

June 1, 2015

EEOC v. Abercrombie & Fitch

New York, New York – Tanenbaum applauds today’s U.S. Supreme Court ruling on *Equal Employment Opportunity Commission v. Abercrombie & Fitch*, and its clear decision requiring employers to acknowledge and accommodate the religious needs of employees. Though Abercrombie had adjusted its policies before the decision came out in ways that we also applaud, this decision is still critically important. It reminds employers everywhere that the rights of prospective and current employees to freedom of religion cannot be arbitrarily trampled – including at work.

As Tanenbaum’s Managing Director of Programs Mark Fowler noted, “The Court reminds us that refusing to hire a young woman for the primary purpose of avoiding an accommodation to a religious practice is discrimination plain and simple. And that’s illegal.” While there are circumstances where a company’s legitimate safety or other policies may limit its ability to acknowledge an employee’s religious needs, this case makes clear that acknowledging and accommodating religion must be a core consideration when possible.

That’s why, at Tanenbaum, we help companies develop policies and practices that reflect what we call the Accommodation Mindset®.

The Accommodation Mindset® is one in which employers stop asking “do I have to accommodate?” and start asking “how can I accommodate?” One aspect of this approach is instituting proactive accommodation policies. Though it can be tricky to balance individual religious accommodation requests with the business needs of a company, it can be done. Some effective accommodation policies for companies include:

Abercrombie is moving away from hiring people because they reflect a homogenous “look” policy. Abercrombie is increasingly hiring employees based on criteria less about appearance and more about merit.

Proactively inform employees or prospective hires that accommodations may be possible so the employees or applicants know they can inquire. Abercrombie has started doing this following a settlement in two similar cases involving employees or applicants who wore headscarves for religious reasons.

Clearly communicate policies on religious accommodation, conducting trainings for executive managers in employee rights and their legal obligations, and providing an appeals process for denials of religious accommodation requests. These are also initiatives that Abercrombie has begun implementing following the settlements in 2013.

“Tanenbaum encourages companies to incorporate these better practices into their own policies and recommends that Abercrombie adopt them nationwide.” Fowler says. “If these policies had already been in place when Ms. Elauf applied for a job, I doubt that this case would have ever made the news – or raised questions about the Abercrombie brand in the minds of many consumers.”

By proactively addressing religion at work and finding ways to accommodate different beliefs and practices, companies can ensure that religion is not a motivating factor in an employer’s decision to

deny an applicant employment. The Supreme Court affirmed today that employers must do more than treat religion neutrally - they must actively accommodate employees' and prospective employees' religious practices, unless it causes an undue hardship, even if that requires making an accommodation to an otherwise neutral policy. This is clearly a question of freedom but it is more. Accommodating religion in the workplace is not only the right thing to do – it's good business.