

Managers Can be Manipulated and Subsequently Burned: Know the Fable of the Monkey and the Cat's Paw

By: [Adam Kunz](#)

A recent case from the United States Supreme Court stands as a warning: know why the employee is being fired. If the company fires an employee **based on a supervisor's recommendation, and the supervisor was motivated by an illegal reason**, the company may be liable for illegal discrimination.

There is a fable about a monkey who was sitting with a cat. The monkey wanted some chestnuts that were roasting in the fire. He flattered the cat, saying "you are much better at this sort of thing than I am, get the chestnuts out of the fire and we will split them up." The cat clawed several hot chestnuts out of the fire, burning her paws. The monkey quickly ate all the chestnuts and the cat was left with just burned paws.

A supervisor or manager might manipulate another manager to get rid of an employee, just as the monkey manipulated the cat to retrieve the hot chestnuts. The recent U.S. Supreme Court case of *Staub v. Proctor Hospital* is one such example. Staub was an employee at the hospital and a member of the Army Reserve. His supervisors despised needing to adjust work schedules to accommodate his Army Reserve Weekend Drill and Annual Training schedules. They said his weekend of "smoking and joking" was "a waste of taxpayer money" and told other employees that they wanted to get rid of Staub. The supervisors allegedly created a policy that said employees couldn't leave their desks without first reporting to the supervisor. They reported Staub to their manager for allegedly violating the policy, hoping to get Staub fired.

The manager immediately fired Staub, who complained that he had been illegally fired due to his supervisors' hostility towards his service in uniform, a violation of USERRA - the Uniformed Services Employment and Reemployment Rights Act of 1994. The manager reviewed Staub's employee file and determined that termination was warranted. Staub sued and won a \$57,000 verdict against his employer in a jury trial.

The hospital appealed and argued that, although there was adequate evidence that Staub's immediate supervisors detested his Army Reserve service and indeed had set him up for a policy infraction to have him fired, there was no evidence that the manager was hostile to Staub's uniformed service. The 7th Circuit Court of Appeals decided that it was not illegal for the employer to fire Staub. However, the United States Supreme Court disagreed with the Court of Appeals; overruled its decision and remanded the case for corrections, which potentially required the company to pay the \$57,000 jury verdict and Staub's attorney fees.

The Supreme Court Justices pointed to both the language of the statute and long established principles of law that say when **part of the motivation for the action of firing an employee is illegal then firing the employee is illegal**. The manager fired Staub based on what the supervisors said. The supervisors made those statements because of their hostility to Staub's uniformed Army Reserve service, which was a violation of USERRA and therefore illegal. The law does not allow the supervisor "monkeys" to use the manager as a "cat's paw" to do their illegal firing. The company is liable for that kind of illegal termination. The Supreme Court also said that the same rules apply to other types of illegal discrimination under Title 7 of the United States Code, including race, religious or sex discrimination.

The manager in the Staub case could have protected the hospital and its employees in several ways. First, the supervisors needed employment discrimination training. They needed education about what areas are protected by the law and why setting traps for an employee is not only a poor supervisory technique but also needlessly creates liability for their employer. Secondly, the manager should have independently investigated the issues (not relied on the supervisor's statements) to determine if any discrimination had occurred. Finally, Staub should not have been terminated. If the manager later found out that Staub had been terminated for an illegal reason, he should have immediately rehired Staub to avoid legal action.

The story of the monkey and the cat's paw is a fable; a story with a moral. The *Staub v. Proctor Hospital* case also has moral for the workplace. Don't let managers discriminate and fire an employee for an illegal reason by "building a file" to convince the boss. The company could be liable.

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