# Motive Now Matters: The Second Circuit Rewrites the Religious Accommodation Playbook




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For decades, religious accommodation claims in New York, Connecticut, and Vermont ran on a familiar three-step track. The employee showed that she held a sincere religious belief that conflicted with a job requirement, that she informed her employer of the conflict, and that she was disciplined for not complying. Once those boxes were checked, the burden shifted to the employer to prove it offered a reasonable accommodation or that doing so would have imposed an undue hardship. The inquiry was about process and knowledge. What did the employer know, and what did it do about it?

On July 15, 2026, in *Bergin v. New York State Unified Court System*, the Second Circuit held that this test has been dead since 2015 and nobody noticed. The court concluded that the Supreme Court's decision in *EEOC v. Abercrombie & Fitch Stores* severed the link on which the old framework rested, and it replaced the knowledge-based prima facie case with one built around a single question: was the employer's desire to avoid an accommodation a motivating factor in the adverse action?

That is a meaningful shift, and it cuts in more than one direction.

## What Happened in *Bergin*

The facts are a familiar artifact of 2021. A court officer with the New York State Unified Court System sought a religious exemption from the agency's COVID-19 vaccination mandate. She submitted a personal statement, scripture, and a letter from her pastor. When the exemption committee sent a supplemental questionnaire probing the basis for her beliefs, she returned it largely blank, citing privacy concerns. The exemption was denied, and she was terminated.

A jury found in her favor under the old three-part test. The Second Circuit vacated that verdict, held that the old test no longer governs, and sent the case back to be tried under the new standard.

## The New Test

Under *Bergin*, a plaintiff must now show that (1) she actually required an accommodation of her religious practice, (2) the employer's desire to avoid providing that accommodation was a motivating factor in its decision, and (3) she suffered an adverse employment action. The court rejected the argument that *Abercrombie*, a hiring case, should be confined to hiring decisions. Title VII draws no distinction between refusing to hire and choosing to fire, and neither will the Second Circuit.

Knowledge is not irrelevant under the new framework. It is evidence of motive. But it is no longer sufficient on its own, and its absence is no longer automatically fatal. An employer that knew about a religious conflict and acted for reasons having nothing to do with avoiding accommodation has a defense it did not have before. An employer that merely suspected a conflict and acted to sidestep it has an exposure it may not have appreciated.

## Why This Is Not Simply Good News for Employers

The headline of *Bergin* is that it raises the bar for plaintiffs. That is true. Proving motive is harder than proving notice, and some claims that would have survived summary judgment under the old test will not survive under the new one.

But employers should resist the temptation to file this decision under "wins." Three cautions are in order.

First, motive inquiries are jury inquiries. Once a case is framed around what the employer wanted rather than what it knew, the evidence that matters is the evidence that reveals intent: internal emails, committee notes, offhand comments, patterns of how similar requests were handled. That is precisely the category of evidence that courts are reluctant to resolve as a matter of law. A standard that makes it harder to plead a claim can, paradoxically, make it harder to dispose of one.

Second, the new framework diverges sharply from the ADA. Disability accommodation claims remain process-driven: did the employer engage in the interactive process, was the accommodation reasonable, was there an undue hardship? Employers now face two different analytical structures for what feels, on the ground, like the same conversation. An HR team that runs religious and disability requests through a single template will need to think about whether that template still fits.

Third, the *Bergin* facts themselves should give employers pause. The supplemental questionnaire that prompted the dispute is exactly the kind of tool many employers adopted during the pandemic to test the sincerity of exemption requests. Under a motive-focused standard, the design and tone of those inquiries become evidence. A questionnaire that reads as a genuine effort to understand a belief looks very different from one that reads as an effort to build a denial file.

## What About Pennsylvania, New Jersey, and Delaware?

*Bergin* binds only New York, Connecticut, and Vermont. Employers across the river are in a different posture, at least for now.

The Third Circuit continues to apply the traditional framework it set out in *Webb v. City of Philadelphia*: a sincere religious belief that conflicts with a job requirement, notice to the employer, and discipline for noncompliance. That is the test the Third Circuit applied in *Groff v. DeJoy* on its way to the Supreme Court in 2023, and the Supreme Court reversed on the undue hardship standard, not the prima facie case. The Third Circuit has not revisited its framework in light of *Abercrombie*, and no decision to date has adopted a motive element.

That does not mean Philadelphia and Newark employers can ignore *Bergin*. Three points are worth noting.

First, the Abercrombie reasoning that drove Bergin is Supreme Court reasoning, not Second Circuit reasoning. The argument that the traditional test "did not survive" 2015 is now sitting in a published circuit opinion, and defense counsel in the Third Circuit will raise it. Expect district courts in the Eastern District of Pennsylvania and the District of New Jersey to be asked to choose.

Second, a circuit split of this kind is the sort of thing the Supreme Court eventually resolves. Employers with multi-state footprints spanning both circuits are now defending the same accommodation decision under two different tests, which is untenable in the long run and a reason to build the record as if the motive standard applied everywhere.

Third, state law matters independently. The Pennsylvania Human Relations Act and the New Jersey Law Against Discrimination have their own religious accommodation provisions, and the NJLAD in particular is routinely read more broadly than Title VII. A shift in the federal prima facie test does not necessarily carry over to state claims, which means a plaintiff in New Jersey may plead both and let the employer sort out which framework applies to which count.

## The Practical Takeaway

Under a motive standard, the record you build is the case you will defend. Employers in the Second Circuit, and employers in the Third Circuit who should expect the same argument to arrive shortly, should be doing the following:

**Document the reason for every denial**. Not "request denied," but why. Tie each decision to an articulable, non-religious business basis, and make sure that basis is consistent with how the employer has handled comparable requests.

**Audit your inquiry process.** Questionnaires and follow-up requests should be designed to understand the belief and evaluate feasible accommodations, not to generate grounds for rejection. Train the people who administer them to understand the difference.

**Keep the undue hardship analysis honest**. *Groff v. DeJoy* raised the bar in 2023, requiring a showing of substantial increased cost in the context of the particular business. *Bergin* does not lower it. An employer that skips the hardship analysis because it believes the plaintiff cannot prove motive is betting on a jury question.

Watch what gets written down. Motive cases are won and lost on contemporaneous communications. Managers who vent about "another exemption request" in email are creating exhibits.

*Bergin* did not make religious accommodation claims easier to defend. It changed what defending them looks like. Employers who understood the old test as a process to be followed should now understand the new one as a narrative that will be reconstructed, months or years later, from whatever they left behind.