

# CLIENT NEWS BRIEF

## An Employment Decision Cannot be Motivated by an Employee's Need for an Accommodation Due to Religious Beliefs or Practices

The United States Supreme Court recently ruled that an employer may not use a seemingly neutral policy or practice to discriminate against an employee or applicant in the free exercise of religion. In *Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.* (June 1, 2015) 2015 U.S. Lexis 3718, (*Abercrombie & Fitch*), the Court found that even a neutral policy may cause intentional discrimination against an employee or applicant when used to deny employment or employment rights because of the employee's need for an accommodation due to his or her religious beliefs.

Samantha Elauf, a practicing Muslim, applied for a position with Abercrombie & Fitch Stores. She was interviewed by the store's assistant manager and was given a rating qualifying her for hire. However, Abercrombie & Fitch has a "Look Policy" governing employee dress. The policy prohibits the wearing of "caps." During her interview Ms. Elauf wore a headscarf and the assistant manager was concerned it would conflict with the store's policy. Upon inquiry, the district manager informed the assistant manager that the headscarf would in fact violate the policy, as would any headwear, and directed the assistant manager not to hire Ms. Elauf. The Equal Employment Opportunity Commission (EEOC) filed suit on behalf of Ms. Elauf alleging a violation of Title VII of the Civil Rights Act of 1964 (Title VII).

Title VII prohibits two categories of employment practices: disparate treatment (or intentional discrimination) and disparate impact (or unintentional discrimination). Intentional discrimination is found when an employer fails or refuses to hire or discharges any individual because of that individual's race, color, religion, sex, or national origin. Intentional discrimination can also be found where an employer discriminates against an individual with respect to compensation, terms, conditions, or privileges of employment. Challenges based on a failure to accommodate, as in the *Abercrombie & Fitch* case, can be brought as intentional discrimination claims. In *Abercrombie & Fitch*, the Supreme Court found that the company had a neutral policy against "caps" because the policy forbid the wearing of any kind of cap, religious or non-religious, and the policy was neutrally applied, as it was applied to all employees regardless of religion. However, the Court found that the store had an obligation to accommodate Ms. Elauf's desire to wear a headscarf and therefore Abercrombie & Fitch had intentionally discriminated against Ms. Elauf by failing to provide an accommodation for her religious practice.

The *Abercrombie & Fitch* decision reminds employers to be cautious when denying employment or employment opportunities based on practices or policies that may impact an employee's or applicant's exercise of religion. A neutral policy applied in a neutral manner may not withstand judicial scrutiny if the policy discriminates against an employee or applicant based on his or her religious practices. Employers have a duty to accommodate religious practices, unless the employer can demonstrate it would cause undue hardship on the conduct of the employer's business.

If you have any questions regarding this decision, or other questions regarding employer accommodations for religious practices, please contact one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).

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