

## EEOC Wins Big At Supreme Court On Religious Accommodation Case

June 1, 2015 | [Employment Discrimination, Labor And Employment](#)

This morning, the U.S. Supreme Court handed the EEOC a victory over national retailer Abercrombie & Fitch on a question of religious accommodation. The court addressed whether an employer must have *actual knowledge* of an applicant's need for a religious accommodation to violate Title VII. By a vote of 8-1, the high court said, "no." It started when Abercrombie did not hire a woman who appeared for her interview wearing a headscarf, which would have violated the clothing store's strict dress code. The manager who decided against hiring the candidate conceded that it didn't matter why the person was wearing the headscarf—whether for religious or other reasons—the headscarf was not allowed. On behalf of the woman, who turned out to be a practicing Muslim, the EEOC sued Abercrombie in federal court in Oklahoma, which ruled in favor of the EEOC. Then, the 10<sup>th</sup> Circuit reversed the lower court and found that a company's failure to accommodate a religious practice could not violate Title VII unless the employer has *actual knowledge* of a person's need for an accommodation. In this case, the applicant did not ask for an accommodation. On June 1, 2015, the Supreme Court rejected the 10<sup>th</sup> Circuit's reasoning. In writing for the majority, Justice Antonin Scalia said that Title VII does not require employers to have actual knowledge; rather, Title VII prohibits certain *motives*. Thus, whether it is merely suspected or confirmed, an applicant's religious practices may not be a motivating factor in employment decisions. In his concurring opinion, Justice Alito reached the same decision, but questioned the majority's analysis, saying that the language of Title VII "does not compel such a strange result." The majority opinion, at less than seven pages, emphasizes that Title VII is not neutral about religion. Instead, Title VII gives religious practices "favored treatment," placing affirmative obligations on employers to accommodate religious practices. The decision raises more questions, including whether Abercrombie could have accommodated the religious practice without creating an undue hardship. In 1977, the Supreme Court established a "de minimis" rule—any accommodation causing more than a *de minimis* cost would be an undue hardship. *De minimis* cost includes not only direct monetary costs, but also indirect, less tangible impacts on a business.

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