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EMPLOYER ALERT

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IMPACT OF SUPREME COURT RULING IN RELIGIOUS DISCRIMINATION CASE

On June 1, 2015, the Supreme Court, in an 8-1 decision, ruled in favor of a Muslim woman who sued Abercrombie & Fitch (“A&F”) for discrimination after she was denied a sales position because she wore a hijab (head scarf) for religious reasons.

CASE BACKGROUND

A&F is a clothing retailer that requires its sales employees (referred to as “Models”) to promote the company’s style of clothing by what they wear at work. A&F’s “Look Policy” prohibits Models from wearing black clothing or “caps.” Samantha Elauf, 17, applied and interviewed with A&F for a sales position. At the interview, she wore a hijab, which she had worn since she was 13 as part of her religious observance. Despite the hiring manager’s indirect references to the Look Policy during the interview, neither Elauf nor the hiring manager discussed the hijab or Elauf’s need for a religious accommodation. Despite Elauf scoring high enough on the interview to be recommended for hire, she was not offered the sales position because her hijab did not comply with A&F’s Look Policy. Consequently, Elauf filed a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”). The EEOC, in turn, filed a lawsuit against A&F alleging that A&F violated Title VII of the 1964 Civil Rights Act by failing to hire Elauf and to accommodate her religious practices by making an exception to its Look Policy.

U. S. SUPREME COURT RULING

The Supreme Court held that an employer may be liable under Title VII for refusing to hire an applicant based on a religious observance or practice whether or not the employer has direct knowledge or notice from the applicant that an accommodation is required. A job applicant needs only to show that his or her need for accommodation was a motivating factor in the employer’s hiring decision.

EMPLOYER IMPACT

Because of the *Elauf* decision, if an employer believes that an applicant (or employee) may require an accommodation, it should explain the relevant rule or policy and inquire if the applicant (or employee) can comply or will require an accommodation. If an accommodation is requested, the employer should analyze whether the requested accommodation (or another solution) is reasonable or will impose an undue hardship on the company.

Employers should adopt and administer policies with some flexibility where an employee’s religious beliefs and practices may be affected (*e.g.*, holidays, scheduling, dress and grooming, Sabbath observance, etc.). Employers should also train hiring and management personnel to recognize the potential need for religious accommodation and engage in dialogue with employees about possible accommodations without inquiring improperly into an employee or applicant’s religious beliefs or practices or speculating about them.

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