

COVER STORY

# Who Gets to Work at Abercrombie?

The Supreme Court is set to decide whether Abercrombie & Fitch discriminated against a job applicant because of her Muslim veil

BY PATRICIA SMITH

ANALYZE  
THE  
ARTICLE

**Samantha Elauf,**  
24, in front of the  
U.S. Supreme Court  
in February





**The Abercrombie look:**  
Shoppers outside a New York store

**A**bercrombie & Fitch doesn't just sell clothes; it sells an image of a beautiful all-American life. For years, the good-looking, shirtless young men who stood at the stores' entrances beckoned shoppers to be part of the fantasy experience. Loud music played in the dimly lit stores, which were pumped full of perfume.

The company still refers to its sales staff as "models" and "living advertisements," and they're meant to look the part of the image they're selling: young, beautiful, and clean-cut. The company's "look policy"—which calls for a "classic East Coast collegiate style"—spells out what sales staff can wear: no hats, no black clothing, no facial hair. Women's hair should be long and nail polish is discouraged.

So what happens when a teenager who doesn't fit that mold walks into a store and asks to work there? Samantha

Elauf was 17 when she applied for a job at an Abercrombie Kids store in her hometown of Tulsa, Oklahoma. Elauf, an observant Muslim, showed up for an interview wearing a T-shirt and jeans—and a black head scarf.

She didn't get the job.

Abercrombie & Fitch says the head scarf, known as a *hijab*, clashed with its dress code. But in a case now before the Supreme Court, Elauf claims the company discriminated against her because of her religion.

"I was a teenager who loved fashion," says Elauf, now 24. "No one had ever told me that I could not wear a head scarf and sell clothing."

#### Freedom of Religion

The case, *E.E.O.C. v. Abercrombie & Fitch Stores*, asks the Court to weigh in

on an important question involving the religious freedoms guaranteed by the Constitution: How far should private companies have to go to accommodate the religious beliefs of their employees?

**Employers must make a 'reasonable accommodation' to an employee's religious beliefs.**

"The balancing act is between the applicant who's saying her religious rights were infringed and the employer who has a right to hire who they want," says Barbara

McGraw, a law and ethics professor at Saint Mary's College of California.

The First Amendment to the Constitution protects the right of all Americans to freely practice their religion. The Civil Rights Act of 1964 prohibits religious discrimination in hiring by public and private companies and by federal, state, and local governments. (It also prohibits racial and gender discrimination.) Under Title VII of the Civil Rights Act, employers must make a "reasonable



accommodation” to an employee’s religious beliefs unless that accommodation puts an “undue burden” on the employer.

Abercrombie says it “has a longstanding commitment to diversity” and has “granted numerous religious accommodations when requested, including hijabs.”

But it’s not the first time the company has faced allegations of discrimination. In 2004, it paid \$40 million to settle a lawsuit brought by black, Hispanic, and Asian groups who claimed minority job applicants were steered toward low-visibility jobs. In 2009, British authorities found that the company had wrongfully dismissed a young employee who refused to be banished to the stockroom because she had a prosthetic arm. And in 2013, a federal judge in California ruled that Abercrombie discriminated against a 19-year-old Muslim working at Hollister who refused to take off her hijab to conform to the dress code. (Hollister is owned by Abercrombie & Fitch.)

After Elauf didn’t get the job at Abercrombie Kids in 2008, she filed a complaint with the Equal Employment Opportunity Commission (E.E.O.C.), the federal agency that enforces the laws that prohibit workplace discrimination. The E.E.O.C. sued Abercrombie on her behalf.

A jury sided with Elauf, finding that the company did discriminate against her as a Muslim; it awarded her \$20,000 in damages. But the U.S. Court of Appeals overturned the verdict, and the E.E.O.C. appealed the case to the Supreme Court.

### Not a ‘Fashion Statement’

In oral arguments at the Supreme Court in February, Shay Dvoretzky, a lawyer for Abercrombie, repeated the argument that the company has made all along: that Elauf never told her interviewer she wore the head scarf for religious reasons, so Abercrombie couldn’t have discriminated against her. Requiring the company itself to raise the religion issue during the interview, Dvoretzky told the justices, would be “asking employers to treat applicants differently based on stereotypes or assumption about whether something is likely a religious practice.”



