

TENTH CIRCUIT SAYS EMPLOYEES MUST GIVE EXPRESS NOTICE OF RELIGION-WORK CONFLICT

Earlier this month, the U.S. Court of Appeals for the Tenth Circuit found that the EEOC failed to establish a prima facie case of religious discrimination where the EEOC could not show that a prospective employee expressly informed the employer of a conflict between the applicant's religious beliefs and the employer's dress code and of the applicant's desire for a reasonable accommodation from that dress code.

In *EEOC v. Abercrombie and Fitch Stores, Inc.*, the Tenth Circuit reversed the lower court's grant of summary judgment in favor of the EEOC on the EEOC's claim that the employer failed to provide a reasonable religious accommodation for a prospective employee who wore a "hijab" (headscarf) for religious reasons. The employer, a national retail clothing company, maintains a "Look Policy" or dress code that is intended to promote and showcase the company's clothing brand. The policy requires employees to dress in clothing that is consistent with the kinds of clothing that the company sells in its stores and prohibits employees from wearing black clothing and caps.

The employer rejected the prospective employee for employment after she wore a hijab to her job interview. The EEOC filed suit against the company, alleging that the company failed to provide the prospective employee a reasonable religious accommodation in violation of Title VII of the Civil Rights Act of 1964.

The Tenth Circuit recognized employers' obligation under Title VII to reasonably accommodate religious practices of an employee or prospective employee unless the employer demonstrates that the accommodation would pose an undue hardship on its business. The court found that, in this case, the EEOC had failed to establish one of the key elements of a Title VII religious accommodation claim - notice. The Tenth Circuit held that in order to succeed on such a claim, the employee or prospective employee must inform the employer that he or she engages in a religious practice that conflicts with the employer's policy and that the employee would, therefore, require an accommodation for that religious practice.

Because the prospective employee, in this case, did not inform the employer, prior to its hiring decision that she engaged in the conflicting practice of wearing a hijab for religious reasons and that she needed an accommodation for it, the court found that the EEOC could

not meet the requirements for a religious accommodation claim under Title VII.

As an employer, you should be aware of the general obligation under Title VII to reasonably accommodate religious practices of employees or prospective employees who inform you of a conflicting religious belief or practice and the need for such an accommodation.

Understand, however, that the reasonable accommodation obligation is implicated *only* when there is a conflict between an employee's religious practice and your neutral policy. If you are made aware of an employee's religious conflict, you should take steps to obtain additional information that would allow you to determine whether an accommodation can be made available to that employee to eliminate the religious conflict without posing an undue hardship on your business. If you have questions about religious accommodation under Title VII, please contact one of our Employment Law attorneys.