

Employees Participating in Internal Investigations Protected from Retaliation

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The U.S. Supreme Court recently held that employees who answer management questions during a Title VII related internal investigation are protected from retaliation under the Act's "opposition clause." *Crawford v. Metropolitan Government of Nashville*, No. 06-1595 (Jan. 26, 2009).

The plaintiff, Vicky Crawford, worked for Nashville for 30 years. She was approached by a human resources officer to discuss rumors that Nashville's employee relations director had engaged in sexual harassment. In response to questions, Ms. Crawford relayed several instances which she thought constituted sexual harassment. A short time later, she along with two other employees who provided information were fired. While Nashville claimed Ms. Crawford was discharged for embezzlement, she alleged she was terminated in retaliation for disclosing unlawful acts of sexual harassment during the investigation.

The lower courts ruled against Ms. Crawford by finding she was not protected from retaliation under the "opposition clause." That clause states it is unlawful for an employer to discriminate against an employee because she opposed a practice made unlawful by Title VII. Both the District and Sixth Circuit found that because Ms. Crawford had not "instigated or initiated a complaint" her actions did not rise to the level of "opposition."

The Supreme Court disagreed. It found that when an employee communicates to her employer a belief that the employer has engaged in a form of discrimination, the communication constitutes the employee's opposition to the activity. It went on to say that a person can

“oppose” by responding to someone else’s question just as surely as by provoking the discussion. Specifically it stated that “nothing in the statute requires a freakish rule protecting an employee who reports discrimination, but not one who reports the same discrimination in the same words when her boss asks a question.”

This case adds to the growing list of decisions that have widened protections against retaliation. As retaliation cases now constitute the second largest category of discrimination claims, employers are urged to carefully review any potential adverse action against employees who have lodged complaints or participated in investigations, whether internal or external in nature.

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