

# Benefits BULLETIN

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## Abercrombie Discrimination Case

On June 1, 2015, the U.S. Supreme Court ruled in favor of a Muslim woman who was denied employment by retailer Abercrombie & Fitch for wearing a headscarf, or hijab, because of her faith. [Equal Employment Opportunity Commission \(EEOC\) vs. Abercrombie & Fitch Stores, Inc.](#) (Abercrombie) became a high-profile religious discrimination case, and it provides insight for employers regarding permissible hiring practices.

Title VII of the Civil Rights Act protects job applicants from discrimination based on their religion. Under Title VII, employers cannot deny applicants employment to avoid providing reasonable accommodations for religious practices.

In this case, practicing Muslim Samantha Elauf applied for a position at Abercrombie. She was

determined to be eligible for hire under the company's standard assessment system for prospective employees. When the assistant manager disclosed to her superiors that Elauf wore a hijab, she was told not to hire her because headwear violated the company's "look policy."

The EEOC sued Abercrombie on Elauf's behalf, and she was initially awarded \$20,000 in damages. The award was reversed by the Court of Appeals, which ruled that Abercrombie did not violate Title VII because the applicant did not inform the company of her religious practice or the need for an accommodation.

The U.S. Supreme Court overturned the Court of Appeals decision, holding that in order to prove discrimination, a job applicant only needs to demonstrate that the assumption of a need for accommodation was a determining factor in an employer's decision.

In general, the Supreme Court's decision confirms current practice for many employers. However, the ruling is significant for employers because it establishes a lower standard for job applicants to prove discrimination—they only need to prove motive instead of actual knowledge. In practical terms, this means that employers should not base their hiring decisions on an assumption that an applicant may require some type of accommodation.

## King v. Burwell on ACA Subsidies

On June 25, 2015, the U.S. Supreme Court issued its opinion on [King v. Burwell](#). In this case, the Supreme Court upheld the availability of health insurance Exchange subsidies in every state, regardless of whether a state establishes its own Exchange or has a federally facilitated Exchange (FFE).

The Supreme Court ruled that the text of the Affordable Care Act (ACA) does not prohibit subsidies from being offered in FFEs. The Supreme Court reasoned that, without the availability of these subsidies in all states, several other key ACA provisions would not operate as intended. Therefore, the Supreme Court determined that Congress intended subsidies to be available in all states.

The Internal Revenue Service (IRS) had previously determined that subsidies would continue to be provided in all states, so there are no changes in subsidy availability due to the Supreme Court's ruling.

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## King v. Burwell on ACA Subsidies

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However, the ruling is significant for individuals who are purchasing insurance through an FFE. The Department of Health and Human Services (HHS) states that 87 percent of individuals purchasing health care coverage through an Exchange were eligible to receive subsidized insurance. During the 2015 open enrollment period, nearly 9 million of the 11 million people who purchased private health plans obtained health insurance through an FFE. If the FFE subsidies had been struck down, many individuals would no longer receive subsidies to help with the cost of health coverage.

The ruling also has a significant impact on large employers in states with FFEs. Applicable large employers may face penalties under the ACA's employer mandate if they do not provide full-time employees with health coverage. The penalties are triggered by a full-time employee receiving an Exchange subsidy. If subsidies were not available through FFEs, employers in those states would not have been subject to the employer mandate penalties. Because the Supreme Court upheld the FFE subsidies, the employer mandate will apply consistently throughout the country.

## Embedded Out-of-pocket Maximum for Family Coverage

The ACA requires non-grandfathered health plans to limit an enrollee's out-of-pocket costs for essential health benefits each year. This annual limit is often referred to as the "out-of-pocket (OOP) maximum."

Recent [agency guidance](#) will require the self-only OOP maximum to be embedded in family coverage when the plan's OOP maximum for family coverage exceeds the ACA's limits for individual coverage. This requirement will

take effect beginning with the 2016 plan year, when the OOP maximum for self-only coverage will be \$6,850.

