Workplace Alert

The Information Maryland Local Government Employers Need to Know **July 2015**

SUPREME COURT ISSUES IMPORTANT DECISION IN RELIGIOUS DISCRIMINATION CASE

Recently, the Supreme Court ruled that an employer may violate Title VII of the Civil Rights Act of 1964 for failing to accommodate a religious practice, even if the employer was unaware that the accommodation was required by the applicant's religion.

In *EEOC v. Abercrombie & Fitch*, No. 14-86 (S.Ct. June 1, 2015), the Court found in favor of a Muslim applicant who was rejected because she wore a headscarf in violation of Abercrombie & Fitch's "no caps" rule, despite the fact that the applicant had not attributed her headscarf to her religion.

> *"[A]n employer who acts with the motive of avoiding accommodation may violate Title VII even if he has not more than an unsubstantiated suspicion that accommodation would be needed."*

The Facts Underlying the Case

Abercrombie & Fitch operates different lines of clothing stores, each of which has its own "style." In order to promote the style of its stores, Abercrombie forbids employees from wearing "caps" at work. The applicant at issue, Samantha Elauf, is a practicing Muslim who wears a headscarf due to her religion.

Elauf applied for a position with Abercrombie and based upon her interview, was determined to be qualified. The interviewer, an assistant manager, was concerned that Elauf's headscarf violated the company's no cap policy. The assistant manager ultimately questioned a district manager and in doing so, the assistant manager expressed her belief that Elauf wore the headscarf due to her religion. The district manager determined that the headscarf, like all headwear, would violate the no cap policy, regardless of whether Elauf wore it due to her faith. The district manager instructed the assistant manager not to hire Elauf.

The EEOC filed suit against Abercrombie on Elauf's behalf and the case went to trial. The jury found that Abercrombie violated Title VII and awarded $20,000 in damages. Abercrombie appealed the case to the Tenth Circuit Court of Appeals. The Court of

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Appeals threw out the jury verdict and concluded that an employer cannot be liable for failing to accommodate a religious practice until the applicant provides the employer with actual knowledge that she needed accommodation due to her religion.

The Supreme Court reasoned that Title VII prohibits an employer from failing to hire an applicant "because of" the applicant's "religious practice." It further noted that Title VII does not impose a "knowledge" requirement. The Court specifically stated, "[A]n employer who acts with the motive of avoiding accommodation may violate Title VII even if he has not more than an unsubstantiated suspicion that accommodation would be needed."

The Court expressly rejected the argument that a neutral policy cannot constitute "intentional discrimination" in a religious discrimination context. Title VII's religious discrimination provisions explicitly require an employer to accommodate a religious practice and, in the absence of an undue hardship, "requires otherwise-neutral policies to give way to the need for an accommodation."

What this Means for Employers

Typically, employers are encouraged to avoid questions and discussions of protected factors such as religion during interviews and in the workplace. However, the Court's decision in Abercrombie & Fitch suggests that this is not the case when an employer suspects that an applicant or employee cannot comply with an otherwise neutral policy due to a religious practice or belief.

Following the Court's decision, employers should consider the following tips.

1) With regard to religion, in the absence of an undue hardship, reasonable accommodation is required and simply treating the applicant or employee the same as "similarly situated colleagues" is not sufficient.

2) Decide which work rules are important and ask all applicants if they can comply with them.

3) When it appears (i.e., there is a suspicion) that an applicant or employee's religion is rendering the employee unable to comply with a neutral policy, discuss the policy with the employee to understand the reasons underlying the non-compliance or appearance that they will be non-compliant, if hired. If religion is the cause, provide reasonable accommodation when doing so does not constitute an "undue hardship."

4) Supervisors and employees who conduct interviews and make hire decisions should be well trained and advised of the Court's decision in Abercrombie & Fitch. Furthermore, they should be encouraged to consult supervisors or employment counsel

when possibility of religious accommodation arises.

The Court's decision in Abercrombie & Fitch underscores that it is critical to train individuals involved in the hiring process well.

This case is very important and is available for reading and downloading at:
http://www.supremecourt.gov/opinions/14pdf/14-86_p86b.pdf

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