

EEOC v. Abercrombie & Fitch Stores, Inc.

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EEOC v. Abercrombie
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Religious Accommodations in Employment



Circuit Split: What Knowledge is Required?



MIKE DeWINE

EEOC v. Abercrombie: Background

- Look Policy
- Complainant wears a headscarf and is a practicing Muslim
- Given a "qualified" rating
- District Manager decision to not hire

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EEOC v. Abercrombie: District Court

- *McDonnell Douglas* burden shifting
- Focus on what notice given to employer
- Explicit, direct notice not required
- Granted summary judgment to EEOC

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EEOC v. Abercrombie: Tenth Circuit

- 10th Circuit reversed district court, ordered summary judgment in favor of Abercrombie
- Particularized, actual knowledge requirement
- A correct assumption ≠ actual knowledge

Mike DeWise

EEOC v. Abercrombie: Supreme Court

- Reversed and remanded
- Holding: To prevail in a disparate-treatment claim, an applicant need show only that his need for an accommodation was a motivating factor in the employer's decision, not that the employer had knowledge of his need.

Mike DeWise

Post EEOC v. Abercrombie Cases

- Fifth Circuit - *Nobach v. Woodland Village Nursing Center, Inc.*
- D. Colorado - *EEOC v. Jetstream Ground Services, Inc.*

Mike DeWise





Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
v. ABERCROMBIE & FITCH STORES, INC.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE TENTH CIRCUIT

No. 14–86. Argued February 25, 2015—Decided June 1, 2015

Respondent (Abercrombie) refused to hire Samantha Elauf, a practicing Muslim, because the headscarf that she wore pursuant to her religious obligations conflicted with Abercrombie’s employee dress policy. The Equal Employment Opportunity Commission (EEOC) filed suit on Elauf’s behalf, alleging a violation of Title VII of the Civil Rights Act of 1964, which, *inter alia*, prohibits a prospective employer from refusing to hire an applicant because of the applicant’s religious practice when the practice could be accommodated without undue hardship. The EEOC prevailed in the District Court, but the Tenth Circuit reversed, awarding Abercrombie summary judgment on the ground that failure-to-accommodate liability attaches only when the applicant provides the employer with actual knowledge of his need for an accommodation.

Held: To prevail in a disparate-treatment claim, an applicant need show only that his need for an accommodation was a motivating factor in the employer’s decision, not that the employer had knowledge of his need. Title VII’s disparate-treatment provision requires Elauf to show that Abercrombie (1) “fail[ed] . . . to hire” her (2) “because of” (3) “[her] religion” (including a religious practice). 42 U. S. C. §2000e–2(a)(1). And its “because of” standard is understood to mean that the protected characteristic cannot be a “motivating factor” in an employment decision. §2000e–2(m). Thus, rather than imposing a knowledge standard, §2000e–2(a)(1) prohibits certain *motives*, regardless of the state of the actor’s knowledge: An employer may not make an applicant’s religious practice, confirmed or otherwise, a factor in employment decisions. Title VII contains no knowledge requirement. Furthermore, Title VII’s definition of religion clearly in-

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dicates that failure-to-accommodate challenges can be brought as disparate-treatment claims. And Title VII gives favored treatment to religious practices, rather than demanding that religious practices be treated no worse than other practices. Pp. 2–7.

731 F. 3d 1106, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed an opinion concurring in the judgment. THOMAS, J., filed an opinion concurring in part and dissenting in part.

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 14–86

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PETITIONER *v.* ABERCROMBIE & FITCH
STORES, INC.**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT

[June 1, 2015]

JUSTICE SCALIA delivered the opinion of the Court.

Title VII of the Civil Rights Act of 1964 prohibits a prospective employer from refusing to hire an applicant in order to avoid accommodating a religious practice that it could accommodate without undue hardship. The question presented is whether this prohibition applies only where an applicant has informed the employer of his need for an accommodation.

I

We summarize the facts in the light most favorable to the Equal Employment Opportunity Commission (EEOC), against whom the Tenth Circuit granted summary judgment. Respondent Abercrombie & Fitch Stores, Inc., operates several lines of clothing stores, each with its own “style.” Consistent with the image Abercrombie seeks to project for each store, the company imposes a Look Policy that governs its employees’ dress. The Look Policy prohibits “caps”—a term the Policy does not define—as too informal for Abercrombie’s desired image.

