

## *ALERT*

---

### **U.S. SUPREME COURT EXPANDS EMPLOYEE PROTECTION**

#### **EMPLOYEES' INVOLVEMENT IN INTERNAL INVESTIGATION IS PROTECTED UNDER TITLE VII**

On January 26, 2009, the United States Supreme Court in *Crawford v. Metropolitan Gov't of Nashville and Davidson County, Tennessee*, ruled that Title VII's protection against retaliation extends to an employee who reported alleged harassment, not on her own initiative, but in response to the employer's questions during the employer's internal investigation of a harassment complaint made by another employee. The decision confirms the broad scope of Title VII's anti-retaliation protections and increases the risks employers face from retaliation claims.

#### **The Facts And The Lawsuit**

The *Crawford* case arose out of the employer's internal investigation into complaints that its Employee Relations Director (ERD) had engaged in unlawful sexual harassment. During the investigation, a Human Resources officer asked Ms. Crawford, a 30-year employee, whether she had witnessed any inappropriate behavior on the part of the ERD. Crawford replied by describing several instances in which the ERD directed sexually harassing behavior at her. Following the investigation, the employer took no disciplinary action against the ERD, but it discharged Ms. Crawford and two other employees who claimed to have been harassed.

The Supreme Court ruled that Ms. Crawford's description of the harassment she allegedly suffered in response to the investigator's questions constituted protected activity. The Court rejected the previous rule that an employee must instigate or initiate a complaint and engage in active, consistent activities to be protected from retaliation under Title VII.

#### **Why This Holding Is Important To Employers**

The Supreme Court's decision in *Crawford* has far reaching implications. The holding that merely describing harassing behavior in response to questioning during a sexual harassment investigation of another's complaint may constitute protected activity means that virtually anyone questioned during a harassment investigation may become protected from retaliation. However, limiting internal investigations of harassment and discrimination allegations creates its own risks. Employers are obligated to promptly investigate and stop harassing behavior to avoid liability for sexual and discriminatory harassment, and effective internal investigations may resolve many harassment complaints and avoid expensive litigation.

Employers must therefore ensure that before they take adverse employment action against an employee who has described harassment or discrimination during an investigation, they have a documented, non-discriminatory basis for the decision that has nothing to do with the employee's statements during the internal investigation.

Please contact Kris Cato at 803-227-2277 or [kcato@mgclaw.com](mailto:kcato@mgclaw.com); Amy Jenkins at 843-576-2917 or [amy.jenkins@mgclaw.com](mailto:amy.jenkins@mgclaw.com); Edward Rawl at 803-227-4930 or [erawl@mgclaw.com](mailto:erawl@mgclaw.com); or Tracey Downs at 704-405-4648 or [tracey.downs@mgclaw.com](mailto:tracey.downs@mgclaw.com) to assist you to prepare and plan proactively for your Company's future.