

## Religious accommodation

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**By Sharolyn Whiting-Ralston**

In July, a young Tulsa woman, Samantha Elauf, received a \$20,000 jury verdict against fashion giant Abercrombie & Fitch. The judge determined Elauf had been the victim of discrimination because Abercrombie failed to accommodate her religious beliefs.

Elauf is Muslim, and wears a head scarf known as a hijab. She applied for a position as a model, and wore the hijab to the interview. Elauf received high marks, but the store manager was unsure of what to do because of the hijab. Abercrombie requires its models to adhere to its “look policy,” which has many restrictions such as prohibiting heavy makeup and black clothing. It requires employees to dress in merchandise like that sold at Abercrombie stores. It prohibits employees from wearing “caps”; hence, Elauf’s hijab was prohibited by the policy, and she was not hired.



The Equal Employment Opportunity Commission filed a lawsuit against Abercrombie, asserting it failed to “accommodate” Elauf’s religion by refusing to hire her and allow her to wear her hijab. As the judge in Elauf’s case said, “Title VII imposes an obligation on the employer ‘to reasonably accommodate the religious practices of an employee or prospective employee, unless the employer demonstrates that accommodation would result in undue hardship on the conduct of its business.’” The requirement functions similarly to accommodations required under the Americans with Disabilities Act.

Upon learning about a religious requirement, employers may consider whether the religious belief is bona fide. The law defines “bona fide religious belief” as one that is “religious within the plaintiff’s own scheme of things” and “sincerely held,” and the employee’s perspective is given great weight. Title VII covers both traditional and nontraditional religions and it is not up to the employer (or court) to determine if the religion really requires the employee’s requested accommodation. Instead, the inquiry really surrounds whether the belief is one as a matter of conscience, or spurred by deception and fraud.

Assuming the employee holds a sincere religious belief, the employer must provide a reasonable accommodation unless it would cause an undue burden. Determining reasonable accommodation involves communication between the employee and employer. The employer does not always have to provide the exact accommodation sought, but should consider the employee’s preference. For instance, an employer need not remove someone from their position so that a religious accommodation can be made for someone else. However, allowing someone to adjust their hours to accommodate a Saturday Sabbath may be reasonable.

When does an accommodation create an undue burden? The EEOC recommends employers assess the costs of accommodation in relation to factors such as company size, operating costs, and the number of employees needing accommodations. Dress code variations will not generally impose an undue burden, absent a safety concern.

Abercrombie argued that the look policy was crucial to its marketing. However, Abercrombie had not conducted any study supporting this belief, and made similar accommodations in other markets. Accordingly, Abercrombie failed to show Elauf's hijab created an undue burden.

The case reminds employers of the obligation to make reasonable religious accommodations for employees or potential employees. Employers should engage in interactive communications to determine possible accommodations. If accommodations are reasonable and not inordinately expensive, the employer must offer an accommodation.

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