



## Legal Alert: Supreme Court Clarifies Cat's Paw Liability in Discrimination Claims

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The U.S. Supreme Court has clarified the standards under which an employer can be liable for discrimination under the so-called "cat's paw"<sup>[1]</sup> theory of liability in a discrimination claim. See *Staub v. Proctor Hospital*, No. 09-400 (March 1, 2011). The Court held that if a supervisor performs an act motivated by unlawful animus and intends to cause an adverse employment action, the employer is liable if the supervisor's act is a proximate cause of the adverse decision even if the decision maker did not share the supervisor's animus. The decision was issued in a case brought under the Uniformed Services Employment and Reemployment Rights Act (USERRA), but its holding will likely be applied in cases under Title VII and other discrimination statutes.

The issue in *Staub* was whether an employer is liable for unlawful discrimination when a decision maker relies in part on information tainted by the discriminatory animus of a lower level supervisor, and in part on the decision maker's independent investigation. Staub's immediate supervisor and second level supervisor both harbored unlawful animus based on Staub's military service and falsely accused him of performance deficiencies. The decision maker was at a higher level than those two supervisors. The decision maker investigated the alleged performance deficiencies, rejected Staub's objection that the supervisors' accusations were motivated by unlawful animus, and also considered Staub's personnel file and other information. The decision maker decided to fire Staub and he sued, alleging a violation of USERRA.

A jury ruled in favor of Staub, and Proctor appealed. The United States Court of Appeals for the Seventh Circuit reversed, because the decision maker did not depend wholly on the tainted accusations in making the decision to fire Staub. According to the Seventh Circuit, an employer is not liable in a cat's paw case unless the non-decision maker exerted "such 'singular influence' over the decision maker that the decision . . . was the product of 'blind reliance.'"

The Supreme Court rejected the Seventh Circuit's approach. The Court first pointed out that to establish liability under USERRA, Staub was required to prove that his military status was "a motivating factor" in the adverse action, and that there can be multiple motivating factors. The Court then analyzed the lower level supervisors' actions, noting that the jury had found that they made their false accusations because of unlawful animus, and finding that they intended that their accusations would result in adverse action against

Staub. The Court further found that Proctor had effectively delegated the fact finding portion of the decision maker's investigation to the biased supervisors and that the false accusations were one factor in the decision to terminate. Because the false accusations were the product of unlawful animus and were a motivating factor in the discharge decision, they were a proximate cause of the discharge and Proctor could be liable, even though other factors might be additional proximate causes.

Nonetheless, the Court agreed that Proctor could avoid liability if it could establish that the decision maker's investigation resulted in the discharge for reasons unrelated to the supervisors' original biased action. While this affirmative defense can be a complete defense to liability under some discrimination statutes including USERRA, under other discrimination statutes, including Title VII, it would be only a partial defense.

### **Employers' Bottom Line**

The Court's decision potentially expands the scope of liability under the "cat's paw" theory. Thus, it is more important than ever for employers to conduct thorough and independent investigations of discrimination allegations and properly document those investigations. It is also important to ensure that adverse employment actions are taken for legitimate, nondiscriminatory reasons, which are factually supported and appropriately documented.

If you have any questions regarding this decision, please contact the Ford & Harrison attorney with whom you usually work or the author of this Alert, Shane Muñoz, a partner in our Tampa office, at [smunoz@fordharrison.com](mailto:smunoz@fordharrison.com).

[1] The term "cat's paw" is derived from a 17th century fable in which a manipulative monkey convinces an unsuspecting cat to retrieve chestnuts from a fire. The cat burns its paw getting the chestnuts, while the monkey devours them one by one. In discrimination cases, courts have used this term to describe the imposition of liability on an employer for the discriminatory animus of a non-decision maker where that person so influenced the decision maker that the decision maker was nothing more than a puppet or "cat's paw" for the biased non-decision maker.