ALERTS AND UPDATES

U.S. Supreme Court Broadens Employer Liability by Upholding "Cat's Paw" Theory in Employment Discrimination Case

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In *Staub v. Proctor Hospital*,[1] the U.S. Supreme Court upheld the "cat's paw" theory, deciding that an employer can be held liable for the discriminatory bias of an employee who influenced the employment decision, even if that employee did not make the ultimate decision.

The "cat's paw" theory refers to a 17th-century French fable conceived by Aesop, in which a monkey persuades a cat to reach into a fire for chestnuts. After the cat pulls the chestnuts from the fire, burning his paw in the process, the monkey makes off with the chestnuts and leaves the cat with nothing. The monkey used the cat to accomplish his own purposes. The analogy to employment discrimination is the supervisor who avoids the dirty work of firing the employee, but influences the person who delivers the "bad news."

In *Staub v. Proctor Hospital*, the fired employee sued Proctor Hospital for anti-military bias under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), which prohibits employment discrimination based on military membership or obligation. The employee showed evidence that two supervisors disliked his role in the U.S. Army Reserve, which occasionally took him away from work. The U.S. Supreme Court held the employer liable, even though the two biased supervisors did not make the ultimate decision to fire the employee. The Court attributed responsibility to the "earlier agent[s]" because his firing was the intended consequence of the supervisors' discriminatory conduct.

What This Means for Employers

This case potentially leaves employers with little protection against the discriminatory conduct of employees who play even minor roles in decision making. It also signals broader implications on other discrimination lawsuits, since USERRA's standard is "very similar to Title VII [sex discrimination]" which is also similar to the Americans with Disabilities Act [disability discrimination].

Employers may be unable to avoid liability for discrimination on the grounds that a nonbiased employee was the ultimate decision maker for an adverse employment action, where such decision maker's determination was, in actuality, tainted with

discriminatory animus because it was influenced by a biased lower-level manager or supervisor who intended to adversely affect the employee. Since this opinion broadens employer liability, it may be prudent for all supervisors and human resources staff to receive anti-discrimination and anti-harassment training.

In addition, since the Court found the employer in this case did not conduct a sufficient independent investigation of the facts relied upon in firing the plaintiff, this opinion underscores the need for employers to conduct meaningful independent investigations, particularly where discriminatory bias may influence decisions regarding an employee. An employer may be able to avert liability for discrimination if it can establish that through the ultimate decision maker's independent investigation of the facts, the decision maker did not rely on or take action based upon the tainted information or tainted prior actions.

For Further Information

If you have any questions about the information addressed in this *Alert*, please contact any member of our Employment, Labor, Benefits and Immigration Practice Group or the attorney in the firm with whom you are regularly in contact.

Note

1. *Staub v. Proctor Hosp.*, 2011 U.S. LEXIS 1900 (U.S. Mar. 1, 2011).