This guidance applies to all non-grandfathered group health plans, including self-funded plans and insured plans of all sizes.

While this change will have a significant impact on many employer-sponsored health care plans, high deductible health plans are likely to be affected the most. This is due to the fact that high-deductible family plans have higher cost-sharing limits. They are also typically designed to administer a single OOP limit on all family coverage with no underlying OOP maximum for each individual enrolled in the family plan.

Under the new guidance, many high-deductible family health plans will need to be modified so that a single individual's OOP costs do not exceed the specified maximum. Currently, most group health plans that offer self-only and family coverage have separate out-of-pocket maximums for these levels of coverage, and they do not apply the self-only OOP maximum to individuals who have family coverage.

For example, currently, a plan could have an \$8,000 OOP limit for family coverage and require that limit to be satisfied before it covers expenses at 100 percent, even if one individual incurs all of the expenses.

According to the guidance, this type of plan design will no longer be permitted for non-grandfathered plans, and the plan would have to be amended so that each individual would not be required to pay more than the OOP maximum for individual coverage for essential health benefits.

## PTO Trends Revealed in Recent Survey

Paid time off (PTO) is usually viewed by employees as a valuable benefit. PTO benefits are often used as part of an overall benefits package to support employee retention and recruitment efforts. The 2015 edition of the Paid Time Off Survey, conducted by Zywave Inc., gathered responses from 2,192 employers in all regions



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of the country. The survey focuses on various types of PTO offerings and how employers use them.

The 2015 survey reveals trends consistent with past years, showing the popularity of offering paid time off, especially to full-time employees. While employers in most states are not legally obligated to provide their employees with PTO, many choose to do so in an effort to remain competitive. Some type of PTO is offered to full-time employees by 94 percent of employers.

Employers typically offer PTO in one of two ways: either through the traditional categories of vacation, sick and personal time or through a PTO bank that does not distinguish different types of paid time off. The majority (55 percent) of employers that offer PTO currently use traditional PTO packages. PTO banks are slowly growing in popularity, with 39 percent of employers using them and 29 percent saying they have considered switching to a PTO bank system.

The majority of employers determine the amount of PTO offered to each employee based on length of service. For those offering vacation time, 89 percent of employers scale number of days off based on length of service (Graph 1), which is similar to the 83 percent of employers that offer PTO (Graph 2).

For vacation time, 50 percent of those who have been with a company for one year receive six to 10 days off. For PTO banks, 30 percent receive six to 10 days and 25 percent receive 11 to 15 days off. For those with vacation time, however, they also typically receive additional days of sick time or personal days: 78 percent of employers offering traditional packages provide sick time and 43 percent provide personal days.

In addition to PTO, many employers offer at least some paid holidays. Only 7 percent do not offer any paid time off for holidays, and 50 percent offer between seven and 10 days of paid holidays. Four percent offer 13 or more paid days off for holidays each year.

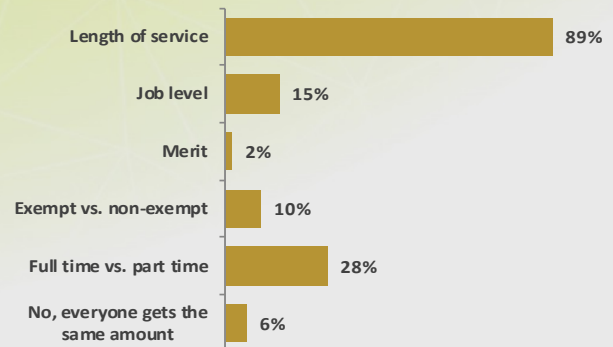
For the full survey results or more information on PTO benefits, contact Brown & Brown Benefit Advisors today.

*The information contained in this newsletter is not intended as legal or medical advice. Please consult a professional for more information.*

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**Graph 1**

**How does your company currently scale vacation time? Please select all that apply.**



**Graph 2**

**How does your company currently scale PTO? Please select all that apply.**

