

Crawford Analysis – by Tammy Marzigliano and Delyanne Barros

In *Crawford v. Metropolitan Gov't of Nashville & Davidson County, Tennessee*, the Supreme Court unanimously decided that protection under Title VII of the Civil Rights Act extends to an employee who speaks out about discrimination when answering questions during an employer's internal investigation.

Vicky Crawford was an employee of Metro for over 30 years. In 2002, Veronica Frazier, a Human Resources employee, conducted an internal investigation regarding allegations of "inappropriate behavior" by the relations director, Gene Hughes. Frazier asked Crawford if she had witnessed any "inappropriate behavior" by Hughes. Crawford told Frazier that Hughes had asked to see her breasts on numerous occasions, grabbed his genitals in front of her and, on one occasion, and pulled her head down towards his crotch. The employer took no action against Hughes; however, a few months later Crawford and two other accusers were terminated. The employer alleged that it terminated Crawford and the other accusers because they embezzled money.

Crawford brought a lawsuit against her employer for retaliation in violation of Title VII. The district court ruled for the employer and the 6th Circuit affirmed the decision, holding that Crawford did not "oppose" the harassment under Title VII because she had not "instigated or initiated a complaint" and no EEOC charge had been filed.

However, the Supreme Court found the embezzlement allegation was completely unfounded and unsupported. In addition, the Court rejected the Circuit Court's reasoning that Crawford's actions did not qualify as "opposition" because she had not "instigated or initiated any complaint." The Court applied the ordinary meaning to "opposition" finding that it merely means to "resist or antagonize" and that Crawford's statement to Frazier clearly fell within that definition. As a result, the Court reversed the 6th Circuit's decision granting judgment for the employer and sent the case back to the 6th Circuit to be decided in accordance with the Court's analysis.

Analysis

Retaliation cases are the most prevalent cases being filed today. Out of the 82,792 cases that were filed with the EEOC in 2007, 26,663 were retaliation cases. Specifically, 23,371 of those cases were under Title VII alone, accounting for almost 30% of all cases filed.

Therefore, it was no surprise that Justice Souter stated retaliation "is no imaginary horrible." Indeed, the Court continued, "retaliation is the leading reason why people stay silent instead of voicing their concerns about bias and discrimination."

The 6th Circuit's erroneous interpretation of the retaliation provision under Title VII was an anomaly considering most courts in other circuits have extended protection to employees in similar situations as Crawford's. However, the Supreme Court's clear cut decision on this matter will leave employers little room to maneuver around this issue.

Therefore, employers will be more attentive to not fire or punish employees who have cooperated with internal investigations as well as those who have made formal complaints. As a result, a case under similar facts would unlikely be brought to trial and instead will likely be settled out of court.

The protection is clearly extended to those employees who are approached by their employers to participate in any type of investigation concerning discrimination. In addition, employees who participate voluntarily in an investigation or in response to a subpoena should also be covered by the protection against retaliation.

Now that the Supreme Court has clearly laid out the parameters of this protection, employers may consider instituting some type of anti-retaliation policy similar to the anti-harassment policies now in place. Therefore, employers can ensure compliance by providing employees with a reasonable avenue to complain about possible retaliatory behavior.

Either way, employers should be more wary of engaging in retaliatory behavior now that the Supreme Court has clarified the extent of the protection.