

Supreme Court Rules For Woman Denied Abercrombie & Fitch Job Over Headscarf

The Supreme Court has ruled 8-1 in favor of a young Muslim woman who was denied a job at Abercrombie & Fitch because she wore a headscarf.

Samantha Elauf had applied for the sales job in Tulsa, Okla., in 2008 and was recommended for hire by an interviewer. But Abercrombie has a "look policy" that bars the wearing of caps by its salespeople.

The Equal Employment Opportunity Commission took up the case, and the U.S. District Court ruled in favor of Elauf, awarding her \$20,000 in damages. The 10th U.S. Circuit Court of Appeals reversed the decision, concluding that an employer cannot be held liable under Title VII of the Civil Rights Act for failing to accommodate a religious practice until the applicant provides the employer with actual knowledge of his need for an accommodation.

Abercrombie defends its action, citing its so-called look policy, which bans caps and black clothing. Elauf's dress for the interview — a T-shirt and jeans — fit well with that policy, which is described as 'classic East Coast collegiate style of clothing.' But her headscarf did not fit at all. The policy does not allow caps, terming them 'too informal for the image we project.'

"Abercrombie maintains that if Elauf wanted a religious exception allowing her to wear her headscarf, it was up to her to make the case at the time of her interview. Elauf responds that she didn't even know about the look policy, and that deliberately downgrading an otherwise highly rated applicant because of a religious practice violates the federal law banning religious discrimination in employment."

The high court's opinion states that:

"Religious practice is one of the protected characteristics that cannot be accorded disparate treatment and must be accommodated."

Or, as NPR's Carrie Johnson explained for NPR's Newscast unit:

"The court majority held that to win a claim of disparate treatment, job seekers just need to show that their need for accommodation was a motivating factor for an employer, not that the employer actually knew for certain the prospective employee would need an accommodation."

The dissenting vote was Justice Clarence Thomas.

In a statement, Abercrombie & Fitch says it has updated some of its hiring and personnel policies since Elauf's lawsuit:

"We have made significant enhancements to our store associate policies, including the replacement of the 'look policy' with a new dress code that allows associates to be more individualistic; changed our hiring practices to not consider attractiveness; and changed store associates' titles from 'Model' to 'Brand Representative' to align with their new customer focus."

However, the company says the Supreme Court "did not determine that A&F discriminated against Ms. Elauf" and that the company will "determine our next steps in the litigation."

The American Civil Liberties Union also weighed in. In a statement, ACLU national legal director Steven R. Shapiro said:

"The court's decision sends a powerful reminder that religious discrimination has no place in the workplace. Employers should welcome and accommodate religious diversity, not shut their doors to it."

The Council on American-Islamic Relations, CAIR, which had filed a friend-of-the-court brief in the case, also welcomed what Executive Director Nihad Awad called a "historic ruling in defense of religious freedom at a time when the American Muslim community is facing increased levels of Islamophobia."

By Brian Naylor, NPR