

U.S. Supreme Court Expands Protections Against Retaliation

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A recent decision by the U.S. Supreme Court expands the protections against retaliation under Title VII of the Civil Rights Act of 1964. The statute forbids retaliation against an employee who has “opposed” discriminatory practices. In *Crawford v. Metropolitan Government of Nashville and Davidson City*, the Supreme Court held that this language protects employees who allege discrimination in response to questions during an employer’s internal investigation.

In *Crawford*, the employer investigated rumors that a director had engaged in sexual harassment. As part of that investigation, a human resources officer asked three employees if they had ever witnessed the director engaging in inappropriate behavior. Although none of the employees had ever filed a complaint or reported any discrimination, each responded that the director had sexually harassed them. One of those employees, Vicky Crawford, later sued the employer, claiming that she had been terminated in retaliation for her statements during the internal investigation.

The district court granted summary judgment to the employer because Crawford had not initiated any complaint of discrimination and did not actively oppose any allegedly discriminatory practices. In its view, Crawford had merely responded to questions as part of the employer’s internal investigation. The Court of Appeals for the Sixth Circuit affirmed that decision for the same reasons.

On certiorari, the Supreme Court reversed the dismissal of the case. The Court explained that an employee need not initiate or instigate a complaint to “oppose” a discriminatory practice. The Court held that so long as the employee communicates her belief that discrimination has occurred, then that communication is sufficient to trigger the protections against retaliation. Because Crawford had stated that she had been sexually harassed by the director, the Court found that she had “opposed” a discriminatory practice under Title VII and thus had stated a claim of retaliation.

The decision in *Crawford* should not discourage employers from conducting internal investigations into allegations of discrimination. Employers should continue to promptly investigate and respond to complaints of discrimination. However, in doing so, employers now must be sensitive to the fact that employees who participate in the investigation may have protections against retaliation, even though they themselves neither initiated nor instigated the investigation. While it is unlikely that responsible employers would terminate an employee under these circumstances, *Crawford* broadens the class of employees who may claim retaliation in response to an adverse employment decision, and we anticipate a rise in such claims as a result.

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