Supreme Court: Employees Questioned During Discrimination/Harassment Investigations May Be Protected Under Title VII's Anti-Retaliation Provisions

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The United States Supreme Court ruled unanimously that employees questioned by their employers during internal discrimination/harassment investigations may be protected by Title VII's anti-retaliation provisions. *Crawford v. Metropolitan Gov't of Nashville and Davidson County*. This Supreme Court decision overturns several lower court decisions which had ruled that a "mere" witness, an inactive player in the harassment allegations, was not protected by Title VII's anti-retaliation provisions. While the Supreme Court's decision does not mean that such employees can never be discharged, it does remind employers not to retaliate against those who provide unwelcome information.

In *Crawford*, the employer received reports that a supervisor had engaged in inappropriate workplace conduct. During the investigation, co-worker Vicky Crawford was asked whether she had personally witnessed any "inappropriate behavior" by the supervisor. Crawford responded in detail, reciting several occasions when the offending supervisor had acted inappropriately toward her. Subsequently, the employer terminated Crawford's employment. Crawford then claimed she was fired in retaliation for her statements about the supervisor.

The Title VII anti-retaliation provision makes it "an unlawful employment practice for an employer to discriminate against any of his employees . . . because he has opposed" an unlawful practice ("the opposition clause"). The question before the Supreme Court involved defining the term "opposed." Specifically, did Crawford's reply to the employer's question regarding the supervisor's behavior constitute "opposition" within the meaning of Title VII – meaning that she could not be discharged for providing such a reply?

Some lower courts had required more active opposition to the discriminatory conduct than merely answering questions. For example, the federal appeals court in Cincinnati (Sixth Circuit) held the opposition clause to "demand active, consistent 'opposing' activities to warrant . . . protection against retaliation." The Supreme Court, however, unanimously concluded that the ordinary meaning of "oppose" requires much less. The Supreme Court held that Crawford's "disapproving account of [the supervisor's] sexually obnoxious behavior" entitled Crawford to protection under Title VII. Thus, Crawford's mere answers to the employer's questions constituted opposition to an unlawful practice within the meaning of the anti-retaliation provisions.

While the *Crawford* decision arguably provides employers with a disincentive to inquire about alleged workplace discrimination, such a decision would be unwise. An employer is well-advised to exercise reasonable care to prevent and correct promptly any discriminatory conduct and to conduct a thorough investigation of such allegations. Nevertheless, the *Crawford* decision serves as a reminder to employers to carefully approach such investigations and their aftermath. Specifically, employers should have a legitimate, non-retaliatory reason for discharging any employee who participated in the employer's investigation in any fashion.