



# U.S. Supreme Court Addresses Employer's Liability for Employment Discrimination Under The "Cat's Paw" Theory

05.25.2011

Reversing the 7th Circuit Court of Appeals, the U.S. Supreme Court unanimously held that an employer can be held liable for employment discrimination based upon the discriminatory intent of a supervisor who influenced but did not make the ultimate employment decision. *Staub v. Proctor Hospital*, No. 09-400 (March 1, 2011).

The standard adopted by the Supreme Court adhered to the long-held doctrine that if improper bias is a "motivating factor" in an employment decision, the employer may be liable. In *Staub*, the Court went one step further and held that this remains the rule *even if* an unbiased company representative, acting unsuspectingly on tainted information, is the ultimate decision-maker. Thus, under a "cat's paw" theory<sup>1</sup>, if a plaintiff can show that a biased supervisor's discriminatory intent bears *some* direct relation to an adverse employment decision, the employer will be responsible despite a seemingly neutral decision-making process.

Although the case arose under the Uniformed Services Employment and Reemployment Rights Act (USERRA), which prohibits discrimination based on an individual's membership in a uniformed service, the *Staub* Court expressly noted that Title VII and USERRA have similar textual provisions, providing for liability when unlawful animus is a "motivating factor" in an adverse employment action. Thus, the *Staub* standard is likely to apply well beyond USERRA cases.

## Factual Background

Vincent Staub worked for Proctor Hospital as a medical technician until his discharge in 2004. Throughout his employment, Staub was a member of the Army Reserve, which required him to attend training one

weekend a month and three weeks every year. According to Staub, his immediate supervisors, Janice Mulally and Michael Korenchuk, were hostile to his military obligations and openly displayed an anti-military bias.

In January 2004, Mulally issued Staub a disciplinary warning and corrective action for purportedly violating a rule which required Staub to remain in his work area when not assisting a patient. Several months later, Korenchuk advised the hospital's vice-president of human resources, Linda Buck, that Staub had left his work area without informing his supervisor as required by the January 2004 corrective action. After reviewing Staub's personnel file, Buck decided to terminate Staub for insubordination based on this conduct.

Staub challenged his termination through the hospital's grievance process, asserting that his supervisors' disciplinary actions against him were caused by hostility to his military status. After consulting with another human resources manager but conducting no other investigation, Buck declined to change the termination decision.

### **Procedural Background**

Staub sued the hospital under USERRA. Although Staub did not contend that Buck had any anti-military bias herself, he asserted that his supervisors' anti-military bias had improperly influenced Buck's decision to terminate him. A jury found in favor of Staub, finding that his military status was a motivating factor in his dismissal.

The U.S. Court of Appeals for the Seventh Circuit reversed, holding that the hospital was entitled to judgment as a matter of law. The court explained that a "cat's paw" case could not succeed unless the nondecisionmaker exercised such "singular influence" over the decisionmaker that the decision to terminate was the product of "blind reliance". Because the undisputed evidence established that Buck was not wholly dependent on the advice of Korenchuk and Mulally, the court held that the hospital was entitled to judgment. On further appeal, the U.S. Supreme Court decided to review the case.

### **The U.S. Supreme Court's Ruling**

Writing for the majority, Justice Scalia explained that if an employer's investigation results in an adverse action for reasons unrelated to the supervisor's original biased action, then the employer will not be liable. On the other hand, the supervisor's biased report may remain a motivating factor if the independent investigation takes it into account without determining that the adverse action was separate from the supervisor's recommendation. Justice Scalia further stated that in a "cat's paw" liability case, "[t]he employer is at fault because one of its agents committed an action based on discriminatory animus that was intended to cause, and did in fact cause, an adverse employment decision."

Accordingly, the Supreme Court ruled that the hospital was not entitled to judgment as a matter of law because of evidence that Staub's supervisors were motivated by hostility toward Staub's military obligations and there was evidence that their actions were causal factors underlying Buck's decision to fire Staub. Under the Court's analysis, the only way that an employer can escape liability for discrimination when acting as a "cat's paw" is if the employer's independent investigation results in an adverse action for reasons unrelated to the supervisor's original biased recommendation.

## **Practical Implications for Employers**

It is critical for employers to conduct thorough and independent investigations of discrimination claims and properly document those investigations.

Employers should ensure that any adverse employment action is taken for legitimate, nondiscriminatory reasons which are properly documented.

All company discrimination and harassment policies and procedures should be reviewed and updated to ensure they contain adequate mechanisms for reporting claims.

All supervisors and management personnel should periodically receive up-to-date training and understand the importance of not engaging in conduct motivated by discriminatory animus.

## **How Nossaman Can Help**

Nossaman's Employment Practice Group assists private and public employers with identifying, implementing, and achieving their goals. Our services include counseling, advice, and litigation on a broad array of employment and labor related matters, including harassment, discrimination, wage and hour, unfair competition/trade secrets, wrongful terminations, executive employment agreements and benefits, leave laws, reductions in force/Warn Act, record retention, and union/employer relations. We also offer investigation and assessment services that often eliminate the threat of a lawsuit and grievances, and give our clients an effective roadmap for responding to inquiries.

We will continue to monitor and update you with any new information on this subject. For more information, or if you have any questions regarding employment related issues, please contact us at [employment@nossaman.com](mailto:employment@nossaman.com).

<sup>1</sup> The term "cat's paw" derives from a fable in which a monkey induces a cat to steal chestnuts from a fire and then absconds with the stolen nuts, leaving the cat with nothing but burnt paws. In the workplace context, the biased supervisor plays the monkey and the employer is the duped cat.