

United States Supreme Court Expands Claims of Retaliation

by Joette S. Doran, Esq.

The United States Supreme Court recently issued a decision holding that an employee who is interviewed during an internal investigation of another employee's complaint of sexual harassment may be able to sue for retaliation even where the employee did not initiate the complaint. In *Crawford v. Metropolitan Government of Nashville and Davidson County, Tennessee*, 129 S. Ct. 846 (2009), the Metropolitan Government of Nashville and Davidson County, Tenn., began investigating rumors of sexual harassment by the Metro School District's employee relations director, Gene Hughes. In connection with the investigation, a human resources officer asked employee Vicky Crawford whether she had witnessed any inappropriate behavior on the part of Hughes. In response, Crawford described several instances of harassing behavior by Hughes. Although the employer took no action against Hughes, it fired Crawford after an investigation contending she engaged in embezzlement. Crawford sued under Title VII of the Civil Rights Act of 1964, claiming that Metropolitan Government fired her in retaliation for reporting Hughes' behavior during their sexual harassment investigation. Prior to the investigation, Crawford had not complained about Hughes' behavior. The question before the Court was whether Crawford had opposed an unlawful employment practice (sexual harassment) sufficient to support a claim of retaliation when she had not instigated or initiated any complaint, but instead had only answered questions by investigators



in an already pending internal investigation. The Court held that the retaliation protection offered by the opposition clause of Title VII does extend to "an employee who speaks out about discrimination not on her own initiative, but in answering questions during an employer's internal investigation." This decision affirms that all employees questioned as part of an internal investigation should be afforded the same protection against retaliation as those making the actual complaint.

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