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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.