

## Supreme Court Issues Decision Regarding “Cat’s Paw” Claims of Discrimination

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In the recent case of *Staub v Proctor Hospital*, the United States Supreme Court addressed the so-called “cat’s paw” claim of discrimination under the Uniformed Services Employment and Reemployment Rights Act. In a cat’s paw case, the employee seeks to hold the employer liable for the discriminatory intent of a supervisor who was not the ultimate “decision maker” for the challenged adverse employment action. The Court’s holding in *Staub* now makes it easier for employees to establish liability in such cases where a biased supervisor has influenced someone else to take the adverse employment action. This case is sure to impact employers, as its holding potentially reaches beyond USERRA and into other types of federal discrimination cases.

Staub worked as an angiography technician for Proctor Hospital. He also served in the U.S. Army Reserve, and took leaves of absence from work in order to attend monthly drill. Staub’s immediate supervisor (Mulally), as well as Mulally’s supervisor (Korenchuk), were allegedly hostile towards Staub’s military obligations. Mulally issued Staub a corrective action for purportedly violating the hospital’s work rules regarding failure to remain in his work area whenever he was not working with a patient. The corrective action directed Staub to report to his supervisors when had no patients. A few months later, Korenchuk reported to the hospital’s vice president of human resources (Buck) that Staub had violated the corrective action by leaving the

work area without notifying his supervisors. Buck relied on this report and, after reviewing Staub's personnel file, made the decision to discharge Staub for failure to comply with the corrective action.

Staub later sued the hospital in Federal court for wrongful discharge in violation of USERRA, claiming that his discharge was motivated by his obligations as a member of the Army Reserves. Significantly, that claim did not allege that the decision maker regarding his discharge (Buck) held a discriminatory motive.

Instead, and pursuant to the cat's paw theory, Staub claimed that supervisors Mulally and Korenchuk held discriminatory animus and that their actions influenced the discharge decision. The jury found in favor of Staub on this claim, but the Seventh Circuit Court of Appeals reversed. The Seventh Circuit held that since the decision maker conducted an albeit limited investigation of the facts, her decision to discharge Staub was not singularly influenced by the non-decision maker supervisors holding discriminatory animus. Staub then appealed to the Supreme Court, which reversed the appellate court's decision.

Writing for the Court, Justice Scalia first noted that USERRA's statutory language provides that an employer has violated the Act where an employee's membership in the uniformed services is a "motivating factor" in the employer's adverse employment action. Justice Scalia's opinion pointed out that this language is similar to that found in another major Federal employment statute, Title VII of the Civil Rights Act of 1964 (which prohibits discrimination on the basis of race, color, religion, sex or national origin). The key issue for the Court was to define the term "motivating factor" within the context of a cat's paw case where the decision maker was not motivated by discriminatory intent. The Court held 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 USERRA." Thus, the adverse employment action must be both the intended

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consequence of the non-decision maker's conduct, as well as proximately caused by that conduct. The Court noted that proximate cause requires only "some direct relation" between the supervisor's conduct and the adverse employment action. This holding apparently rejects any rule that a decision maker's independent investigation prior to taking the adverse action automatically precludes liability for the employer. However, the Court left open the possibility that an investigation which leads to reasons unrelated to the supervisor's biased conduct, and which would justify the adverse employment action, would allow the employer to avoid liability.

The Supreme Court's decision in *Staub* will almost certainly encourage more employees to pursue "cat's paw" litigation. Also, because of the similarity in statutory language with respect to the requirement that unlawful discrimination be a "motivating factor" for an adverse employment action, it seems likely that this decision will be applied in Title VII as well as USERRA cases. However, while the Court's decision has made it easier for employees to advance a cat's paw claim, employers should keep several important things in mind. First, the employee still has the burden of proving that the non-decision maker supervisor engaged in conduct motivated by discriminatory intent. Second, whenever the employer receives information which could prompt the taking of an adverse employment action, an immediate and thorough investigation should be undertaken. A decision maker must review all the facts and interview all relevant employee witnesses in order to make an informed and proper judgment as to the proper action. Lastly, employers should make sure that all supervisors are trained with respect to equal employment opportunity and anti-harassment laws, and that the employer's policies in these areas are up to date. These steps still provide meaningful defenses to reduce the likelihood that any adverse employment action can be challenged successfully.

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