Recent Supreme Court Decision Acts as a Reminder to Employers about the Perils of Making Unsubstantiated Assumptions about an Individual's Religion

By Amanda J. MacDonald / Jun 02, 2015

On Monday, June 1, 2015, the United States Supreme Court ruled 8-1 in favor of the Equal Employment Opportunity Commission (EEOC) in its religious discrimination case against Abercrombie & Fitch. The Court found that the retailer may have violated Title VII by refusing to hire a job applicant because she wore a hijab even though the retailer did not have actual knowledge that the job applicant wore the hijab for religious reasons.

Samantha Elauf, on whose behalf the EEOC pursued the claim against Abercrombie & Fitch, is a practicing Muslim who wore a headscarf to an interview with an Abercrombie & Fitch assistant store manager. During the interview, Ms. Elauf never mentioned that she wore the headscarf as part of her religious practice. However, the assistant store manager believed that Ms. Elauf wore the headscarf for religious reasons and was concerned that the headscarf would violate Abercrombie & Fitch's "Look Policy." The "Look Policy" prohibits all employees from wearing "caps," a term undefined in the policy. The assistant store manager sought guidance from a district manager with Abercrombie & Fitch. The district manager directed that the assistant manager not hire Ms. Elauf, despite otherwise being qualified, because her headscarf would violate the "Look Policy."

The Supreme Court rejected Abercrombie & Fitch's argument that the retailer could not be liable for intentional discrimination without actual knowledge of an applicant's need for a religious accommodation. Instead, the Court held that a job applicant must show only that the need for a religious accommodation was a motivating factor in the employer's decision. The Court reasoned that, unlike other anti-discrimination statutes, Title VII does not impose a knowledge requirement. Rather, Title VII prohibits religious discrimination from being a motivating factor in an employer's decision. Title VII broadly defines religion as "all aspects of religious observance and practice, as well as belief."

The Court distinguished between motive and knowledge:

"An employer who has actual knowledge of the need for an accommodation does not violate Title VII by refusing to hire an applicant if avoiding that accommodation is not his motive. Conversely, an employer who acts with the motive of avoiding accommodation may violate Title VII even if he has no more than an unsubstantiated suspicion that accommodation would be needed."

The Court also rejected Abercrombie & Fitch's argument that its neutral policy evidenced a lack of intent to discriminate based on religion. The Court reasoned that Title VII demands that religion be given preferential, not neutral, treatment. An employer's otherwise neutral policy must allow for the need for religious accommodation.

This recent decision exemplifies how an employer may inadvertently subject itself to liability under Title VII by making assumptions about a job applicant's religion. Because employers are prohibited from inquiring about an individual's religion, employers must walk a fine line to avoid discrimination claims. In light of the Supreme Court's recent decision and the increase in religious discrimination claims, employers are well-advised to consult their employment counsel when making hiring decisions.

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