

THE
Extra Mile
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Employees Protected from Retaliation for Testifying in Investigation-

The U.S. Supreme Court has unanimously agreed that an employee is protected from retaliation for speaking out against discrimination in an internal investigation, even if he or she would not have spoken out on his or her own initiative.

Under Title VII of the *Civil Rights Act of 1964* (“Title VII”), employees are protected from retaliation for either opposing discrimination (the so-called “opposition clause”) or participating in a discrimination investigation, proceeding, or hearing (the “participation clause”).

In *Crawford v. Metropolitan Govern-*

ment of Nashville and Davidson County, Tennessee, 129 S. Ct. 846, a female employee, Ms. Crawford, was interviewed by a human resources official as part of an investigation regarding rumors of sexual harassment by another employee.

In response to questions, Crawford recounted numerous examples of serious sexually harassing conduct by the employee in question. However, Crawford had not raised these allegations on her own initiative. The employer ultimately fired Crawford, but took no action against the harassing employee.

The Court in *Crawford* quickly concluded **Continued on Page 2**

Illinois Federal Court Finds No Constitutional Right to Student “Self-Defense” in Discipline Incident--

In a major ruling potentially impacting many school districts, the Federal District Court for the Northern District of Illinois recently held that enforcement of a school Board’s disciplinary policy was constitutional as against a student’s claim that the discipline violated his right to “self-defense.”

In *Brett N. v. Community Unit School District No. 303*, No. 8 C 3092 (2/18/2009), a student challenged the constitutionality of the school board’s decision to suspend him for allegedly defending himself against another student who allegedly attacked him, unprovoked, at school.

After the fight, the school board decided to suspend Brett for violating Section 7:190 of the board’s disciplinary policy which provided, in relevant part, that a student may be disciplined for “any action a student takes to inflict physical conduct may be considered fighting – including, but not limited to, self-defense.”

Rejecting the plaintiff’s argument that there is a fundamental right within the Due Process Clause of the Fourteenth Amendment to protect one’s bodily integrity, the court found that Section 7:190 of the board’s policy was rationally related to a legitimate government interest

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Consumer Price Index

Percent change for the month of **January, 2009**, for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly	0.8	0.9
12 Mth	-0.5	-0.6
St. Louis-6 Mth	0.4	0.2
12 Mth	2.5	2.6
U.S. Mthly	0.4	0.4
12 Mth	0.0	-0.5

February CPI figures will be released March 18, 2009. For the most recent CPI, visit our website at: www.hlerk.com

The Extra Mile is intended solely to provide information to the school community. It is neither legal advice nor a substitute for legal counsel. The Extra Mile is intended as advertising but not as a solicitation of an attorney/client relationship.

Reminders & Notes

- Register now for the Illinois Principals Association’s administrator academy approved program on *Making Special Education Law Functional* featuring **Jay Kranning**. Information and the registration form are available at www.hlerk.com. Also, join **Barbara Erickson** at the IASBO Annual Conference on May 14th where she will speak on Section 125 Cafeteria Plans.
- It’s time to update your student handbooks! Send in the enclosed order form to purchase the acclaimed *HLERK Student Handbook Checklist* or contact **Michelle Todd** or **Brandon DeBerry** to request a legal review of your student handbooks.

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Deadline for Filing Discriminatory Compensation Claims Extended--In 2007, the Supreme Court concluded that a woman who had received lower pay than her male colleagues over the course of a nearly twenty year career due to discriminatory evaluations earlier in her career was prohibited from challenging the disparate compensation at the end of her career. *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007).

The Court's conclusion was based on the fact that the discrimination, namely the poor evaluations based on her sex, was not challenged within the period required by the EEOC (300 days in Illinois).

On January 29, 2009, *Ledbetter's* impact was erased by a new federal law, the *Lilly Ledbetter Fair Pay Act of 2009* (P.L. 111-2). The Act revises four federal nondis-

Moment of Silence Struck Down--After a tumultuous fifteen months on the books, Section 1 of the Illinois *Silent Reflection and Student Prayer Act* (105 ILCS 20/1) was struck down in federal court. On January 21st, Judge Gettleman held the law, which mandated a "brief period of silence . . . for silent prayer or for silent reflection on the anticipated activities of the day," to be unconstitutional.

The court held that the law did not have a secular purpose, in violation of the Establishment Clause of the Constitution. The law was also held to violate the Establishment Clause in that it "demonstrate[d] an offi-

Retaliation Cont. that, although Crawford had not actively opposed the harassing conduct by raising a complaint on her own, she had opposed the conduct by testifying against it in the internal investigation.

Therefore, she was entitled to protection against retaliation under the opposition clause of Title VII. It is also quite possible that Crawford would be entitled to retaliation protection under the participation clause, as

Self Defense Cont. and thus its enforcement was constitutional. The court also rejected the plaintiff's argument that Section 7:190 was unconstitutionally vague and granted the defendant school board's motion to dismiss the plaintiff's claims.

crimination laws, Title VII of the *Civil Rights Act of 1964*, the *Age Discrimination in Employment Act of 1967* ("ADEA"), the *Americans with Disabilities Act of 1990* ("ADA"), and the *Rehabilitation Act of 1973*.

Under the new law, a discriminatory decision or practice that affects an individual's pay is considered to "continue" each time the wages, benefits, or other compensation are paid. Thus, a disparately-paid employee's 300-day time limit will not begin to run until after he or she receives his or her last paycheck, even if the discrimination that caused the disparate pay happened twenty years ago. ***The Ledbetter legislation increases potential school district liability for discriminatory pay practices. For questions regarding employment discrimination issues or on the impact of this new law, please contact Cindi DeCola.***

cial preference for those religions that practice *silent* prayer over those that do not." The court also noted that in order to comply with the law, teachers would have to monitor students to ensure that they were either praying or reflecting. Finally, the court also struck the law based on its vagueness as to how the period of silence should be implemented.

Based on this opinion, Illinois schools are permanently enjoined from implementing the law. The Illinois Attorney General's office is reportedly considering whether to appeal the decision. ***Please contact Stan Eisenhammer or Jeff Goelitz with any questions.***

she testified in an internal investigation, but the Court declined to address that issue in light of the protection afforded under the opposition clause. ***Employee sexual harassment claims create a variety of legal issues for school districts. Please contact Cindi DeCola with questions on sexual harassment claims and investigations or the impact of this Supreme Court decision on your school district.***

At the administrative level, HLERK's Bennett Rodick represented the district. For further information about this decision's impact on your school district or to your student discipline policy, contact Bennett or Brandon DeBerry.