

Accommodation of Sincerely Held Religious Beliefs

08MondayDec 2014

Posted by [Leslie L. Lynch](#) in [Employment](#)

Several years ago a young woman wearing a black hijab applied for a retail job at a national chain in a Tulsa mall. The retailer, which caters to the young and fashionable, has a strict dress code which prohibits, among other things, the wearing of “caps” and black clothing. After in-person interviews and multiple discussions at several levels of the company, the retailer determined that the young woman would not be hired for the sales floor job. The reason driving the hiring decision was the Hijab.

The Equal Employment Opportunity Commission (“EEOC”) sued the retailer on behalf of the young woman. The retailer vigorously defended its hiring decision. After conducting discovery, the parties both filed motions with the Court that asked the Court to rule, as a matter of law, in their favor. The EEOC convinced the trial judge that the retailer violated Title VII’s prohibition against discrimination based on religion by refusing to hire the young woman. The retailer appealed.

In a lengthy decision, the Tenth Circuit Court of Appeals reversed the trial court but did not send the case back to the trial court for a trial on the merits. Rather, in a decision filed October 1, 2013, the Court entered judgment in favor of the retailer. Central to the majority’s decision was the fact that the young woman never told the retailer that she was wearing the Hijab for religious reasons. The appellate court also relied on the EEOC’s expert witness’s testimony that “although some Muslim women wear hijabs for religious reasons, those are not the only reasons that Muslim women wear hijabs; for example, some do so for cultural reasons or in order to demonstrate a personal rejection of certain aspects of Western-style dress.” The EEOC’s witness also “testified that, in understanding the reasons why people maintain certain styles of dress ... the question is, what is their motivation.” Thus, the Court concluded that because “Title VII’s conception of religion as a uniquely personal and individual matter,” it is up to an individual to notify his or her employer (or potential employer) of a closely held religious belief that needs to be accommodated.

On October 1, 2014, the United States Supreme Court decided to hear the EEOC’s appeal of the Tenth Circuit’s decision. It will be interesting to see if the Supreme Court’s decision favors the EEOC’s position or the Circuit Court’s. A quick survey of the internet shows the pundits’ opinions are clearly split. One can only hope that the Court provides clear guidance to assist employers in negotiating the tension that might exist between an employee’s or applicant’s religious beliefs and the employer’s dress code. Does a hiring employer need to observe an employee’s manner of dress (whether it is a Hijab; a cross; a woman wearing a skirt and not slacks; or a man’s facial hair), determine that the manner of dress is necessitated by the applicant’s closely held religious belief and then accommodate that belief? If it is up to the employer to guess as to the nature and extent of an employee’s personal religious belief, employers need to beef up their research into the various recognized religions (obscure or not) and education of hiring managers so that they are not subject to a Title VII religious discrimination claim when a Pastafarian applicant appears for an interview wearing a spaghetti strainer on her head (<http://www.venganza.org/>) or something equally authentic but far from the mainstream.