ABERCROMBIE & FITCH'S "LOOK POLICY" NEEDS A MAKEOVER AFTER THE SUPREME COURT LOOKED AT IT - AND - ANOTHER BILL SEEKS TO INCREASE CALIFORNIA'S MINIMUM

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The Abercrombie & Fitch clothing company is famous for their scantily clad models with six-packs and very little actual clothing and employee store-hosts with very little on as well. It should be no surprise, then, that Abercrombie & Fitch employees are subject to a "Look Policy." The US Supreme Court recently took a look at that "Look Policy" and declared it unattractive, and unlawful in some contexts. (Click here for the court opinion.)

Specifically, an attractive and otherwise qualified female applicant interviewed for a job as an Abercrombie & Fitch employee. Cooke, the manager who interviewed the applicant, found her to be a good candidate but was concerned whether her headscarf would violate the Look Policy. Cooke was unsure because she believed the headscarf was being worn for religious observance reasons. Cooke took it up the chain of command and was told by Johnson, her superior, that the applicant's headscarf would indeed violate the Look Policy, as would all other headwear, religious or otherwise, and directed Cooke not to hire the applicant. No withering flower, the applicant pursued a claim of discrimination with the EEOC, and the agency took up her cause.

Following a long journey through the court system, the case came before the US Supreme Court. Unlike some cases, the Supremes declared this case "easy", saying:

> Abercrombie's argument that a neutral policy cannot constitute "intentional discrimination" may make sense in other contexts. But Title VII does not demand merely neutrality with regard to religious practices —that they be treated no worse than other practices. Rather, it gives them favored treatment.

In other words, Title VII requires otherwise-neutral policies to give way to the need for a religious (or other legally required) accommodation.

Notably, the court further held that it was irrelevant that the applicant did not declare her religious need to wear the headscarf or ask for an accommodation. (Really, she couldn't have because she did not yet know of the Look Policy.) Based on this "easy" analysis, the court held that:

To prevail in a disparate-treatment claim, an applicant need show only that his need for an accommodation was a motivating factor in the employer's decision, not that the employer had knowledge of his need.

This does not bode well for employers who actively attempt to not know of an employee's religion, handicap or other protected class status. If it appears that the employer knew of it or suspected it, regardless of whether the applicant expressly confirmed it, the employer will be held accountable for how that knowledge was used in the hiring process. And that may not make the employer look good.

Another Bill Seeks To Increase California's Minimum Wage

For the third year in a row, the California Senate is seeking to increase California's minimum wage with automatic adjustments for inflation. Specifically, Senate Bill 3 proposes to raise minimum wage to $11 per hour on January 1, 2016, $13 per hour on January 1, 2017 and will automatically adjust thereafter commencing on January 1, 2019. The bill has already been approved by the senate and will now proceed to the State Assembly for review. Prior efforts to legislate automatic adjustments of the minimum wage have failed, although Assembly Bill 10 was signed into law after deletion of such a provision in 2013. AB 10 raised California's minimum wage to the current $9 per hour, which will increase to $10 per hour on January 1, 2016. Of course, that could change if SB 3 passes.