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High Court to Decide Title VII Anti-Retaliation Issue

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On January 18, 2008, the United States Supreme Court announced that it will review the Sixth Circuit Court of Appeals' decision in Crawford v. Metropolitan Government of Nashville and Davison County Tennessee. The Supreme Court will determine whether an employee who cooperates and participates in an employer's internal investigation of sexual harassment allegations, but fails to file a charge with the Equal Employment Opportunity Commission ("EEOC"), is nevertheless protected from retaliation under Title VII.

Facts

The case involves a claim by a Tennessee woman, Vicky Crawford, who asserts that Title VII's anti-retaliation provision protects workers, like her, who voluntarily provide information during an internal investigation of suspected unlawful sexual harassment. Title VII's anti-retaliation provision prohibits employers from (1) retaliating against employees who oppose unlawful practices (the "opposition clause"), or (2) participate in various types of Title VII proceedings (the "participation clause"). Crawford was employed for 30 years at the Metropolitan School District ("Metro"). Her employment was terminated in January 2003.

In 2002, Crawford participated in an internal investigation into sexual harassment complaints made by some of her female co-workers. Crawford's co-workers asserted that they had been sexually harassed by Gene Hughes, the employee relations director for the Metro School District. As the employee relations director, Hughes was responsible for investigating all claims of discrimination and harassment. As a result, the investigation was conducted by the assistant director of human resources, Veronica Frazier. Frazier interviewed several employees in the administrative department who worked with Hughes, including Crawford.

During the interview, 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, pulled her head down towards his crotch. The investigation was concluded and no disciplinary action was taken against Hughes. Nevertheless, a few months after the investigation, Crawford was suspended and, eventually, fired. Crawford alleged that the other women who complained about sexual harassment by Hughes were also fired.

Lower courts reject Crawford's claims

Crawford sued Metro claiming that it violated Title VII by firing her because her act of providing information regarding Hughes' unlawful conduct

constituted protected activity under the statute. Crawford further asserted that the reasons Metro provided for her termination (*i.e.*, allegations of embezzlement and drug use) were fabricated and unfounded. The trial court held that Crawford's conduct was not protected under Title VII's anti-retaliation provision and dismissed her case.

The Sixth Circuit agreed with the trial court. The court held that Crawford's actions of relating unfavorable information during the course of an internal investigation did not qualify as overt opposition because Crawford did not allege that she initiated any complaint prior to her participation in the investigation or after the investigation, but prior to her termination. Therefore, Crawford could not bring a retaliation claim under the opposition clause.

In determining whether the participation clause applied to Crawford's actions, the court determined that the participation clause does not protect employees' participation in an internal investigation and only applies to formal investigations conducted by the EEOC. Therefore, because no EEOC charge had been filed at the time of the investigation, Crawford's participation in the investigation did not constitute protected activity that would support a retaliation claim.

What will the future hold?

The National Employment Lawyers Association has supported Crawford's appeal, and has argued that the Sixth Circuit's ruling will have far-reaching, harmful effects in preventing sexual harassment in the workplace. The U.S. Justice Department lawyers have also indicated their view that the decision was contrary to the EEOC's interpretation of the law and should be overturned. The main concern of these groups is that the practical effect of the Sixth Circuit's decision is that employees who participate in internal harassment and/or discrimination investigations will be protected from retaliation only in very limited circumstances.

The U.S. Department of Justice is urging the U.S. Supreme Court to hold that the disclosure of discriminatory acts during an employer's internal investigation constitutes protected activity, and therefore, there is no requirement that the employee actually lodge a formal complaint. With regard to the application of the participation clause, those opposing the Sixth Circuit's decision argue that Title VII protects employees who participate in an employer's internal investigation even when no EEOC charge has been filed.

The Supreme Court will hear arguments in the case and then decide the case either in this term or its upcoming term. Whatever the outcome, stay tuned. The Supreme Court's opinion may have a significant impact on employers if the Court were to broaden the scope of protected activity under either the opposition clause or the participation clause.

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