



Religious Accommodation in the Workplace: Can you tell your employees "What Not to Wear?"

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On October 1, 2013, the 10th Circuit Court of Appeals ruled in favor of Abercrombie & Fitch in a lawsuit claiming religious discrimination based on a failure to accommodate the religious practices of an applicant.

The Look

Abercrombie & Fitch requires store employees to comply with its "Look Policy" which "exemplifies a classic East Coast collegiate style of clothing." The policy prohibits employees from wearing black clothing and from wearing caps, although it does not define the term "cap." Sales-floor employees are referred to as "Models."

The Process

Notably, as prudent employers do, Abercrombie instructs its store managers not to assume facts about applicants and not to ask applicants about their religion. This practice comports with EEOC guidance (found in its Compliance Manual) warning that such questions could raise an inference of discrimination based on religion.

Lower Court Ruling Turned on its Head

In general, to establish a claim of religious discrimination based on a failure to accommodate, an employee must show that (1) she has a *bonafide* religious belief that conflicts with a requirement of employment; (2) she informed her employer of this belief; and (3) she was fired/not hired for failing to comply with the conflicting requirement. An employer can defend such a claim by showing either that (1) it offered a reasonable accommodation, or (2) it was not able reasonably to accommodate the employee's religious needs without undue hardship to the employer.

True Religion

Title VII protects employees from discrimination based on their religious beliefs – it does not provide protection for other beliefs, though strongly held, based on social philosophies or personal preferences. The Court explained that whether or not a practice is religious in nature depends upon the particular beliefs of the individual. For example, some women wear the hijab as a form of cultural expression, not necessarily as a religious practice. For this reason, the courts encourage employers to engage in the "interactive, religion-accommodation process" with each employee on an individual basis rather than reaching conclusions based on assumptions about a particular religious group.

What Lies Ahead

Employees may seek religious accommodations based on any number of religious practices. The Abercrombie decision serves as a reminder that employers need to be attentive to the particular beliefs and practices of each individual employee or applicant and not make assumptions based on general knowledge of religious groups. We all know what happens when you assume...

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