

RELIGIOUS DISCRIMINATION – U.S. SUPREME COURT ISSUES DECISION ON CLOSELY WATCHED CASE

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Attorneys

Elizabeth McPhail

On October 3, 2014, I posted a blog entry that the U.S. Supreme Court announced that it would hear the EEOC's appeal over whether a national retailer, Abercrombie & Fitch Stores Inc., violated the prohibition against discrimination based on religion pursuant to Title VII of the Civil Rights Act of 1964, as amended, when it did not hire a Muslim woman who wore a headscarf to a job interview.

On June 1, 2015, the Court handed down its ruling the reversed the Tenth Circuit decision in this closely watched case. The Tenth Circuit previously ruled in favor of Abercrombie that potential employees are required under Title VII to notify their employer of their religious beliefs if they seek accommodation. Samantha Elauf wore a Muslim headscarf to a 2008 job interview but never mentioned her faith or asked for an exception to the Company's dress code. The Supreme Court ruled that a job applicant needs to show that the need for a religious accommodation was a motivating factor in a challenged employment decision, not that the employer had knowledge of the need for such an accommodation, to prevail on a disparate treatment claim.

The case has been remanded to the Tenth Circuit for further consideration.

The Supreme Court's decision shifts the responsibility onto an employer to determine whether an individual applicant's religious observances must be reconciled with employer policies and expectations. Justice Scalia's decision indicates that "[a]n employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions." This holding will complicate employer hiring procedures, as employer representatives attempt to navigate how to inquire about issues related to religious accommodation, while still avoiding the type of racial and religious profiling that Title VII of the Civil Rights Act of 1964, as amended, is designed to prevent. The decision essentially shifts the entire burden of determining the need for a religious accommodation – whether the applicant's religious beliefs/practices are "confirmed or otherwise" – onto the employer.