an unlawful employment practice for an employer to discharge or refuse to hire an individual because of the individual's religious observance or practice unless the employer demonstrates that it is unable to accommodate the practice without undue hardship in the conduct of its business. Today, the Supreme Court granted certiorari in *Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.*, No. 14-86, to decide whether an employer may be liable under Title VII for refusing to hire an applicant or discharging an employee based on a religious observance or practice where the employee did not provide the employer with direct, explicit notice of the need for a religious accommodation.

The EEOC claimed that Abercrombie violated Title VII when it failed to hire a prospective employee, Samantha Elauf, because of her religious practice without offering her a reasonable accommodation. Elauf, a Muslim, interviewed for a sales position at Abercrombie while wearing a black hijab (headscarf), a practice inconsistent with Abercrombie's policy prohibiting sales employees from wearing black clothing or "caps." Although the assistant manager interviewing Elauf assumed that Elauf wore her hijab because she was Muslim, Elauf did not say that she needed to wear it for religious reasons or request a religious accommodation. There was evidence that Abercrombie did not hire Elauf because of her attire. The district court granted the EEOC's motion for summary judgment on liability and denied Abercrombie's motion for summary judgment. It concluded that the EEOC had established all elements of a *prima facie* case of discrimination, including Abercrombie's awareness of Elauf's need for a religious accommodation, and held that Abercrombie had failed to rebut the EEOC's showing on those elements.

The Tenth Circuit reversed the grant of summary judgment to the EEOC and held that Abercrombie was entitled to summary judgment. According to the Tenth Circuit, the undisputed evidence showed that no agent of Abercrombie involved in the hiring process had actual knowledge of Elauf's religious obligation to wear a hijab. The court of appeals explained that plaintiffs claiming religious discrimination based on a failure to accommodate ordinarily must prove that they informed the employer that they engage in a particular practice for religious reasons and require an accommodation. It rejected the EEOC's position that Title VII may be satisfied by notice short of an explicit communication from the applicant. The Tenth Circuit's decision is in tension with decisions of the Seventh, Eighth, Ninth, and Eleventh Circuits, which have adopted the EEOC's position that the element of notice is established where the employer has actual knowledge of an employee or applicant's religious practice even if there is no an explicit request for an accommodation. *See Adeyeye v. Heartland Sweeteners, LLC*, 721 F.3d 444 (7th Cir. 2013); *Brown v. Polk Cnty.*, 61 F.3d 650 (8th Cir. 1995); *Heller v. EBB Auto Co.*, 8 F.3d 1433 (9th Cir. 1993);*Dixon v. Hallmark Cos.*, 627 F.3d 849 (11th Cir. 2010).

This case is of significant interest to the business community because it will determine what level of notice is required from an applicant or employee before an employer is required to provide a reasonable accommodation for the applicant or employee's religious beliefs. The case is of special significance to firms that have dress requirements for employees.

Absent extensions, amicus briefs in support of the petitioner are due on November 24, 2014, and amicus briefs in support of the respondent are due on December 24, 2014. Any questions about the case should be directed toMiriam Nemetz (+1 202 263 3253) in our Washington office.