**Keep it on:** School dress codes can't prevent you from wearing religious attire like crosses, yarmulkes, and turbans.

But the justices seemed skeptical. After warning “this is going to sound like a joke,” Justice Samuel A. Alito posed a hypothetical question about four job applicants: a Sikh man wearing a turban, a Hasidic Jewish man wearing a hat, a Muslim woman wearing a hijab, and a Catholic nun wearing a habit.

“Do you think that those people have to say, ‘We just want to tell you, we’re dressed this way for a religious reason? We’re not just trying to make a fashion statement,’” Alito asked.

Despite the First Amendment’s

protection of religious freedom, the courts have long grappled with the issue of religious attire and what the right balance is in accommodating it. For example, courts have ruled that public school dress codes can’t prevent students from wearing items connected with their faiths, such as crosses, yarmulkes, head scarves, or turbans. And earlier this year, the Supreme Court ruled in *Holt v. Hobbs* that an Arkansas prison must allow a Muslim prisoner to grow a short beard to accommodate his religious beliefs, even though facial hair violates prison policy.

But at the same time, some restrictions on religious attire have been upheld. In 1986, the Supreme Court ruled in *Goldman v. Weinberger* that a Jewish Air Force officer didn’t have a right to wear a yarmulke when in uniform, because members of the military don’t have the same right to religious expression as ordinary citizens.\* And in 2003, a Florida judge ruled that the state could require a Muslim woman to remove her *niqab* (a veil that covers both the hair and face) for her driver’s license photo.

In the Abercrombie case, Christian, Jewish, Sikh, and Muslim groups have all filed briefs in support of Elauf.

If the Court rules for her, it could have broad ramifications for Muslims in the American workplace: Of the 3,800 religious discrimination complaints filed with the E.E.O.C. in 2012, more than 20 percent were from Muslims, who make up less than 1 percent of the U.S. population.

Whatever the justices decide, Abercrombie already seems to be making changes. It recently adjusted its “look policy” to allow head scarves for religious reasons; it’s also phasing out the shirtless men at its store entrances and toning down the perfume and loud music.

“If they’re smart and they understand the power of social media and consumer awareness, they’ll be learning from this,” says Americus Reed, a marketing professor at the Wharton School of Business in Philadelphia, “and that will probably update their approach.” ●

*With reporting by Adam Liptak of The Times.*

\*After this ruling, Congress passed a law allowing members of the military to wear religious apparel while in uniform.



## ***U.S. Equal Employment Opportunity Commission***

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### **PRESS RELEASE**

6-1-15

## **Supreme Court Rules in Favor of EEOC in Abercrombie Religious Discrimination Case**

***Employers Cannot Refuse to Hire Applicants Based on Religious Belief or Practice, Even If Not Specifically Asked for an Accommodation***

WASHINGTON - The U.S. Supreme Court held today in an 8-1 decision written by Justice Antonin Scalia that an employer may not refuse to hire an applicant if the employer was motivated by avoiding the need to accommodate a religious practice. Such behavior violates the prohibition on religious discrimination contained in Title VII of the Civil Rights Act of 1964.

EEOC General Counsel David Lopez hailed the decision. "At its root, this case is about defending the quintessentially American principles of religious freedom and tolerance," Lopez said. "This decision is a victory for our increasingly diverse society and we applaud Samantha Lauf's courage and tenacity in pursuing this matter."

According to the Supreme Court, "An employer who acts with the motive of avoiding accommodation may violate Title VII even if he has no more than an unsubstantiated suspicion that accommodation would be needed." The court continued that "...to accommodate a religious practice is straightforward: An employer may not make an applicant's religious practice confirmed or otherwise, a factor in employment decisions."

"The EEOC applauds the Supreme Court's decision affirming that employers may not make an applicant's religious practice a factor in employment decisions," said EEOC Chair Jenny R. Yang. "This ruling protects the rights of workers to equal treatment in the workplace without having to sacrifice their religious beliefs or practices."

The case arose when Samantha Lauf, then a teenager who wore a headscarf or hijab as part of her Muslim faith, applied for a job at Abercrombie & Fitch in her hometown of Tulsa, Okla. She was denied hire for failing to conform to the company's "Look Policy," which Abercrombie claimed banned head coverings. She then filed a charge with the U.S. Equal Employment Opportunity Commission (EEOC), alleging religious discrimination, and the EEOC filed suit against Abercrombie & Fitch alleging that Abercrombie refused to hire Samantha Lauf due to her religion, and that it failed to accommodate her religious beliefs by making an exception to its "Look Policy" prohibiting head coverings.

