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THE DISCRIMINATORY MOTIVES OF NON-DECISION MAKERS CAN EXPOSE A COMPANY TO LIABILITY FOR DISCRIMINATION

The United States Supreme Court held that an employer may be liable for the discriminatory motives of a supervisor who influences, but does not make the ultimate employment decision. The Court's ruling will impact employment discrimination claims where multiple individuals are claimed to have made, caused, or influenced the ultimate employment decision. *Staub v. Proctor Hospital* (S.Ct. 3.1.11).

The Facts

Vincent Staub worked in the Diagnostic Imaging Department for Proctor Hospital and was a member of the United States Army Reserves. Staub's immediate supervisor Janice Mulally and her supervisor Michael Korenchuk allegedly resented and opposed Staub's Army Reserve training requirements. These supervisors allegedly openly opposed his reservist duties and intentionally scheduled him to work on weekends on which he had reservist duties. Shortly after Staub received an order to report for reservist duties, Supervisor Mulally gave him a written warning for disregarding his job duties. One of the requirements of that warning was to report his whereabouts to Korenchuk or Mulally at all times. One day when Staub was leaving for lunch he looked for Korenchuk to tell him he was taking his lunch break. Korenchuk was not in his office so he left him a voice mail message. Upon his return from lunch Korenchuk accused him of failing to report his whereabouts as required by the written warning. He escorted Staub to the Vice President of Human Resources, Linda Buck, who reviewed his personnel file, saw the written warning, and spoke with Korenchuk who informed her that Staub had failed to report his whereabouts, but did not disclose that he had left a voice mail message for Korenchuk. Based on her review of the personnel file and discussion with Korenchuk, the Vice President of Human Resources made the decision to terminate Staub.

The Supreme Court Defines the Scope of Employer Liability

The Supreme Court held that, "if a supervisor performs an act motivated by 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." The court provided a very limited exception to liability where subordinate bias is at issue. If the employer's investigation results in an adverse action for reasons unrelated to the supervisor's original biased action, then the employer will not be liable. But 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.

Therefore, it is clear that the biases of those who make, cause, or influence the employment decisions are relevant and can be considered when determining employer liability.

How Does This Decision Impact Employers?

The decision makes it clear that if the biased motives of a subordinate supervisor influenced the chain of events that lead to the adverse employment action, the employer may be liable for discrimination, even if the ultimate decision maker had no discriminatory intent.

Employers must now look more carefully at an employee's prior conduct and the discipline or corrective action issues before taking an adverse employment action. The ultimate decision maker can no longer rely solely on the content of an employee's personnel file or the recommendation of the employee's immediate supervisor before making an employment action and, instead, must conduct an independent investigation to confirm that there is a legitimate non-discriminatory reason for the adverse employment action.

San Francisco
201 Spear St
Suite 1000
San Francisco
CA 94105

Los Angeles
515 South Flower St
Suite 1100
Los Angeles
CA 90071

San Jose
50 W. San Fernando St.
Suite 1400
San Jose, CA 95113

Redwood City
1001 Marshall St
Suite 300
Redwood City
CA 94063

New York
750 Third Avenue
25th Floor
New York
NY 10017

Boston
60 State St
Suite 700
Boston
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