Legal Alert: Supreme Court Clarifies Scope of Title VII Retaliation Prohibition

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On January 26, 2009, the U.S. Supreme Court held that an employee who discloses information about discriminatory conduct in response to questions that are part of an employer's internal investigation is protected by the "opposition clause" of Title VII's prohibition on retaliation. *See Crawford v. Metropolitan Government of Nashville* (1/26/09). In reaching this decision, the Supreme Court rejected the Sixth Circuit's determination answering questions during an internal investigation was not the type of "active" opposition to unlawful conduct protected by Title VII.

Title VII prohibits two types of retaliation. The "opposition clause" prohibits discrimination against an employee because he or she has opposed any practice made unlawful by Title VII. The "participation clause" prohibits discrimination against an employee because he or she has "made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing" under Title VII.

In this case, Crawford was interviewed as part of the employer's internal investigation of another employee's sexual harassment allegation. There was no agency charge pending during or following the investigation. During the interview, Crawford described several instances of sexually harassing behavior to which she had been subjected. Subsequently, the employer discharged Crawford for, according to the employer, embezzlement.

Crawford sued, claiming her discharge violated both the opposition and participation clauses of Title VII's prohibition on retaliation. The Sixth Circuit affirmed the trial court's decision in favor of the employer, holding that Crawford could not meet the requirements of the opposition clause because answering questions during the interview was not the type of "active, consistent 'opposing'"activity protected by the opposition clause.

The Supreme Court reversed this decision, holding that "nothing in the statute requires a freakish rule protecting an employee who reports discrimination on her own initiative but not one who reports the same discrimination in the same words when her boss asks a question."

In reaching this decision, the Court held that the term "oppose" carries its "ordinary meaning" – that is, to "resist or antagonize . . . ; to contend against; to confront; resist; withstand." According to the Court, Crawford's statement during the interview, an "ostensibly disapproving account of sexually obnoxious behavior toward her by a fellow employee" would qualify in the minds of reasonable jurors as resistant or antagonistic to the alleged harasser's treatment.

In his concurring opinion, Justice Alito emphasized his understanding that "the Court's holding does not and should not extend beyond employees who testify in internal investigations or engage in analogous purposive conduct." Specifically, Justice Alito stated, "it is questionable whether silent opposition is covered by the opposition clause."

Employers' Bottom Line:

The Court's decision expands the scope of Title VII retaliation claims in states within the jurisdiction of the Sixth Circuit (Kentucky, Michigan, Ohio and Tennessee); however, many other federal appeals courts already followed the Supreme Court's position. As the number of retaliation claims continues the increase, this decision emphasizes the importance of ensuring that terminations and other adverse employment decisions are based on legitimate, nondiscriminatory reasons that are properly documented, especially when those decisions involve employees who have complained of illegal harassment or discrimination.

If you have any questions regarding this decision or other labor or employment related issues, please contact the Ford & Harrison attorney with whom you usually work.