

This court ruling will be of interest to those investigating claims of discrimination, harassment and unfair employment situations.

### Supreme Court Expands Protection under Title VII - EMPLOYEES PARTICIPATING IN INVESTIGATION

by Paige Lueking

Rumors of sexual harassment by the employee director were floating throughout the department. A 30 year employee witnessed his inappropriate behavior, but made no complaints. During the internal investigation, the employee reported her experiences. When asked "What's up?" by his employee, the director made provocative gestures and comments. Two other employees reported being harassed by the same supervisor. At the conclusion of the investigation, the director was not removed, but the employee who cooperated in the investigation and 2 other accusers were terminated.



In the case of *Crawford v. Metropolitan Government of Nashville & Davidson County*, the United States Supreme Court held Title VII's anti-retaliation provision's protection extended to an employee who made no direct complaints about discrimination, but merely answered questions during her employer's internal investigation regarding another employee's complaints about sexual harassment rumors. Title VII provides an employee protection from a retaliatory firing if the employee is reporting discriminatory behavior or opposing discriminatory treatment.

As part of its investigation of an employee's complaints regarding alleged sexual harassment by a company director, Ms. Crawford, a thirty (30) year employee was interviewed. Although she never initiated any complaints herself, during the interview Ms. Crawford described, in detail, several instances of sexual harassment by the director under investigation. The incidents included inappropriate conduct by the director against several female employees.

Shortly after the interview, Ms. Crawford was terminated. In her retaliation claim, the employer raised the defense that Ms. Crawford was not engaging in "protected activity" and therefore, the suit should be dismissed. The trial court agreed with the employer, granting summary judgment in its favor. The reasoning was as follows: since Ms. Crawford did not initiate a harassment claim, then the protection clause of Title VII did not apply, and the termination was lawful and not retaliatory in nature. On appeal, the summary judgment was affirmed by the appellate court.

When the United States Supreme Court accepted the case, and ruled in favor of Ms. Crawford, a message was sent to employers across the land. When conducting an internal investigation, the employee's answers to questioning equals opposition activity which is also protected under Title VII. By answering the employer's questions and disclosing the director's harassment, Ms. Crawford demonstrated "opposition activity," which extended the statutory anti-retaliation provisional protection to her.

This holding is consistent with the high court's pro-employee retaliation decisions. With retaliation claims on the increase, it will be important for employers and those conducting internal investigations to keep the investigation focused. Termination of employees participating in an internal investigation needs to be non-discriminatory and not retaliatory.

If you would like more information on this case -- or would like a free presentation on the current issues in employment law -- please contact me at 214-712-9510 or [email me](#).

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