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SPECIAL BULLETIN

U.S. SUPREME COURT ISSUES MAJOR RELIGIOUS ACCOMMODATION DECISION

On Monday, June 1, 2015, the Supreme Court of the United States issued a highly-anticipated decision on the subject of religious discrimination and accommodation in the case of Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc. The Court's holding permits an applicant to move forward with a Title VII claim by showing that the need to make a religious accommodation was a motivating factor in the employer's hiring decision, regardless of whether the employer has actual knowledge that the potential accommodation was required by the applicant's religious beliefs.

The Equal Employment Opportunity Commission ("EEOC") brought a Title VII action against Abercrombie and Fitch on behalf of Samantha Lauf ("Lauf") a Muslim job applicant. In mid-2008, Lauf applied for a position at Abercrombie Kids, in which she wore a traditional Muslim headscarf (hijab) to the interview. Abercrombie and Fitch at the time enforced a dress code for its employees known as the Look Policy. Lauf's headscarf was viewed to be a violation of this policy. During the interview, Lauf never informed the interviewer that she wore the headscarf for religious reasons, and the topic of the headscarf was never directly brought up during the interview by either Lauf or the interviewer. The interviewer, however, informed her manager that Lauf wore a headscarf and that she believed it was because of her faith; the manager in turn opted not to hire her.

An Oklahoma district court initially granted summary judgment in favor of the EEOC; however, the Tenth Circuit Court of Appeals reversed the decision and granted summary judgment in favor of Abercrombie and Fitch stating that there was no genuine dispute that Lauf had not informed Abercrombie prior to its hiring decision that she wore her headscarf for religious reasons and that she needed an accommodation for the practice. The EEOC petitioned for Supreme Court review, and in its Supreme Court brief, Abercrombie claimed that Title VII requires that companies have actual knowledge of a religious practice and need for accommodation to be held liable under the Act. The EEOC responded that Title VII prohibits a refusal to hire an applicant based on what the employer correctly understands to be a religious practice, unless the employer can show undue hardship.

The Supreme Court reversed the decision of the Tenth Circuit. Of particular importance to employers is the Supreme Court's holding that an employer who refuses to hire someone based on a desire to avoid providing an accommodation may violate Title VII even if there is no more than an "unsubstantiated suspicion" that an accommodation would be necessary or that such accommodation is tied to religious beliefs. As the Court said, "the rule for disparate-treatment claims based on a failure to accommodate a religious practice is straightforward: An employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions."

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If you have any questions, please call The Kullman Firm attorney with whom you customarily work.

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