

AkerAlert

Labor and Employment Law

Employees Who Participate In Investigation of Discrimination Are Protected From Retaliation

By: Scott Silverman, Main: 813.223.7333
scott.silverman@akerman.com

Most employers realize they cannot discipline or take adverse action against an employee who, in good faith, complains of what the employee believes to be unlawful discriminatory or harassing conduct. The question has arisen on whether employees who provide information as part of an investigation into a complaint are also protected from retaliation. The U.S. Supreme Court recently answered that question, holding that when an employee informs her employer of conduct she believes is discriminatory, the employee is protected by Title VII from retaliation.

In *Crawford v. Metropolitan Government of Nashville and Davidson County, Tenn.*, ___ U.S. ___, 2009 WL 160424 (January 26, 2009), the Supreme Court held that protection from retaliation under Title VII extends to an employee who answers questions during an employer's internal investigation. In so holding, the Supreme Court extended the scope of Title VII's anti-retaliation provision beyond those who file a

formal complaint with their employer or with the EEOC.

During an investigation into alleged sexual harassment by the Metro School District's employee relations director, a Metro human resources officer asked plaintiff Crawford whether she had witnessed inappropriate behavior. In response, plaintiff described several instances of sexual harassment. Two other employees also reported sexual harassment. While the School District took no action against the alleged harasser, it fired all three employees who supported the employee who filed the original complaint. Plaintiff claimed that her termination was in retaliation for her report of sexual harassment.

Title VII's anti-retaliation provision has two clauses: (1) it is unlawful to discriminate against an employee because she has opposed an unlawful employment practice (opposition clause); and (2) it is unlawful to discriminate against an employee because she has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under Title VII (participation clause). In finding that

plaintiff Crawford was covered by these provisions, the Supreme Court held that the statement given by the plaintiff in response to questioning was covered by the opposition clause, because it was a disapproving account of sexually harassing behavior. On this point, the Supreme Court agreed with the EEOC that "when an employee communicates a belief that the employer has engaged in employment discrimination, that communication constitutes the employee's opposition to such activity." The Supreme Court did not reach the issue of whether the participation clause applied to the plaintiff.

In sum, Title VII's anti-retaliation provision protects an employee who provides information concerning unlawful conduct during an internal investigation into alleged unlawful employment practices under Title VII. Further, it is not relevant whether a charge has been filed at the time. Recognizing this broad standard, employers must make sure that any subsequent employment action taken against such an employee is completely supported by a legitimate, non-discriminatory business reason.

DENVER
511 Sixteenth Street
Suite 420
Denver, CO 80202
Main: 303.260.7712
Fax: 303.260.7714

FT. LAUDERDALE
Las Olas Centre II
350 East Las Olas Boulevard
Suite 1600
Ft. Lauderdale, FL 33301
Main: 954.463.2700
Fax: 954.463.2224

JACKSONVILLE
50 North Laura Street
Suite 2500
Jacksonville, FL 32202
Main: 904.798.3700
Fax: 904.798.3730

LOS ANGELES
725 South Figueroa Street
38th Floor
Los Angeles, CA 90017
Main: 213.688.9500
Fax: 213.627.6342

MADISON
222 West Washington Avenue
Suite 380
Madison, WI 53703
Main: 608.257.5335
Fax: 608.257.2029

MIAMI
One Southeast Third Avenue
25th Floor
Miami, FL 33131
Main: 305.374.5600
Fax: 305.374.5095

NEW YORK
335 Madison Avenue
Suite 2600
New York, NY 10017
Main: 212.880.3800
Fax: 212.880.8965

ORLANDO
CNL Center II at City Commons
420 South Orange Avenue
Suite 1200
Orlando, FL 32801
Main: 407.423.4000
Fax: 407.843.6610

TALLAHASSEE
Highpoint Center
106 East College Avenue
12th Floor
Tallahassee, FL 32301
Main: 850.224.9634
Fax: 850.222.0103

TAMPA
SunTrust Financial Centre
401 East Jackson Street
Suite 1700
Tampa, FL 33602
Main: 813.223.7333
Fax: 813.223.2837

TYSONS CORNER
8100 Boone Boulevard
Suite 700
Vienna, VA 22182
Main: 703.790.8750
Fax: 703.448.1801/1767

WASHINGTON, D.C.
801 Pennsylvania Avenue N.W.
Suite 600
Washington, DC 20004
Main: 202.393.6222
Fax: 202.393.5959

WEST PALM BEACH
Esperante Building
222 Lakeview Avenue
Suite 400
West Palm Beach, FL 33401
Main: 561.653.5000
Fax: 561.659.6313

www.akerman.com

This client alert, published by the Labor & Employment Group of Akerman Senterfitt, with offices in Florida, California, New York, Virginia, Wisconsin, Colorado and the District of Columbia, is intended to inform firm clients and friends about legal developments in the areas of labor and employment law, including recent decisions of various courts and administrative bodies. Nothing in this publication should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this publication without seeking the advice of legal counsel.