Title VII and Islamophobia: Maintaining Compliance

BY SUSAN K. EGGUM

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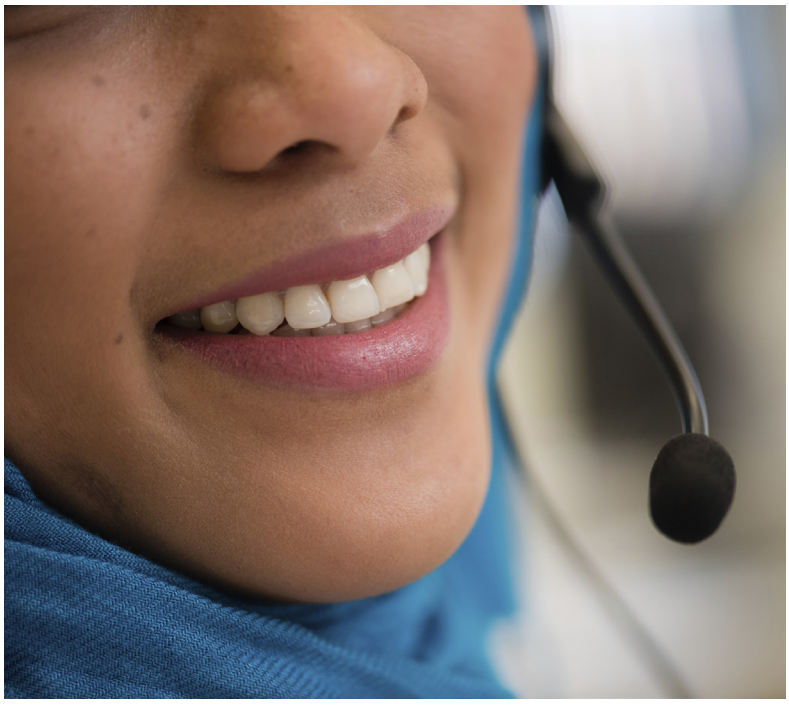
OVER THE PAST DECADE, THERE HAS BEEN AN INCREASE IN ISLAMOPHOBIA perpetuated by negative stereotypes resulting in bias, discrimination and marginalization. That presents an issue to which all employers must be sensitive. According to Pew Research Center, Muslims are the fastest growing religious group in the world, estimated at 1.6 billion as of 2010, or roughly 23 percent of the global population. Islam is currently the third largest faith in the U.S. and represents the most racially diverse religious group within the country. A 2011 survey of Muslim Americans estimated that there were 1.9 million Muslim adults and 2.75 Muslim Americans of all ages, with 65 percent identifying as Sunnis, 11 percent as Shias, and the remainder as "just" Muslim. Demographic projections indicate that by the year 2050 there will be more Muslim Americans than persons who identify as Jewish.

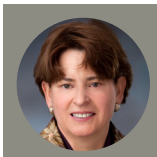
Title VII of the Civil Rights Act of 1964 prohibits employers with at least 15 employees from discriminating in hiring, disciplining, demoting, harassing, retaliating against or firing a person on the basis of sincerely held religious beliefs or religious practices. Title VII also requires reasonable accommodations of religious practices, unless the accommodation would impose an undue hardship on the employer.

The religious practices of Islam include, but are not limited to, observance or participation in Eid (a religious holiday), Ramadan, daily prayers, Friday congregational prayer, dietary restrictions (including prohibition of alcohol and pork) and use of hijabs. The U.S. Equal Employment Opportunity Commission (EEOC) has seen a 22.3 percent increase in religious discrimination charges from 1997-2012. On June 1, 2015, the U.S. Supreme Court issued a decision in *EEOC v. Abercrombie & Fitch Stores, Inc.*, a suit brought by the EEOC on behalf of a Muslim teenager who wore a hijab to her interview for a retail sales position. She was not hired due to the retailer's "no-cap" policy applicable to all employees regardless of religion. The Supreme Court rejected the employer's policy defense explaining, in part, that the law gives religious practices "favored treatment." The Court made clear that to prevail in a Title VII disparate treatment claim, the job applicant must only prove that needing an accommodation (e.g., permitting use of the hijab) was a motivating factor in the decision not to make a job offer, and there isn't a need for proof of any request from the applicant for an accommodation. In other words, the job applicant may prevail without proving that the employer actually knew of the need for a religious accommodation.

The take-away from *Abercrombie & Fitch* is to avoid questions about religion at the job interview, and instead focus on established workplace policies and ask if the applicant could comply with the policies, if hired. If the answer is "no," then certainly the employer may simply ask "why." If it becomes apparent to a well-trained hiring manager that an accommodation could be required, and assuming the high threshold of "undue hardship" cannot be established if an accommodation is made, then the employer must make an unbiased decision to hire or not hire based solely on the applicant's ability to perform essential job duties. Best hiring practices and human resource managers will agree that staying abreast of the laws and regulations guiding the hiring process is key to company success and reputation, and assuring diversity in the workplace. ■



Reasonable accommodations of religious practices are required, unless the accommodation would impose an undue hardship on the employer



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