*EEOC v. Abercrombie & Fitch*Argued: February 25, 2015 Decided: June 1, 2015

Background

In 1964, Congress passed the Civil Rights Act of 1964. This law grew out of the civil rights movement of the 1950s and 60s, and was an effort to end discrimination based on race, sex, or religion. The law prohibited many forms of discrimination, including discrimination in public accommodations, government services, and employment. Title VII is a section of the Civil Rights Act of 1964 that bans employment discrimination based on a worker’s or applicant’s sex, race, national origin, religion, or color.

Title VII says an employer cannot discriminate against a worker based on his or her religious belief, observance, or practice. An employer must make an effort to accommodate employees’ religious practices, unless it would cause an “undue hardship” on the employer’s business. These adjustments to the work environment could include flexible scheduling or exceptions to a dress code, for example. An employer faces an undue hardship when the adjustment has more than a minimal burden on the operation of a business. As an example, an accommodation like allowing an employee to pray during work breaks would not be an undue hardship, while accommodating a religious belief that requires men and women to be separate at all times could be.

A person’s religion is not always visually apparent; therefore, it can be difficult to know which employees need accommodations for their religious practices. This is a case about a woman who was not hired for a job for which she would have needed a religious accommodation. The question is whether she was required to notify the employer that she needed the accommodation, or was the employer (having correctly guessed she would need one) required to ask?

Facts

Abercrombie & Fitch maintained a very strict “Look Policy” for their employees, whom they call “models.” A portion of that policy bans wearing caps and the color black. Samantha Elauf was unaware of the exact restrictions when she interviewed for a job at the Abercrombie & Fitch at her local mall. Elauf, age 17, wore a t-shirt, jeans, and a black headscarf to the interview. Elauf, a Muslim, wore the headscarf every day as a religious practice. During the interview, Elauf was told she would need to wear clothing that “looked like Abercrombie,” but she was never given a copy of the Look Policy or informed her scarf would violate it.

After interviewing her, the interviewer assumed (but never asked) that Elauf wore her headscarf for religious reasons and that she would want to wear it to work. The interviewer asked the district manager if a religious headscarf would be consistent with the Look Policy. The manager said that the Look Policy did not allow headscarves and Elauf should not be hired. Points were subtracted from her interview score; as a result, she was not hired. Through a friend, Elauf learned that the reason she was not hired was her headscarf. Elauf filed a complaint with the Equal Employment Opportunity Commission (EEOC), which is responsible for investigating charges of discrimination under Title VII. After investigating the case, the EEOC believed that Abercrombie had discriminated against Elauf based on her religion. The agency filed a lawsuit in federal court claiming that Abercrombie violated Title VII by failing to hire her and adjusting the Look Policy to allow her hijab, or head scarf.

Elauf won her case at trial, and Abercrombie appealed the decision to the Court of Appeals for the 10th Circuit. The 10th Circuit decided that Abercrombie did not violate Title VII because the company did not have actual knowledge that the headscarf was worn as a religious practice. Under Title VII, the 10th Circuit said, Elauf would have had to specifically inform Abercrombie that the headscarf was worn as a religious practice and that she would need an accommodation. The EEOC appealed to the Supreme Court.

Issue

Does Title VII of the Civil Rights Act of 1964 require an employer have actual knowledge that an employee’s practice is religious in order to be held liable for firing an employee or not hiring an applicant over that practice?

STATUTES:

Civil Rights Act of 1964, Title VII

“It shall be an unlawful employment practice for an employer to fail or refuse to hire or discharge any individual, 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.”

“The term “religion” includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.”  
  
**Code of Federal Regulations**

The Equal Employment Opportunity Commission (EEOC), a federal government agency, enforces Title VII. The EEOC issues guidance that instruct employers on how to satisfy the requirements of Title VII, and these guidelines are part of the *Code of Federal Regulations*. These guidelines say, in part:

“… After an employee or prospective employee notifies the employer or labor organization of his or her need for a religious accommodation, the employer or labor organization has an obligation to reasonably accommodate the individual’s religious practices.”   
  
  
  
Directions: Read through each argument presented at the United States Supreme Court and decide which side it supports. Write (AF) for the arguments that supports Abercrombie and Fitch’s side and (EEOC) for those arguments that supports the Equal Employment Opportunity Commission. Write your answers in the spaces provided.

\_\_\_\_1. **AF/EEOC** Abercrombie correctly guessed that Elauf wore a headscarf for religious reasons. They should have informed her of the Look Policy, and asked whether she would need an exception. Abercrombie could have described the policy and asked if she could comply with the policy without specifically asking about her religion.

\_\_\_\_2. **AF/EEOC** It should not be solely the responsibility of a prospective employee to ask for an accommodation. The employer knows its policies better than a prospective employee would, so the employer should bear some responsibility for making sure the employee would not need an exception to those policies.

\_\_\_\_3. **AF/EEOC** If the employer has to initiate the dialog about accommodation, they will need to investigate the religious practices of an employee. That is a highly invasive inquiry into the employee’s privacy. The EEOC advises employers not to ask about prospective employee’s religion during an interview, in order to prevent religious discrimination. How can employers safely ask about the need for accommodations and still follow the EEOC’s guidance not to ask about religion?

\_\_\_\_4. **AF/EEOC** Courts will have a difficult time determining whether employers violated Title VII if they must consider whether the employer correctly “guessed,” “assumed,” or “had a hunch” that an employee would need an accommodation. It is much clearer and easier to determine whether the employee asked for an accommodation and was denied.

\_\_\_\_5. **AF/EEOC** The EEOC provides a lot of guidance to companies on the implementation of Title VII. One line of the Code of Federal Regulations does say “after an employee or prospective employee notifies the employer.” But that does not mean that employers are free to discriminate based on their assumptions about someone’s religious practices just because the employee has not explicitly said their practice is religious.

\_\_\_\_6. **AF/EEOC** Forcing an employer to guess or infer whether an employee or applicant needs for a religious accommodation may require them to rely on outdated and offensive stereotypes.

\_\_\_\_7. **AF/EEOC** If the Court rules for Abercrombie here, other employers will avoid starting a discussion with employees or applicants whom they suspect might need religious accommodation. This will enable companies to get around the Title VII rules, resulting in fewer accommodations for religious practices and more discrimination by employers. Employers would be free to discriminate based on religion, as long as they could claim that the employee or applicant “never told them directly” that they had a religious practice.

\_\_\_\_8. **AF/EEOC** Religion is internal and personal. A person’s religious beliefs and practices may not be apparent from their physical characteristics. Without notification from the employee, how can an employer know if an employee needs an accommodation?