

“We Didn’t Know” is No Longer an Employer Defense for Religious Accommodation Claims Under Title VII

Implications for New York, Connecticut, and Vermont Employers

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If your organization operates in New York, Connecticut, or Vermont, a recent Second Circuit decision may significantly impact how you handle and defend religious accommodation requests.

For four decades, employees bringing Title VII religious accommodation claims in the Second Circuit followed a straightforward three-part test. In its July 15, 2026, decision, the Second Circuit in *Bergin v. New York State Unified Court System* abrogated this historical standard, replacing a test focused on employer *knowledge* with one focused on employer *motivation*.

After pushback from the Equal Employment Opportunity Commission (EEOC) and the Department of Justice (DOJ), the Second Circuit filed an amended decision on September 15, 2026, further clarifying the new standard. For employers in New York, Connecticut, and Vermont, this shift could affect how religious accommodation claims are defended.

Key Takeaways

- **New standard in the Second Circuit.**

Bergin abrogates the 40-year-old *Philbrook* test, shifting the focus of Title VII religious accommodation claims from employer knowledge to employer motivation.

- **“We didn’t know” is no longer a complete defense.**

Employees do not need to prove the employer knew of the religious conflict—only that the employers’ desire to avoid an accommodation was a motivating factor in its adverse decision.

- **The amended decision clarifies, but questions remain.**

No heightened “animus” showing is required, but the denial must be because of religion; the court left open whether denying an accommodation alone is an adverse action.

- **Document your reasons.**

Employers should keep a clear, contemporaneous record of legitimate, non-discriminatory reasons for adverse actions and should not rely solely on procedural technicalities like missed deadlines or incomplete paperwork.

Case Background

The plaintiff worked for the New York State (NYS) Unified Court System (UCS). When UCS mandated that all workers obtain and show proof of their COVID-19 vaccinations in September 2021, she sought a religious exemption by submitting a petition that included a personal statement, scripture verses, and a letter from her pastor addressing the use of fetal stem cell lines in vaccine formulas.

UCS’s vaccine exemption committee (VEC) requested additional information via a supplemental form. The plaintiff initially left most of the form blank, and her exemption was denied on December 29, 2021.

When she resubmitted the completed form one week before a January 10, 2022, vaccination deadline, the VEC refused to reconsider. The plaintiff did not submit proof of vaccination by the deadline, was placed on administrative leave, and was terminated in April 2022.

She sued under Title VII, asserting a single claim for failure to accommodate her religious beliefs. The court system later rescinded the vaccination mandate in February 2023, and the plaintiff was reinstated that June. **The district court ruled in her favor**, finding she established a valid claim under the *Philbrook* standard and that UCS failed to demonstrate undue hardship. UCS appealed.

The Old Test

For four decades, the Second Circuit followed the test established in *Philbrook v. Ansonia Bd. Of Educ.*, 757 F.2d 476, 481 (2d Cir. 1985).

To prevail on a failure to accommodate claim, an employee had to prove three elements:

1. The employee had a bona fide religious belief that conflicts with an employment requirement;
2. The employee informed the employer of this belief; and
3. The employee was disciplined for failure to comply with the conflicting employment requirement.

The critical piece? Employer knowledge. If an employer did not know about the religious conflict, the employee’s claim failed.

The New Test

In 2015, the US Supreme Court's decision in *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 US 768 (2015) shifted the framework, but the Second Circuit had not addressed how it affected the old *Philbrook* test until *Bergin*.

Under the new standard, an employee must prove :

1. The employee actually required an accommodation of their religious practice;
2. The employer's desire to avoid the accommodation was a motivating factor in the decision; and
3. The employer made an adverse employment decision.

The key shift: employees no longer need to prove their employer actually knew about their religious conflict. Instead, they must show that avoiding the accommodation was a motivating factor in an employer's decision. In *Bergin*, the Second Circuit held for the first time that *Abercrombie* abrogated the old *Philbrook* test.

Agency Pushback and the Second Circuit's Amended Response

After the July 2026 decision, the EEOC and DOJ weighed in, expressing concern that the court's framing of the *Abercrombie* standard could be interpreted to impose a heightened discriminatory-motive requirement, essentially requiring a showing of animus in a failure to accommodate claim rather than just applying *Abercrombie*'s motivating-factor test.

The agencies argued that a showing of animus should not be necessary in these circumstances. The agencies also raised questions about whether an adverse employment action (such as termination) is necessary, or whether denying the accommodation itself is enough for an employee to satisfy the test.

In September 2026, the Second Circuit issued an amended decision, with two new footnotes that attempted to clarify some of the agencies' concerns.

- **Footnote 2:** The court clarified it was “not suggesting that a new, heightened discriminatory motive requirement exists in failure to accommodate cases.” However, the court states that employees **do need** to show that the denial was “because” of the worker's religion, and not for neutral reasons like failing to submit paperwork on time.
- **Footnote 3:** The court confirmed that *Bergin*'s termination was an adverse employment action, but declined to decide whether denying an accommodation alone could qualify as an adverse action.

What Does This Mean for Employers Moving Forward?

1. The “we didn't know” defense just got weaker.

Under the old test, an employee needed to prove their employer had knowledge of the employee's religious

conflict. Now this knowledge is evidence of motive, but not a complete defense.

2. Employees can potentially sue even without a formal accommodation request.

If an employee shows their employer suspected a religious conflict and acted to avoid providing an accommodation, that may be enough to state a claim.

3. The focus is now on the employer's mental state—document accordingly.

The new test examines whether avoiding the accommodation was a “motivating factor” in the adverse employment action decision. Employers should create a clear, contemporaneous record of their legitimate, non-discriminatory reasons for any adverse action.

4. Do not rely on procedural technicalities.

Defenses based on missed deadlines or incomplete paperwork may not be enough. Courts will look at the substance of an employer's decision-making.

We are Here to Help

When in doubt about how to apply the new failure-to-accommodate standard and its amendments, employers are cautioned to remember that the law is designed to benefit employees and will be interpreted accordingly.

If you are unsure how to prepare your company for these amendments to take effect, [please contact Hinshaw's Labor & Employment team as soon as possible](#).

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