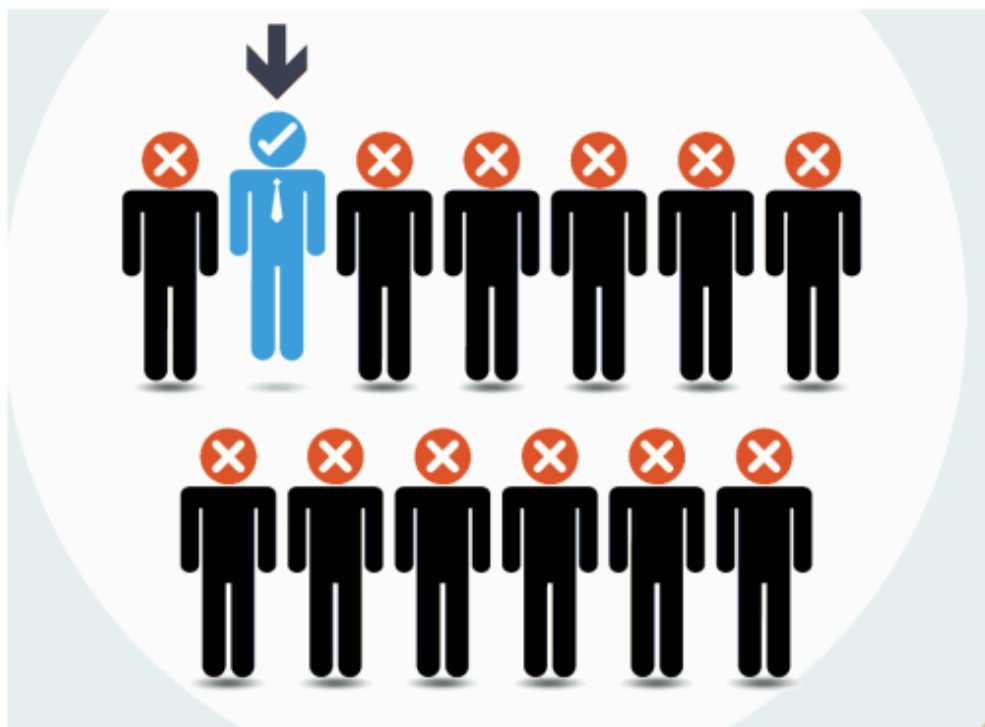


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WORKPLACES FACING TEST OF FAITH IN HIRING

Employers must tread carefully when it comes to a job candidate's religion.

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CONTRIBUTING COLUMNIST

Todd Wulfison's phone has been ringing ever since the U.S. Supreme Court's widely publicized ruling earlier this month in a religious discrimination lawsuit against Abercrombie & Fitch.

Employers want to know how they can avoid being the next Abercrombie, said Wulfison, a partner at Carothers DiSante & Freudenberger LLP, an employer-defense law firm in Irvine.

The high court's ruling allowed a Muslim woman in Tulsa, Okla., to maintain a discrimination claim against the youth-oriented retailer for refusing to hire her because her re-

Ever been bullied at work? What did you do? I'm collecting examples of workplace bullying and strategies for dealing with the problem for a future On the Job column. If you've got a story to share, write me at the email below.

dress, or limit the hours of the day or days of the week that a job hunter or employee could work.

A 2013 California law is even broader, prohibiting discrimination based on grooming or dress practices such as wearing a beard, turban or yarmulke, according to Eaton, an attorney with Seltzer Caplan McMahon Vittek in San Diego.

It's opening the door for job hunters to file claims against companies for discrimination related to ethnic or cultural practices involving tattoos, piercing and other appearance-related issues, according to Wulfison.

lated question, you don't have to answer.

On a job interview, you're within your rights to decline to answer such a question. You could simply decline to comment, or make an observation such as, "You're not allowed to ask me about my religion." If a recruiter, human resources staffer or hiring manager asks about religion "and they don't hire you because of it, you could sue," Eaton said.

- If you think you're being discriminated against in an interview, you can take action.

In California, the Department of Fair Employment and Housing handles workplace discrimination claims. Job applicants and employees can file claims online.

The DFEH investigates claims, and if it determines there's probable cause, it either tries to obtain a settlement from the employer or it sues. At the federal level, the Equal Employment Opportunity Commission handles similar religious discrimination claims.

religious headscarf, or hijab, violated an employee dress code that bans wearing hats on the job.

"Companies are going to be running scared. They don't know what to do," Wulffson said.

Companies are nervous because under the ruling, job hunters may have a claim for religious discrimination even if they don't specifically disclose during an interview that they wear a head covering for religious reasons, as was the case with the job applicant in the Abercrombie suit.

"It's enough that the prospective employer has a suspicion that the applicant's attire or grooming practices are for religious reasons," according to Dan Eaton, an employment attorney who lectures on business ethics at San Diego State University.

That puts the onus on employers to find out whether a candidate is unable to adhere to dress policies or other company rules for religious reasons.

If an employer asks a job applicant upfront if he can adhere to such company regulations and the candidate says yes, then gets hired and decides later he is being discriminated against, he may find it hard to prove that those same regulations actually burden his religion, attorneys said.

The ruling's implications aren't limited to head coverings. They also apply to religious observances that require other types of

He said he's seen a number of lawsuits filed since the Supreme Court ruling, including one against a client brought by a job applicant who claims to have been turned down for a position because of a neck tattoo he maintains is culturally relevant.

Companies can try to head off problems by adding information about any dress code or grooming standards to job descriptions so job hunters know what to expect even before filling out an application, Wulffson said.

At the same time, job hunters should disclose if they have any issues related to their ability to do the job, he said. "It's always better to work those out upfront than bring some surprise claim," Wulffson said. "Nobody wants to go through a lawsuit. It's expensive, and once your name's listed as a plaintiff, it's really hard to get a job."

Here are some points raised by the ruling, according to the two attorneys:

- A potential employer can't ask questions about your religion.

An employer can ask if there is any reason you would not be able to observe a workplace dress code or work certain hours or days of the week. But they cannot ask if there is any religious reason why you would not be able to do either of those. If they do, it opens them up to charges of violating laws that protect workers or job candidates against religious discrimination.

- If a potential employer asks a religion-re-

- You don't have to know definitively if you've been discriminated against because of your religion to take action.

The fact that an employer asked about it changes the process, Eaton said. If you're rejected after having been asked the question, it could be evidence that the rejection was motivated by your refusal to answer an improper question, he said.

- Employers are not required to accommodate religious dress or practices if doing so would cause them "undue hardship."

According to the EEOC, an accommodation may cause undue hardship if it is costly, compromises workplace safety, decreases workplace efficiency, infringes on the rights of other employees, or requires other employees to do more than their share of potentially hazardous or burdensome work.

According to Eaton, one example of an undue hardship might be an employee whose evangelical religion requires them to spread their faith.

"The employer could put restrictions on the practice on the grounds that allowing unrestrained proselytizing of coworkers would cause an undue hardship in the work environment," he said.

Michelle V. Rafter specializes in covering jobs and employment issues. Send your questions to her at michellerafter@comcast.net or find her on Twitter @MichelleRafter