

Supreme Court Clarifies Protections for Religion in Hiring

June 1, 2015

On June 1, 2015, the United States Supreme Court issued a much anticipated ruling on the Title VII religious bias claim brought by a Muslim female applicant who wore a religiously mandated headscarf to her interview and was denied employment in *EEOC v. Abercrombie & Fitch Stores, Inc.* (No. 14-86). The United States Supreme Court reversed a Tenth Circuit decision that placed the burden on the job applicant plaintiff to inform Abercrombie that her headscarf was religiously mandated and remanded the case to the Tenth Circuit.

In this case, the applicant wore a headscarf to her job interview but never mentioned her faith or asked for any exceptions to the company's stated dress code policy, which the headscarf violated. After her interview, the applicant was rated as qualified to be hired, but the assistant store manager was concerned that her dress would violate Abercrombie's "Look Policy," which prohibited "caps." The assistant manager contacted the district manager and informed him that she believed that the applicant wore the headscarf because of her faith, after which the district manager told the assistant manager that the headscarf violated the Look Policy, as would all other headwear, religious or not, and directed the assistant manager not to hire the applicant.

The United States Supreme Court ruled that the employer's actual knowledge regarding the need for a religious accommodation is not the issue at hand, because a job applicant like the one in question only needs to show that the need for a religious accommodation was a motivating factor for the challenged employment decision. "Actual knowledge" of the need for a religious accommodation, Justice Scalia wrote for the majority, is not required to show disparate treatment. The Supreme Court reasoned that Title VII prohibits certain motives, such as discrimination on the basis of religion, regardless of knowledge – employers can violate Title VII even if their perceptions of the need for a religious accommodation are wrong, because the perceived need for an accommodation was used as the basis of the decision, which is prohibited by Title VII. As such, the plaintiff job applicant had a viable claim because she could show that a motivating factor in Abercrombie's decision to not hire the plaintiff was because they would have to accommodate their dress-code policy on religious grounds.

In light of *EEOC v. Abercrombie & Fitch Stores, Inc.*, employers should pay special attention to the factors that lead to employment and hiring decisions. Employers may not protect themselves from potential liability under Title VII for adverse actions based on lack of knowledge of the employee/applicant's membership in a protected class or need for an accommodation. The critical inquiry is the motive behind the decision: was membership in the protected class or the need for accommodation a motivating factor, even if the applicant/employee did not identify such membership or need and the employer's conclusions regarding such membership or need were incorrect.

Megan Norris

+1.313.496.7594

norris@millercanfield.com