



DELAWARE

EMPLOYMENT LAW LETTER

Part of your Delaware Employment Law Service

Lauren Russell, Scott A. Holt, William W. Bowser,
and Molly DiBianca
Young Conaway Stargatt & Taylor, LLP

Vol. 20, No. 7
July 2015

Key takeaways from Abercrombie decision

by Barry M. Willoughby

The Supreme Court focused on the question of whether the employer's adverse action was motivated by illegal discrimination rather than its knowledge of the applicant's protected status. While knowledge, unsubstantiated or otherwise, of an applicant's protected status will continue to be an important element of proof, the ultimate question in determining whether illegal adverse action occurred will be the employer's actual motivation for its decision.

As the Court noted, knowledge alone won't be a basis for liability if in fact the employer's actual motive was not discriminatory. On the other hand, an employer that was motivated to discriminate based on unsubstantiated facts or suspicion will be liable under Title VII.

You should ensure your decision makers understand that a decision motivated by illegal considerations will lead to liability regardless of their knowledge of an applicant's protected status. Thus, if they are confronted with a potential religious accommodation issue, they should directly address

it with the applicant to determine whether an accommodation is necessary.

Following the familiar approach for addressing the need for an accommodation of a disability is a good guide. If there's an obvious reason to believe that a religious accommodation may be necessary, you should affirmatively raise the issue and engage in the interactive process for determining whether an accommodation is required. If, on the other hand, there's no apparent reason to believe an accommodation is necessary, you need not raise the issue.

Copyright 2015 M. Lee Smith Publishers LLC

DELAWARE EMPLOYMENT LAW LETTER does not attempt to offer solutions to individual problems but rather to provide information about current developments in Delaware employment law. Questions about individual problems should be addressed to the employment law attorney of your choice.

[Back to Results](#)

[Back to Search](#)

[Exit Search](#)