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## U.S. Supreme Court Clarifies Title VII's Anti-Retaliation Provisions

On January 26, 2009, the United States Supreme Court held that the anti-retaliation protections of Title VII extend to employees who do not notify their employer of workplace discrimination until they are questioned by their employer during an internal investigation.

In 2002, The Metropolitan Government of Nashville and Davidson County, Tennessee ("Metro") investigated an employee's allegations of sexual harassment by an employee relations director of the school district, Gene Hughes. *Crawford v. Metropolitan Government of Nashville and Davidson County, Tennessee*, 211 Fed. Appx. 373 (6<sup>th</sup> Cir. 2006). During the investigation, Metro interviewed Vicky Crawford, an employee of thirty years. A human resources director asked Crawford whether she had witnessed any "inappropriate behavior" on Hughes's part. Crawford acknowledged that she had witnessed Hughes behaving in a sexually offensive manner in the workplace and she described a few of those instances to the investigator. Following the interview, Metro took no disciplinary action against Hughes, but it fired Crawford and two other employees who had similarly acknowledged Hughes's harassing behavior during the investigatory questioning. Metro alleged that its reason for terminating Crawford was embezzlement.

Crawford filed a Title VII charge with the EEOC, claiming that Metro unlawfully retaliated against her. Crawford then filed suit with the United States District Court for the Middle District of Tennessee. The District Court granted summary judgment in favor of Metro, holding that Crawford failed to "oppose" workplace discrimination within the meaning of Title VII because she did not initiate or instigate a complaint. Instead, the Court found that she had merely answered questions during an internal investigation initiated by another employee. The District Court also concluded that Crawford's "participation" in Metro's investigation did not qualify for Title VII protection because Crawford did not participate in an investigation pursuant to a pending EEOC charge. The Court of Appeals for the Sixth Circuit affirmed, holding that the opposition clause of Title VII "demands active, consistent "opposing" activities to warrant . . . protection against retaliation". 211 Fed. Appx.,

at 376 (quoting *Bell v. Safety Grooving & Grinding, LP*, 107 Fed. Appx. 607, 610 (6<sup>th</sup> Cir. 2004)). The Sixth Circuit also held that Crawford failed to show a violation of Title VII's participation clause because her employer's investigation was not conducted pursuant to a pending EEOC charge.

Title VII of the Civil Rights Act of 1964 forbids an employer from retaliating against an employee who reports workplace discrimination. The opposition clause makes it "unlawful . . . for an employer to discriminate against any . . . employe[e] . . . because he has opposed any practice made . . . unlawful . . . by this subchapter", and the participation clause makes it unlawful to discriminate against an employee who "has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." 42 U.S.C. § 2000e-3(a). The U.S. Supreme Court determined that the term "opposed" retains its ordinary meaning in this context: "to resist or antagonize . . . ; to contend against; to confront; resist; withstand." The Court found that Crawford's statement to Metro, in the context of the internal investigation, constituted "opposition" under the plain meaning of the word because she expressed disapproval of another employee's sexual behavior toward her. Accordingly, an employee need not instigate or initiate a complaint to be covered under the opposition clause, but may merely express dissatisfaction with the discriminatory behavior when asked.

The Court did not address Crawford's coverage under the participation clause of Title VII because her actions were protected under the opposition clause. The Court noted that Metro's summary judgment motion raised several defenses to the retaliation charge besides the scope of the opposition and participation clauses. Those issues were remanded for further review.

If you have any questions about this holding, please contact [Adam Harris](#) at (212) 758-7724.

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