Does an Informal Complaint Qualify as Opposition Under Title VII?

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As you may know, courts are not keen on employers firing employees for complaining about discrimination in the workplace. This is clear when a formal, written, complaint is made. But what if the complaint weren't so clear, weren't so formal? What if the employee is just venting, or speaking up on behalf of a protected class other than his own? Could there be repercussions for firing an employee in one of those situations? An August 20, 2012, appeals court decision suggests management should be wary of taking action against a worker who stands up to culturally or racially insensitive remarks of his co-workers by informally complaining to Human Resources.

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex and national origin. Under the retaliation provisions of Title VI (which are similar to those under the Age Discrimination in Employment Act and the Americans With Disabilities Act), employers are also prohibited from retaliating against an employee because the employee has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or because the employee has opposed any employment practice that is unlawful under the Act.

The Act doesn't conveniently define "oppose" for us, but the United States Supreme Court has already held that, because the statute did not define the word, courts must apply its ordinary meaning: "to resist or antagonize; to contend against; to confront; resist; withstand." So, applying that definition to the opposition clause of the Act, what does it mean to "oppose" an unlawful employment practice in a Title VII retaliation claim?

Not all complaints are protected, however. Although a complaint does not have to be written to count (in 20ll, the Supreme Court ruled that an oral complaint will do, under the appropriate circumstances), in order for a complaint to constitute *protected* activity under federal antidiscrimination law, the complaining employee must reasonably believe that the activity he or she opposes is unlawful under Title VII. It does not matter whether or not the challenged practice ultimately is found to be unlawful, as long as the employee reasonably believed it to be unlawful. Additionally, the employee's conduct must *specifically* oppose the unlawful practice at issue – vague complaints, complaints about general office practices, or disagreements with coworkers will not suffice. The complaint must specifically address the unlawful activity or practice.

Most courts have been willing to undertake a careful fact-specific analysis when it comes to claims arising under Title VII's opposition clause. The best practice may be to assume that all but the most thin complaints of potentially discriminatory actions are protected by the opposition clause of Title VII and other anti-discrimination laws.

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