

From the courtroom: Ensure dress code allows for religious needs

Your dress code must allow some leeway for religious exemptions. The EEOC takes religious discrimination seriously and has been aggressively going after employers that enforce dress codes that unnecessarily restrict employees' faith-mandated attire.

Plus, the U.S. Supreme Court's 2015 *EEOC v. Abercrombie & Fitch* ruling made it clear that applying a dress code to employees in a way that screens out workers abiding by their religious dress codes is discrimination based on religion. It may also amount to national origin discrimination.

The latest case to test dress-code restrictions was just filed in federal court.

The EEOC alleges that Greyhound, the nation's biggest bus company, discriminated against a practicing Muslim driver.

During her job interview, the woman told a Greyhound supervisor for driver operations and safety that her religion requires her to dress modestly by wearing an abaya and a headscarf. An abaya is a loose-fitting, ankle-length overgarment designed to conceal the outline of a woman's body.

The supervisor allegedly told the driver—who Greyhound determined was highly qualified for the job—that the company would accommodate her religious beliefs and practices.

Before she applied for the job, she had obtained her commercial driver's license and had met all her state's driving tests while wearing an abaya. She had also worked for a year as a tractor-trailer driver while wearing an abaya.

She accepted Greyhound's job offer. But when she began driving, the company refused to let her wear the abaya because of what it called safety-related issues.

Greyhound told her she could wear a knee-length skirt over trousers instead. She said the compromise would not work since her religious practice did not allow revealing even the outline of her lower legs.

She quit and went to the EEOC, which is now suing on her behalf. Barring a settlement, the case will go to trial.

Lesson learned: Never second-guess a worker's religious beliefs or the requirements he or she must observe. If you have safety concerns, you will need solid, objective data to back them up.

McDonald's strict grooming policy riles EEOC

McDonald's—the restaurant that pumps out carbon-copy burgers and unfailingly flawless fries—has found the limits of its exacting standards. People, it appears, cannot be packaged nearly so precisely.

A McDonald's franchise in Central Florida faces charges it violated Title VII of the Civil Rights Act when it refused

to accommodate an applicant's religious beliefs.

A Hasidic Jew applied for a part-time maintenance position at a restaurant run by Chalfont & Associates Group, Inc. The manager interviewing him agreed he was qualified and agreed to hire him on one condition: He had to shave off his beard.

The man refused, citing his religious beliefs. Instead, he offered to wear a beard net. The manager withdrew the employment offer.

The rejected applicant filed a complaint with the EEOC, which concluded the franchisee failed to either accommodate the man's religious beliefs or show that doing so would be an undue hardship. The EEOC is now suing Chalfont, seeking back pay, compensatory and punitive damages, as well as injunctive relief.

The injunctive relief will focus on Chalfont's inflexible grooming policy, which left no room to explore possible religious accommodations.

Employers should know that any law that allows accommodations—such as Title VII's religious prong and the ADA—requires some flexibility.

Employers can deny accommodation requests, but they must show that accommodating the request would have posed an undue hardship. In this case, the employer would have had to show that allowing an employee to use a beard net would either cost too much or would not have met the restaurant's cleanliness requirements.

In addition, the employer would have to demonstrate that it researched other accommodations and they were not reasonable.

Lesson learned: Policies that are obviously and absolutely inflexible are red flags for EEOC investigators looking into failure-to-accommodate complaints.