Samantha Elauf is a practicing Muslim who, consistent

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with her understanding of her religion's requirements, wears a headscarf. She applied for a position in an Abercrombie store, and was interviewed by Heather Cooke, the store's assistant manager. Using Abercrombie's ordinary system for evaluating applicants, Cooke gave Elauf a rating that qualified her to be hired; Cooke was concerned, however, that Elauf's headscarf would conflict with the store's Look Policy.

Cooke sought the store manager's guidance to clarify whether the headscarf was a forbidden "cap." When this yielded no answer, Cooke turned to Randall Johnson, the district manager. Cooke informed Johnson that she believed Elauf wore her headscarf because of her faith. Johnson told Cooke that Elauf's headscarf would violate the Look Policy, as would all other headwear, religious or otherwise, and directed Cooke not to hire Elauf.

The EEOC sued Abercrombie on Elauf's behalf, claiming that its refusal to hire Elauf violated Title VII. The District Court granted the EEOC summary judgment on the issue of liability, 798 F. Supp. 2d 1272 (ND Okla. 2011), held a trial on damages, and awarded \$20,000. The Tenth Circuit reversed and awarded Abercrombie summary judgment. 731 F. 3d 1106 (2013). It concluded that ordinarily an employer cannot be liable under Title VII for failing to accommodate a religious practice until the applicant (or employee) provides the employer with actual knowledge of his need for an accommodation. *Id.*, at 1131. We granted certiorari. 573 U. S. ___ (2014).

II

Title VII of the Civil Rights Act of 1964 78 Stat. 253, as amended, prohibits two categories of employment practices. It is unlawful for an employer:

"(1) to fail or refuse to hire or to discharge any indi-

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vidual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." 42 U. S. C. §2000e-2(a).

These two proscriptions, often referred to as the "disparate treatment" (or "intentional discrimination") provision and the "disparate impact" provision, are the only causes of action under Title VII. The word "religion" is defined to "includ[e] all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to" a "religious observance or practice without undue hardship on the conduct of the employer's business." §2000e(j).¹

Abercrombie's primary argument is that an applicant cannot show disparate treatment without first showing that an employer has "actual knowledge" of the applicant's need for an accommodation. We disagree. Instead, an applicant need only show that his need for an accommodation was a motivating factor in the employer's decision.²

¹For brevity's sake, we will in the balance of this opinion usually omit reference to the §2000e(j) "undue hardship" defense to the accommodation requirement, discussing the requirement as though it is absolute.

²The concurrence mysteriously concludes that it is not the plaintiff's burden to prove failure to accommodate. *Post*, at 5. But of course that is the plaintiff's burden, if failure to hire "because of" the plaintiff's "religious practice" is the gravamen of the complaint. Failing to hire for

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The disparate-treatment provision forbids employers to: (1) “fail . . . to hire” an applicant (2) “because of” (3) “such individual’s . . . religion” (which includes his religious practice). Here, of course, Abercrombie (1) failed to hire Elauf. The parties concede that (if Elauf sincerely believes that her religion so requires) Elauf’s wearing of a headscarf is (3) a “religious practice.” All that remains is whether she was not hired (2) “because of” her religious practice.

The term “because of” appears frequently in antidiscrimination laws. It typically imports, at a minimum, the traditional standard of but-for causation. *University of Tex. Southwestern Medical Center v. Nassar*, 570 U. S. ___ (2013). Title VII relaxes this standard, however, to prohibit even making a protected characteristic a “motivating factor” in an employment decision. 42 U. S. C. §2000e-2(m). “Because of” in §2000e-2(a)(1) links the forbidden consideration to each of the verbs preceding it; an individual’s actual religious practice may not be a motivating factor in failing to hire, in refusing to hire, and so on.

