

U.S. Supreme Court: Employer Must Accommodate Religious Practices

Employers are often confronted with conflicts between company policy and an individual's religious obligation. These issues are governed by Title VII of the Civil Rights Act of 1964 ("Title VII"), which requires employers to accommodate religious practices of applicants. Until recently, it was unclear whether an employer must have actual knowledge of an applicant's religious obligation to trigger liability under Title VII. On June 1, 2015, in *EEOC v. Abercrombie & Fitch Stores, Inc.*, the U.S. Supreme Court answered with a resounding no.

There, Samantha Elauf, an Abercrombie & Fitch ("Abercrombie") applicant and practicing Muslim, wore a headscarf to her interview. Elauf did not mention her headscarf during her interview, and Abercrombie did not ask Elauf whether she wore her headscarf as part of a religious obligation. Nevertheless, Abercrombie declined to hire Elauf because wearing a headscarf violated the company's "Look Policy," which prohibited workers from wearing "caps." Although Abercrombie suspected that Elauf wore the headscarf because she was Muslim, it chose not to ask further questions, applied its neutral policy and rejected her application.

Abercrombie did not have actual knowledge of Elauf's religious obligation, but the Supreme Court nevertheless found Abercrombie's hiring decision violated Title VII because its decision was motivated by a desire to avoid accommodating Elauf's presumed religious obligation.

In light of this holding, employers may not make an individual's religious practice, confirmed or otherwise, a factor in their employment decisions without considering reasonable accommodations. In fact, employers who claim they had no knowledge of an applicant's conflicting religious obligation may still be held liable if the applicant can prove the employer should have known a conflict existed. To help avoid violating Title VII, employers should consider the following hiring practices:

1. **Educate Decision Makers:** Train supervisors to recognize various religious obligations that may require accommodation, such as:
 - wearing religious headgear (e.g. yarmulkes, turbans, headscarves);
 - wearing long facial hair (e.g. beards);

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- observing the Sabbath;
 - having facial piercings or visible tattoos.
2. **Ask the Right Questions:** Explain relevant company policies (e.g. work schedule, dress code, etc.) to applicants during the hiring process and ask whether or not applicants can comply with those policies. Remember, Title VII requires more than neutrality with regard to religious practices.
3. **Explore Accommodations:** If an applicant cannot comply with a particular company policy, decide whether the employer can accommodate the conflicting religious obligation without incurring an undue burden. Examples of possible accommodations include:
- making individual exceptions to company policy;
 - transferring employees to a comparable position where scheduling conflicts are less likely to occur, or allowing employees to voluntarily swap shifts; and
 - providing unpaid leave to employees who need to attend religious services.
4. **Consider Whether an Undue Burden Exists:** Employers need not make an accommodation if it poses an undue burden. But the standard of proving one exists is difficult to meet, and each accommodation must be reviewed on a case-by-case basis.

If you have any questions about this new and important change in the law, please contact [Rob Driscoll](#) or any member of Reinhart's [Labor and Employment group](#).

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