



# Labor and Employment *ALERT*

Current Law Developments and Legal Issues

That May Affect You Or Your Business

Lafayette Shreveport

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## [Employees Who Do Not Complain May Bring](#)

### [Retaliation Claims Under Title VII](#)

In a decision issued yesterday, the United States Supreme Court expanded the category of employees who can file retaliation claims under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.* In the case of *Crawford v. Metropolitan Government of Nashville & Davidson County*, the employee, Vicky Crawford, did not initiate the investigation by complaining, and she never made a complaint of sexual harassment on her own behalf. Nevertheless, the Supreme Court held that she stated a claim for retaliation because she was fired within months of disclosing alleged harassment by a supervisor in response to her employer's questions during an investigation.

After hearing rumors, the employer conducted an investigation into alleged sexual harassment engaged in by a supervisor. When interviewed, Crawford reported that the supervisor had on several occasions made inappropriate sexual comments and gestures towards her and had also engaged in inappropriate sexual contact with her. Two other employees interviewed by the employer reported similar conduct by the supervisor. Within months of the investigation, Crawford and the other two employees who made similar reports were terminated for misconduct related to job performance.

The Supreme Court stated that Crawford engaged in protected activity under the "opposition" clause of Title VII. This clause makes it unlawful for employers to retaliate against employees who oppose any practice made unlawful under Title VII. Although the word "opposition" is not defined by Title VII, the Court explained that the word should be given its ordinary meaning. The Court rejected the idea that an employee has to instigate an investigation or engage in active opposition to be protected by the retaliation provisions of Title VII. According to the Court:

*There is . . . no reason to doubt that a person can 'oppose' by responding to someone else's question just as surely as by provoking the discussion, and 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.*

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Two other Supreme Court Justices joined in the decision but wrote separate opinions to caution against too broad of an interpretation of the retaliation provisions of Title VII. Justices Clarence Thomas and Samuel Alito cautioned that the primary opinion of the Supreme Court not be interpreted so broad as to protect “silent opposition” to harassment or to “water cooler” conversations with co-employees that are indirectly communicated to the employer. Justice Alito stated that to be protected the employee’s conduct should be “active and purposive.”

The impact of this decision will depend on how broadly lower courts apply this new standard. To avoid claims of retaliation, employers will need to make managers and supervisors aware that all employees participating in investigations of harassment or reporting harassment could be protected from retaliation under Title VII and should be treated fairly and with respect.

**By: Maria Fabre Manuel**

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