It is significant that §2000e-2(a)(1) does not impose a knowledge requirement. As Abercrombie acknowledges, some antidiscrimination statutes do. For example, the Americans with Disabilities Act of 1990 defines discrimi-

that reason is *synonymous* with refusing to accommodate the religious practice. To accuse the employer of the one is to accuse him of the other. If he is willing to “accommodate”—which means nothing more than allowing the plaintiff to engage in her religious practice despite the employer’s normal rules to the contrary—adverse action “because of” the religious practice is not shown. “The clause that begins with the word ‘unless,’ as the concurrence describes it, *ibid.*, has no function except to place upon the employer the burden of establishing an “undue hardship” defense. The concurrence provides no example, not even an unrealistic hypothetical one, of a claim of failure to hire because of religious practice that does not say the employer refused to permit (“failed to accommodate”) the religious practice. In the nature of things, there cannot be one.

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nation to include an employer's failure to make "reasonable accommodations to the *known* physical or mental limitations" of an applicant. §12112(b)(5)(A) (emphasis added). Title VII contains no such limitation.

Instead, the intentional discrimination provision prohibits certain *motives*, regardless of the state of the actor's knowledge. Motive and knowledge are separate concepts. 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.

Thus, the rule for disparate-treatment claims based on a failure to accommodate a religious practice is straightforward: An employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions. For example, suppose that an employer thinks (though he does not know for certain) that a job applicant may be an orthodox Jew who will observe the Sabbath, and thus be unable to work on Saturdays. If the applicant actually requires an accommodation of that religious practice, and the employer's desire to avoid the prospective accommodation is a motivating factor in his decision, the employer violates Title VII.

Abercrombie urges this Court to adopt the Tenth Circuit's rule "allocat[ing] the burden of raising a religious conflict." Brief for Respondent 46. This would require the employer to have actual knowledge of a conflict between an applicant's religious practice and a work rule. The problem with this approach is the one that inheres in most incorrect interpretations of statutes: It asks us to add words to the law to produce what is thought to be a desirable result. That is Congress's province. We construe Title VII's silence as exactly that: silence. Its disparate-

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treatment provision prohibits actions taken with the *motive* of avoiding the need for accommodating a religious practice. A request for accommodation, or the employer's certainty that the practice exists, may make it easier to infer motive, but is not a necessary condition of liability.³

Abercrombie argues in the alternative that a claim based on a failure to accommodate an applicant's religious practice must be raised as a disparate-impact claim, not a disparate-treatment claim. We think not. That might have been true if Congress had limited the meaning of "religion" in Title VII to religious *belief*—so that discriminating against a particular religious *practice* would not be disparate treatment though it might have disparate impact. In fact, however, Congress defined "religion," for Title VII's purposes, as "includ[ing] all aspects of religious observance and practice, as well as belief." 42 U. S. C. §2000e(j). Thus, religious practice is one of the protected characteristics that cannot be accorded disparate treatment and must be accommodated.

Nor does the statute limit disparate-treatment claims to only those employer policies that treat religious practices less favorably than similar secular practices. Abercrombie's argument that a neutral policy cannot constitute "intentional discrimination" may make sense in other contexts. But Title VII does not demand mere neutrality with regard to religious practices—that they be treated no worse than other practices. Rather, it gives them favored

³While a knowledge requirement cannot be added to the motive requirement, it is arguable that the motive requirement itself is not met unless the employer at least suspects that the practice in question is a religious practice—*i.e.*, that he cannot discriminate "because of" a "religious practice" unless he knows or suspects it to be a religious practice. That issue is not presented in this case, since Abercrombie knew—or at least suspected—that the scarf was worn for religious reasons. The question has therefore not been discussed by either side, in brief or oral argument. It seems to us inappropriate to resolve this unargued point by way of dictum, as the concurrence would do.

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treatment, affirmatively obligating employers not “to fail or refuse to hire or discharge any individual . . . because of such individual’s” “religious observance and practice.” An employer is surely entitled to have, for example, a no-headwear policy as an ordinary matter. But when an applicant requires an accommodation as an “aspec[t] of religious . . . practice,” it is no response that the subsequent “fail[ure] . . . to hire” was due to an otherwise-neutral policy. Title VII requires otherwise-neutral policies to give way to the need for an accommodation.

* * *

The Tenth Circuit misinterpreted Title VII’s requirements in granting summary judgment. We reverse its judgment and remand the case for further consideration consistent with this opinion.

It is so ordered.

EEOC v. Abercrombie & Fitch Stores, Inc.

To view this opinion in full, please go to
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