

Abercrombie & Fitch Doesn't look too good to Supreme Court

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In a case we [discussed earlier](#), the U.S. Supreme Court did not appear impressed with Abercrombie & Fitch's recent argument that a hijab wearing applicant needed to ask for religious accommodation before they were obliged to grant it to her. [News sources have reported](#) that oral argument this past Wednesday seemed to favor Samantha Elauf's right to an accommodation even though the teenage, Muslim job applicant in Tulsa did not explicitly tell Abercrombie & Fitch that she was wearing the black head scarf for religious reasons.

Abercrombie & Fitch, which has since changed the "Look Policy" that was used to deny Ms. Elauf's application, was vigorously questioned by the Supreme Court including Justice Samuel A. Alito Jr. who essentially said "c'mon, really?" in response to the company's position that it should not be forced to guess whether an applicant was wearing a head scarf for religious reasons. The Justices spent a considerable amount of time discussing whether the company or the applicant should bear the burden of starting the religious accommodation discussion and seemed to settle on placing the burden with the company. By contrast, the 10th Circuit Court of Appeals had ruled that the applicant bore the burden of requesting a religious accommodation.

Although the Supreme Court will not issue a decision for several months, it appears that a majority will side with Ms. Elauf and likely require retail companies like Abercrombie & Fitch (and others) to at least begin religious accommodation discussions with applicants when the need appears obvious (although the companies should never assume facts about applicants). For now, it seems safest for companies to simply inform the applicant of any relevant policy and ask if that presents a problem, which is a good place to begin any interactive, accommodation discussion. This is an important case for companies to follow and we will report again when the Supreme Court's opinion is published to make sure companies are aware of their obligations and implement appropriate policies and practices.

With questions about this case, please contact your Hinshaw employment attorney.

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