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EMPLOYMENT SERVICES ALERT

6/2/15

Supreme Court Rules Against Abercrombie In Religious Bias Suit

On June 1, 2015, the Supreme Court ruled in favor of the U.S. Equal Employment Opportunity Commission in its suit against Abercrombie & Fitch Stores Inc. for failure to hire applicant Samantha Elauf. The Supreme Court reversed a Tenth Circuit decision which had ruled in favor of Abercrombie on the ground that failure-to-accommodate liability attaches only when an employer has actual knowledge of an applicant's need for an accommodation.

Elauf wore a headscarf, called a hijab, to a 2008 interview with the clothing retailer. Abercrombie has a Look Policy, which prohibits "caps" without specifically defining caps. Elauf never mentioned anything about her religion or the need for an accommodation for her hijab. The retailer chose not to hire Elauf based on its concern that her hijab would violate this policy.

Title VII prohibits an employer from refusing to hire an applicant to avoid accommodating a religious practice that it could accommodate without undue hardship. The issue in this case is whether the prohibition is limited to when an applicant has informed the employer of his or her need for an accommodation.

Abercrombie argued that Title VII requires employers to have "actual knowledge" of a potential religious accommodation, but the Supreme Court concluded otherwise. The Court's opinion clarified that applicants only need to show that their need for an accommodation was a "motivating factor" behind a challenged employment decision. Plaintiffs do not need to show that the employer had actual knowledge of the need for an accommodation only that the employer had at least an "unsubstantiated suspicion" that the accommodation would be needed. In other words, employers can be liable for failing to accommodate a religious practice even if there was no request for accommodation.

This decision underscores the importance of training all employees involved in the hiring process on how to handle religious accommodation issues. While interviewers typically have been cautioned not to inquire about an applicant's religion, this rule is no longer absolute. An employer has the burden, if it has some idea that an accommodation is necessary, to inquire about the applicant's need for an accommodation. However, employers need to ensure that their inquiries do not extend beyond seeking the information necessary to determine if an accommodation is required.

While the Supreme Court reversed the Tenth Circuit decision, it did not determine that Abercrombie discriminated against Elauf. The Supreme Court remanded the case to the Tenth Circuit to consider this issue.

Please do not hesitate to contact any of the listed Roetzel employment attorneys should you have any questions regarding this topic.

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