

Cat's Paw: U.S. Supreme Court Holds Employers Can Be Responsible for Supervisors' Discriminatory Motives

Decision underscores importance of training supervisors and conducting fair workplace investigations

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After several years of conflicting lower court decisions, the U.S. Supreme Court, in *Staub v. Proctor Hospital*, finally offered clarifying guidance on when and whether a supervisor's impermissible motive may be imputed to employers in employment discrimination cases.

Case background

Vincent Staub worked as a technician for Proctor Hospital. Staub served in the Army Reserve. His immediate supervisor, Janice Mulally, and her supervisor, Michael Korenchuk, were both hostile to Staub's military obligations because it disrupted staffing. Mulally openly complained about the strain that Staub's duties caused the hospital, and publicly discussed her desire to "get rid" of him. Korenchuk derided Staub's military service.

In January 2004, Mulally cited Staub for failing to remain in his work area after treating a patient, based on a work rule that apparently did not even exist. Regardless, Staub was advised to keep Mulally or Korenchuk advised as to his whereabouts at all times. In April 2004, Korenchuk reported to Linda Buck, the company's vice president of human resources, that Staub had left his desk without advising a supervisor. Relying upon Korenchuk's report, Buck terminated Staub after she reviewed his file.

Staub filed suit under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), alleging that the termination decision was motivated by hostility to his military service. He alleged that he had left Korenchuk a voice-mail regarding his whereabouts. A jury returned a verdict in his favor and awarded him \$57,640 in damages.

On appeal, the U.S. Court of Appeals for the 7th Circuit reversed, holding that Mulally's and Korenchuk's alleged impermissible motives could not be imputed to Proctor Hospital because Buck had conducted her own investigation by reviewing Staub's personnel file, and her decision was not "wholly dependent on a single source of information."

In reaching this result, the 7th Circuit applied what some have called the "functional decision maker" test. Under this test a supervisor's impermissible motive is imputed to the employer only when the supervisor dominates the underlying investigation and the ultimate decision is little more than a rubber stamp reflecting the supervisor's animus. Other circuits had applied a causation test by which a supervisor's impermissible motive could be imputed to an employer if a plaintiff could show that the supervisor "influenced or was involved in the decision or decision making process." The circuit split had not been resolved until now.

The opinion

The U.S. Supreme Court reversed by a unanimous vote, adopting a modified form of the causation test. Writing for the majority, Justice Scalia instructed that "if a supervisor performs an act motivated by [an impermissible] 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."

However, the Court left open the possibility that Proctor could move for a new jury trial because the district court's jury instruction had allowed the jury to find Proctor liable if it found that Staub's military status was a motivating factor for his termination. (This instruction did not precisely track the Court's holding because it did not address the supervisor's specific intent.)

Justice Alito concurred, joined by Justice Thomas, relying on statutory grounds for the proposition that employers should be insulated from liability if they could show that they conducted an independent investigation and reached the

same decision on grounds unrelated to the impermissible motive.

Significance

The Court's opinion offers useful guidance. Employers should:

- Adopt policies and procedures to ensure that workplace investigations are fair in form and function.
- Prescreen decisions to ensure that legitimate, nondiscriminatory decisions are made based on objectively verifiable evidence.
- Document and investigate reports before making a decision.
- Verify that the rule or policy, for which discipline is being imposed, actually exists.
- Before making any decision, consider interviewing employees against whom allegations have been made to get their side of the story and test whether any decisions might be based on personality conflicts or impermissible motives.
- Not make a final decision without conferring with one or two appropriate employer representatives.
- Consult with counsel where decisions have the likelihood of sparking litigation (such as employment termination).

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