

# Employers' Obligations to Accommodate Religious Beliefs

By Jessica Summers

## Supreme Court Poised to Address Religious Discrimination in the Case of EEOC v. Abercrombie & Fitch Stores, Inc.

In *EEOC v. Abercrombie & Fitch Stores, Inc.*, the Supreme Court is set to answer the question of whether an employee or applicant must expressly inform an employer of his or her religious beliefs in order to sustain a claim that the employer has discriminated by failing to accommodate the belief.

In the *Abercrombie & Fitch* case, a job applicant wore a headscarf to her interview for a position as a sales employee. Abercrombie has a "Look Policy" which sets forth the dress requirement for sales employees and prohibits employees from wearing "hats." In Abercrombie's standard interview, one-third of each applicant's interview score is based on "appearance and sense of style." The assistant manager who interviewed the applicant in question identified the applicant as a good candidate but was unsure how the applicant's headscarf would be handled under the Look Policy. The assistant manager consulted the district manager who instructed the assistant manager not to hire the applicant because the headscarf conflicted with the Look Policy. Although the assistant manager believed that the applicant wore the headscarf for religious reasons and expressed this to the district manager, the applicant herself never actually informed the assistant manager, or any other Abercrombie employee involved in the hiring process, that her headscarf was worn for religious reasons or that she would need an accommodation as an exception to the company's Look Policy.

In considering the case, the District Court found that the employee had met her burden to show that (1) she had a bona fide religious belief that was in conflict with Abercrombie's Look Policy, (2) she had sufficiently informed Abercrombie of her belief, and (3) she wasn't hired because her religious beliefs prevented her from complying with Abercrombie's Look Policy. In the absence of controlling appellate precedent, the District Court looked to other circuits on the issue of when an employer has sufficient notice of an employee's religious beliefs. Drawing from these cases, the District Court held that, even when an applicant has not expressly informed the employer of his or her religious belief or need for accommodation, a prima facie case of religious discrimination can still be established where the employer had enough information to make it aware of a potential conflict between the applicant's religion and a job requirements. Thus, in the case at hand, the District Court held that the fact that the applicant wore her headscarf to the interview was sufficient to put Abercrombie on notice.

The District Court's decision in favor of the applicant was appealed to the Tenth Circuit which reversed the lower court's decision. Instead, the Tenth Circuit held that an employer's duty to accommodate an employee's or applicant's religion is not triggered until an employee or applicant provides the employer with express notice of his or her conflicting religious beliefs or practices and need for accommodation. This conclusion by the Tenth Circuit is directly contrary to the conclusions reached by other Courts of Appeals deciding same questions.

The Supreme Court has agreed to hear the case to resolve this circuit split and clarify whether an employee can sustain a prima facie case of religious discrimination for an employer's failure to accommodate an employee's religion absent the employer being expressly informed of the religious belief or need for accommodation.

***Lesson for Employers:*** *Until this matter is resolved by the Supreme Court, employers should not assume that they are not required to offer religious accommodations to employees or applicants who have not expressly indicated a need for such an accommodation. Before making an employment decision based on an employee's or applicant's ability to satisfy a job requirement, employers should consider and investigate, among other things, whether there is a religious reason that the individual can not satisfy the requirements and, if that is the case, whether an appropriate accommodation can be made.*