

[United States Supreme Court Approves "Cat's Paw" Theory of Liability](#)

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March 5, 2011

On March 1, 2011, the United States Supreme Court again increased employers' exposure to employment discrimination claims. In [Staub v. Proctor Hospital, 562 U.S. \(2011\) \(pdf\)](#), the unanimous Court concluded that employers may be held liable for unlawful discrimination if a lower level supervisor influences an adverse employment decision, even if the decision is ultimately made by an independent manager. The theory that an employer may be liable when it relies on facts supplied by a biased supervisor when making an adverse employment decision is known as the "cat's paw" theory.

Staub claimed that Proctor Hospital's Human Resources (HR) Manager relied on facts supplied by Staub's supervisors, who were acting with anti-military animus in violation of the Uniform Services Employment and Reemployment Rights Act (USERRA), when the HR Manager terminated him. Staub admitted that the HR Manager did not have anti-military animus, but claimed that the facts provided by his supervisors were false, and that his supervisors provided the false facts because the supervisors wanted him fired because of his military Reserve obligations.

The focus of the Court's decision was whether the supervisors' anti-military animus was "a motivating factor in the employer's action," in violation of the USERRA. Importantly, and unfortunately for employers, the Court pointed out that the "motivating factor" language from the USERRA is also found in Title VII of the Civil Rights Act. Therefore, it is clear that the "cat's paw" theory is viable under Title VII.

The Court found that the actions of the supervisors, and the independent actions of the HR Manager, could be aggregated to produce a discriminatory employment action. Because the supervisors were agents of the Hospital, their actions could be imputed to the Hospital. If supervisors are motivated by unlawful discrimination, intend to cause the adverse action, and the intended action actually occurs, then the employer will be liable because the supervisors were acting on behalf of the employer. The decision leaves open the question of whether or not an employer may be held liable if an employment decision is influenced by non-supervisory coworkers.

The Court's "cat's paw" theory requires a showing that: (1) a supervisor; (2) acting within the scope of his or her employment; (3) performed an act that was motivated by discrimination; (4) which was intended by the supervisor to cause an adverse employment action; and (5) the act was a proximate cause of the adverse employment action. If such a showing is made, then the employer may be liable for discrimination.

The cat's paw theory seems strikingly expansive, because the proximate cause element of the theory could expose employers to liability in extremely attenuated circumstances. Therefore, employers must take action now to brace for claims involving the cat's paw theory. First, employers should ensure that their discrimination and harassment policies and procedures are up-to-date, and that they contain adequate reporting mechanisms. All employees must be made aware of the available discrimination reporting procedures. In addition, these procedures should not require that employees first make reports of discrimination to their immediate supervisors. Please [click here](#) to view our prior post on this issue.

Also, if and when an employee reports discrimination, the employer must conduct a thorough investigation and take appropriate action. Employers considering terminating an employee should also conduct a thorough investigation and should attempt to establish the relevant facts independently if possible. This is true particularly if there have been allegations of discrimination raised against the employee's supervisor before or during the termination process.

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