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Sixth Circuit: Protected Activity Does Not Shield Employees from Discipline for Workplace Misconduct

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In its recent decision in *Crisp v. Scioto Ambulance Dist.*, the U.S. Court of Appeals for the Sixth Circuit reaffirmed an important principle for employers: employees who engage in protected activity under anti-discrimination laws are not immune from discipline if they separately violate workplace rules.

In *Crisp*, the employee alleged that she had experienced workplace harassment by a coworker and had previously reported that conduct to management. Years later, she was terminated after engaging in conduct that the employer determined violated workplace standards and policies. The employee claimed that her termination was unlawful retaliation because her conduct occurred while discussing concerns related to the coworker's prior behavior. The employer maintained that the termination was based on the employee's own workplace misconduct, not her earlier complaints of harassment.

The Sixth Circuit sided with the employer and dismissed the retaliation claim. The court recognized that reporting or opposing workplace harassment is generally protected activity under Title VII. However, the court emphasized that anti-retaliation protections have limits. According to the court, an employee may engage in protected activity while at the same time engaging in conduct that falls outside those protections. An employer does not violate anti-retaliation laws by disciplining an employee for legitimate workplace misconduct simply because that employee had previously complained about discrimination or harassment. As the court explained, anti-retaliation laws do not prevent employers from enforcing workplace rules or maintaining professional standards of conduct.

Employer Takeaways: Retaliation claims remain among the most common and costly employment claims. This decision is a helpful reminder that employers can still hold employees accountable for policy violations, even when those employees have engaged in protected activity. The key is to ensure that disciplinary decisions are based on legitimate, well-documented business reasons rather than the employee's complaint or other protected activity. Employers should continue to investigate complaints of discrimination and harassment promptly while also enforcing workplace policies consistently and uniformly.

This case demonstrates that courts will not automatically treat all conduct connected to a discrimination complaint as protected with a few additional points to keep in mind:

- Employees who complain about discrimination, harassment, or other unlawful conduct remain protected from retaliation.
- Those protections do not excuse separate violations of workplace rules or standards of conduct.
- Employers may discipline employees for legitimate misconduct, even if the employee has engaged in protected activity.
- Thorough investigations, consistent enforcement of policies, and clear documentation remain critical defenses to retaliation claims.

The Sixth Circuit's decision reinforces a common-sense rule: anti-retaliation laws protect employees who raise workplace concerns, but they do not give employees a free pass to engage in unrelated misconduct. Employers that consistently enforce their policies and can articulate a legitimate reason for discipline remain well-positioned to defend against retaliation claims.

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