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If you have questions or would like more information, please contact any of the attorneys listed at the end of this Alert. Hunton & Williams' [labor and employment law practice](#) covers the entire spectrum of labor and employment litigation, arbitration, administrative practice before the NLRB, EEOC, and the DOL, federal contract compliance, wage-hour standards, workplace safety and health standards, workers' compensation, contractual rights and remedies, Sarbanes-Oxley and whistleblower claims, workplace investigations and client counseling under federal and state labor and employment laws. Hunton & Williams LLP provides legal services to corporations, financial institutions, governments and individuals, as well as to a broad array of other entities. Since our establishment more than a century ago, Hunton & Williams has grown to more than 1,000 attorneys serving clients in 100 countries from 19 offices around the world. While our practice has a strong industry focus on energy, financial services and life sciences, the depth and breadth of our experience extends to more than 100 separate practice areas, including bankruptcy and creditors' rights, commercial litigation, corporate transactions and securities law, intellectual property, international and government relations, regulatory law, products liability, and privacy and information management.

## U.S. Supreme Court Case Involving the Scope of Title VII's Retaliation Provision

On October 8, 2008, the U.S. Supreme Court heard oral argument in *Crawford v. Metro Gov't of Nashville & Davidson County, Tenn.*, U.S. No. 06-1595. *Crawford* involves the scope of the protection afforded employees by Title VII's prohibition against retaliation. The case is important for all employers who investigate complaints of harassment or other discrimination covered by Title VII.

Vicky Crawford had been approached by a human resources representative investigating a sexual harassment complaint against a human resources director, Gene Hughes. Crawford cooperated with the investigation and reported that Hughes had harassed her and other employees. Hughes was not disciplined. Crawford was discharged six months later for alleged drug use and embezzlement. Three other employees who had cooperated with the investigation were also fired. Crawford sued under Title VII.

The U.S. Court of Appeals for the Sixth Circuit found that because Crawford's actions in cooperation with company investigators were not "overt opposition" to suspected unlawful employment practices, they were not protected under Title VII. Neither did Crawford's action qualify for protection as "participation" in a "proceeding" under Title VII, the court ruled, because there was no pending EEOC charge.

At the oral argument in the Supreme Court, Justice Ginsburg stated that it was

clear to her that Crawford's statements to investigators constituted opposition to harassment. Justice Scalia disagreed. Scalia expressed an unwillingness to give legal protection to statements objecting to harassment that are not linked to actual workplace behavior. Scalia suggested that to allow such claims would "reduce incentives" for employers to fix their own problems.

The United States Solicitor General, in a friend-of-the-court brief, has sided with Crawford that cooperating with company investigators is legally protected activity under Title VII. There is a good possibility that the Supreme Court may reverse the Sixth Circuit's decision and find Crawford's conduct to be protected under Title VII.

### What This Means for Employers

Should the Supreme Court reverse the Sixth Circuit's decision:

- Employers must be careful not to discriminate against an employee who participates in an internal investigation or who openly opposes harassment.
- When an employer conducts an internal investigation of harassment and does not terminate the alleged harasser, the employer must clearly caution the alleged harasser not to retaliate against any employee who participated in the investigation or who openly opposed the alleged harassment.

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