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### SUPREME COURT EXPANDS SCOPE OF TITLE VII ANTI-RETALIATION “OPPOSITION” CLAUSE

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In a unanimous decision released Monday, the Supreme Court once again broadened protections for employees who report discrimination in the workplace. *Crawford v. Metropolitan Government of Nashville and Davidson County*, No. 06-1595 (U.S., January 26, 2009).

Title VII’s anti-retaliation provision has two clauses. The first clause, known as the “opposition clause,” makes it “an unlawful employment practice for an employer to discriminate against any of his employees . . . because he has opposed any practice made an unlawful employment practice by this subchapter.” The second, known as the “participation clause,” prohibits retaliation against an employee who “has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [Title VII].” The narrow question presented in the *Crawford* case was whether reporting a supervisor’s harassing conduct in response to questions asked by a human resource officer in the context of an internal investigation gave the employee protection from retaliation under the “opposition clause.”

The Court’s unanimous answer was “Yes.” It made no difference to the Court that the internal harassment investigation was not initiated by the plaintiff, nor that the plaintiff merely responded factually to questions put to her by the human resources officer. “When an employee communicates to her employer a belief that the employer has engaged in a form of employment discrimination,” the Court reasoned, “that communication virtually always constitutes the employee’s opposition to the activity.”



Retaliation claims are among the most treacherous for employers, and they continue to increase in number. The *Crawford* decision underscores the importance of having a strong policy against harassment, and training managers on how to effectively implement the policy. Employers should review their anti-harassment policies to ensure that they prohibit retaliation against any employee who reports discriminatory conduct or “opposes” discrimination in any other way during the course of an internal investigation, whether or not the employee has made a formal complaint or initiated the investigation.

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