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*Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.*, No. 14-86 (previously described in the October 2, 2014, Docket Report)

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, in *Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.*, No. 14-86, the Supreme Court held that an applicant raising a disparate-treatment claim under Title VII need not show that the employer had actual knowledge of the applicant's need for accommodation of a religious practice, but need show only that the need for a religious accommodation was a motivating factor in the employer's decision.

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 and granted summary judgment for Abercrombie, holding that an employer was required to have actual knowledge of the applicant's need for a religious accommodation to be subject to liability.

In an opinion by Justice Scalia, the Supreme Court reversed the Tenth Circuit. The Court explained that, under Title VII's prohibition against disparate treatment, applicants need show only that their need for an accommodation was a motivating factor in the employer's failure to hire. The Court concluded that the statute thus prohibits discharge or failure to hire based on certain *motives*, regardless of actual knowledge. It explained that motive and knowledge are separate concepts. Thus, an employer that has actual knowledge of an applicant's need for an accommodation does not violate Title VII by deciding not to hire the applicant if the need for an accommodation did not motivate the decision. Conversely, an employer who acts with the motive of avoiding an accommodation violates Title VII even if the employer has no more than an unsubstantiated suspicion that the accommodation would be needed. In other words, the Court stated, "[a]n employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions."

Although holding that Title VII imposes no knowledge requirement, the Court noted that the motive requirement arguably could not be met unless the employer at least suspected that the practice at issue was religious. But the Court declined to decide whether an employer that lacks even an unsubstantiated suspicion that a practice is a religious practice requiring accommodation may be subject to liability, concluding that the issue was not before it.

Justice Alito concurred in the judgment. In his view, an employer may not be held liable for disparate treatment unless it knows that the practice at issue is religious. He concluded, however, that there was sufficient evidence in the record to show that Abercrombie had this knowledge, and would have instructed the Tenth Circuit on remand to evaluate whether the EEOC was entitled to summary judgment on that issue. Justice Thomas concurred in part and dissented in part, arguing that mere application of neutral policy cannot constitute intentional discrimination under Title VII even if an employer fails to hire an applicant based on a belief that the applicant may require an accommodation.

Because the Supreme Court's decision sets forth an unequivocal prohibition against making adverse employment decisions based on even the unconfirmed belief that an applicant's religious practice requires an accommodation, it is important to all employers.

Any questions about the case should be directed to [Miriam Nemetz](#) (+1 202 263 3253) in our Washington office.