The district court granted summary judgment to the EEOC after holding that the evidence established that Lauf wore the hijab as part of her Muslim faith, that Abercrombie & Fitch was on notice of the religious nature of her practice, and that it refused to hire her as a result. A jury subsequently awarded Lauf damages for the discrimination.

Abercrombie appealed and a divided panel of the U.S. Court of Appeals for the Tenth Circuit ruled for Abercrombie. The court of appeals held that Abercrombie was not on sufficient notice of Elauf's religious practice because, despite correctly "assuming" that Elauf wore a headscarf because of her religion, Abercrombie did not receive explicit, verbal notice of a conflict between the "Look Policy" and her religious practice from Elauf - despite the evidence that Abercrombie never disclosed the "no head coverings" rule in the "Look Policy" to Elauf.

The U.S. Solicitor General, who conducts all EEOC litigation at the Supreme Court, asked the court to hear the EEOC's case. Given the number of [religious discrimination charges](#) received each year by the EEOC, the government believed that the court of appeals' ruling would have a particularly significant negative impact in cases involving job applicants whose religions impose requirements concerning grooming or dress.

"I was a teenager who loved fashion and was eager to work for Abercrombie & Fitch," said Elauf. "Observance of my faith should not have prevented me from getting a job. I am glad that I stood up for my rights, and happy that the EEOC was there for me and took my complaint to the courts. I am grateful to the Supreme Court for today's decision and hope that other people realize that this type of discrimination is wrong and the EEOC is there to help."

To assist employees and employers in understanding their rights and obligations about accommodations for religious observances, the EEOC has a fact sheet on [Religious Garb and Grooming in the Workplace](#).

The EEOC enforces federal laws prohibiting employment discrimination. More information about the EEOC is available at [www.eeoc.gov](http://www.eeoc.gov).

**“Who Gets to Work at Abercrombie?” *E.E.O.C. v. Abercrombie & Fitch Stores*  
Supreme Court Reading Assignment (HS.32)**

*Directions: Read the article, “Who Gets to Work at Abercrombie?” and the E.E.O.C. Press Release. On a separate piece of paper, write answers to the questions below using complete sentences.*

1. On your separate sheet of paper, write out the 44 words of the First Amendment. What are the five basic freedoms addressed in the First Amendment?
2. Read the article and summarize the central ideas. What was the author's purpose in writing this article?
3. Which federal agency helped Samantha Elauf file suit against Abercrombie? What is the Equal Employment Opportunity Commission?
4. What important question regarding religious freedoms was addressed in *E.E.O.C. v. Abercrombie and Fitch Stores*?
5. The author writes that “Abercrombie & Fitch doesn't just sell clothes; it sells an image of a beautiful, all-American life.” What evidence does the author include to support this claim?
6. Using evidence in the article, analyze what U.S. law says about the role of religion in the hiring process. Evaluate whether Abercrombie violated the law.
7. Compare and contrast the perspectives of Samantha Elauf and Abercrombie & Fitch in this case. How would each side describe what happened?
8. During the oral arguments in this case, why did Justice Samuel A. Alito pose a hypothetical scenario about four job applicants—a Sikh man wearing a turban, a Hasidic Jewish man wearing a hat, a Muslim woman wearing a hijab, and a Catholic nun wearing a habit? What point was he probably trying to make?
9. Study the photos that appear with the article. What do they add to your understanding of the topic?  
*(Answering the all of the questions above correctly and in complete sentences could earn a 2.0)*
10. What changes does the article say Abercrombie has made recently to its “look policy”? Why do you think the company made these changes?
11. What ramifications could this case have for Muslims in American workplaces?  
*(Answering all of the questions above correctly and in complete sentences could earn a 2.5)*
12. Read the E.E.O.C. Press release. How did the Supreme Court rule in this case?
13. What did E.E.O.C. General Counsel David Lopez say about the Supreme Court decision? Do you agree with this decision? Why, or why not?  
*(Answering all of the questions above correctly and in complete sentences could earn a 3.0 or above)*