

## CLIENT ALERT

### Expansion of Retaliation Protections - Decision by the United States Supreme Court

#### What happened -

On January 26, 2009, the United States Supreme Court issued a decision in *Crawford v. Metropolitan Government of Nashville and Davidson County Tennessee*. The case was argued back in October and answers whether an employee that reports conduct prohibited by Title VII is protected by the anti-retaliation provisions of Title VII, when the report is made during the investigation by the employer of a separate matter.

#### Short Answer -

Yes.

#### Discussion -

*Crawford* expands the reach of the federal anti-retaliation laws to include employees who may not themselves initiate a report of an alleged violation of Title VII, but who may instead make such a report in the context of another investigation by the employer. By this ruling, such an employee is protected by the anti-retaliation provisions of Title VII.

In *Crawford* the employee brought out allegations of sexual harassment during an interview that was being done by the employer because of another complaint of illegal conduct.

Soon after the conclusion of that investigation, the employee who made the allegations of sexual harassment in the course of the employer's other investigation, was fired for alleged embezzlement.

While there was not a finding of retaliation for certain, the Court merely said that the employee was entitled to the anti-retaliation protections of Title VII and that it was possible that the employer's action in terminating the employee was retaliation. Consequently, barring a settlement, this case will go back to the trial court for a trial on the issue of whether the employer's actions were actually retaliation.

#### How this changes things -

The practical impact of this ruling is to reemphasize the need for employers to not only train their supervisors and managers that they cannot retaliate against individuals who complain or who provide information as part of an investigation, but at a minimum, those front line managers need to be reminded that there cannot be retaliation against any employees that make complaints or are otherwise involved in an investigation.

Even a better practice would be to create a second level of review of any actions that are to be taken, when the subject employee is one who either made a complaint or was part of an investigation into a complaint, before the action is taken.

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