

03 | 7 | 2011 Posted By

Supreme Court Rules That Employer Could Be Liable For Adverse Employment Actions Even If The Decisionmaker Has No Unlawful Motive

On March 1, 2011, the United States Supreme Court held in *Staub v. Proctor Hospital* that if a supervisor performs an act motivated by antimilitary animus that is intended by the supervisor to cause an adverse employment action, and if that act is a proximate cause of the ultimate employment action, then the employer is liable under the Uniformed Services Employment and Reemployment Rights Act (“USERRA”).

USERRA makes it unlawful for an employer to deny “initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer” on the basis of a person’s membership or obligation to perform service in a uniformed service. 38 U.S.C. §4311(a). USERRA further provides that an employer shall be considered to have engaged in prohibited conduct “if the person’s membership...is a motivating factor in the employer’s action, unless the employer can prove that the action would have been taken in the absence of such membership.” 38 U.S.C. §4311(c).

In *Staub*, the employee was a member of the United States Army Reserve. The employee’s supervisors were hostile to his military obligations. The employee’s immediate supervisor issued him a Corrective Action disciplinary warning for purportedly violating a company rule. Subsequently, another supervisor informed the vice president of human resources (“HR officer”) that the employee had violated the Corrective Action. After receiving this report, the HR officer decided to fire the employee.

The employee challenged his firing through the employer’s grievance process, claiming that his supervisors had fabricated the allegations against him out of hostility toward his military obligations. After discussing the matter with another personnel officer, the HR officer adhered to her decision without further investigation.

Thereafter, the employee sued the employer under USERRA on the theory that the HR officer was the “cat’s paw” of his supervisors, whose actions were motivated by hostility to the employee’s military obligations. The “cat’s paw” theory arises where an employee seeks to hold his employer liable for the animus of an agent who was not charged with making the ultimate employment decision. A jury found in favor of the employee. However, the Seventh Circuit reversed, holding that a “cat’s paw” case could not succeed unless the decision to terminate was the result of blind reliance by the decisionmaker on the actions of the biased supervisors.

The Supreme Court rejected the standard applied by the Seventh Circuit, and ruled that the employer is liable where the actions of a supervisor motivated by discriminatory animus is the

proximate cause of the employment action, so long as the supervisor intended the adverse action to occur. The Court explained that proximate cause "requires only 'some direct relation between the injury asserted and the injurious conduct alleged,' and excludes only those 'link[s] that are too remote, purely contingent, or indirect.'" Under the Court's ruling, therefore, discriminatory animus could be a "motivating factor in the employer's action" even where the technical decisionmaker has no unlawful animus.

The Supreme Court also declined to adopt a "hard-and-fast rule" that the decisionmaker's independent investigation and rejection of the employee's allegations ought to negate the effect of any prior discrimination. The Court reasoned that "the supervisor's biased report may remain a causal factor if the independent investigation takes it into account without determining that the adverse action was, apart from the supervisor's recommendation, entirely justified."

Although this case was brought under USERRA, the Court indicated that the rationale adopted by this case would also apply to cases brought under Title VII. Therefore, this case has implications beyond USERRA. Employers must exercise caution any time an adverse employment decision is influenced in some way by the actions of a biased supervisor, even if the ultimate decisionmaker has no discriminatory motive. This case also serves to warn employers that an independent investigation does not necessarily negate the effect of any prior discrimination. Accordingly, employers should consult with experienced legal counsel to determine the adequacy of any such investigations.

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