

Does Being “Perceived As” Muslim Support A Title VII Claim? One Court Says Yes

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**William A.
Nolan**

Partner
Columbus
Managing Partner

Readers will know that the Americans with Disabilities Act (ADA) is distinctive among discrimination statutes in that it protects not only people who *are* disabled but also those *regarded as* disabled, as discussed [here](#) and [here](#). The foundation of a Title VII sex discrimination in the language “*because of sex*” also creates potential gray areas as to exactly who the law protects. Generally, however, a person either is in a protected class or is not.

[This recent case](#) from a Michigan federal court flags the issue of whether the fact one is perceived as being of a certain faith (in this case, Muslim) is sufficient to trigger Title VII religious discrimination protections. The court denied summary judgment to the employer where a dark-skinned, Iraqi employee claimed he had been discriminated against because of the exception he was Muslim. A supervisor’s statement that the plaintiff’s hat looked like a *topi*, a skullcap worn by Muslim men for religious reasons, appears to have been important to the conclusion. Other references on which the Court relied seem, however, to be based more on national origin than religion. (A national origin discrimination claim also survived summary judgment.) The court acknowledged that a number of other courts had come out the opposite way on this issue, but the parties agreed that the Sixth Circuit, the federal court of appeals with jurisdiction over Michigan, had not weighed in on the issue. The issue seems likely to be destined for the Sixth Circuit in this case, and perhaps even the U.S. Supreme Court if the Sixth Circuit were to come to a different conclusion than other federal courts.

Not surprisingly, the EEOC on its [website](#) seems to take the expansive view that being perceived as being a member of a religion would form the basis for a claim. In the meantime, employers should remain aware of this possible basis for a claim, and in any event remember that, if you make well documented personnel decisions solely for [business reasons](#), you will almost always have a good defense to a claim, regardless of the ever-shifting sands of discrimination law.

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