

In Boost for Workers, High Court Affirms Shield from Employer Retaliation

Employees who provide evidence during an informal investigation of discrimination in the workplace are legally protected against retaliation from the boss or other senior managers.

In an important workers' rights decision announced Monday, the US Supreme Court ruled unanimously that Title VII of the Civil Rights Act of 1964 shields employees from retaliatory acts even when the employee hasn't filed a formal complaint.

In an eight-page decision written by Justice David Souter, the high court cast a broad blanket of protection over American workers struggling in a hostile work environment. Those employees who help identify and root out allegedly discriminatory actions by senior managers and supervisors — even though they may not have filed a formal complaint — are nonetheless protected from retaliation, the court said.

The decision puts managers and supervisors on notice that they face legal consequences if they use their power in the organization to try to cover up their own discriminatory actions by retaliating against complaining employees. In addition, the decision puts employees on notice that, when they come forward to help expose discrimination in the workplace, they clearly enjoy the protections of the law.

The decision comes in the case of Vicky Crawford, a 30-year employee in the payroll department of the Metropolitan Government of Nashville and Davidson County, Tenn. Ms. Crawford agreed to answer questions during an informal inquiry into allegations that the director of employee relations had engaged in sexual harassment of female workers in the office. Among the director's duties was investigation of sexual-harassment complaints.

Crawford did not initiate the investigation, nor had she filed any formal charges. The internal inquiry was conducted by a female lawyer in the legal department. Crawford told the lawyer she was afraid she might lose her job if she told the truth about the manager's behavior.

Crawford eventually answered the questions. She was one of three women who told the lawyer that the director of employee relations had made repeated inappropriate gestures and comments of a sexual nature in the workplace.

After the investigation, the director of employee relations received a verbal reprimand, but no other disciplinary action was taken. Senior management then began an investigation of Crawford and her department. She and the two other women were fired.

Crawford sued, claiming protection under Title VII. But a federal judge and a panel of the Sixth US Circuit Court of Appeals ruled against her. They said Title VII protects only those employees who had demonstrated active "opposition" to the alleged conduct by having already filed a formal discrimination charge with the company or the US Equal Employment Opportunity Commission.

On Monday, the Supreme Court reversed that decision.

"The Sixth Circuit thought answering questions fell short of opposition, taking the view that the [law] demands active, consistent opposing activities to warrant protection against retaliation," Justice Souter wrote. "Though these requirements obviously exemplify opposition as commonly understood, they are not limits of it."

He noted that, for example, many people are known to oppose capital punishment without writing public letters or demonstrating in the streets. "We would call it 'opposition' if an employee took a stand against an employer's discriminatory practices not by instigating action, but by standing pat, say, by refusing to follow a supervisor's order to fire a junior worker for discriminatory reasons."

The central issue in the case was whether Crawford's actions were sufficient to trigger the protections of the law. In passing Title VII, Congress outlawed retaliation against employees who "participate" in a discrimination probe or who "oppose" a form of discrimination they are encountering.

In its decision, the high court focused on the statute's "opposition" requirement and concluded that Crawford's answering of the company lawyers' questions qualified as "opposition" under Title VII.

Lawyers

for the Metropolitan Government have argued in the case that Crawford couldn't claim antiretaliation protection under Title VII because she hadn't filed a formal charge with the EEOC against the senior manager or taken other direct action in opposition to the alleged harassment.

The high court disagreed. "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," Souter wrote.

Employment lawyers had warned that the Sixth Circuit's view of the law would create a strong incentive for workers to stay silent in the face of discrimination and retaliation by their bosses. Some say that incentive already existed.

According to one study, 62 percent of state workers who complained of sexual harassment reported that they faced retaliation in the form of lowered job evaluations, denial of promotions, and being transferred or fired.

More than half of women in the US face some form of workplace sexual harassment, and most of them never report it, according to the National Women's Law Center.

Souter

recognized the danger in his opinion. "If it were clear law that an employee who reported discrimination in answering an employer's questions could be penalized with no remedy, prudent employees would have good reason to keep quiet," he wrote. "The [Sixth Circuit] appeals court rule would thus create a real dilemma for any knowledgeable employee in a hostile work environment."

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