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LABOR & EMPLOYMENT DEPARTMENT

ALERT

U.S. Supreme Court: Employers Liable for Discriminatory Motives of Lower-Level Supervisors Who Influence Final Employment Decisions

By Andrez S. Carberry

In a recent decision, *Staub v. Proctor Hospital*, the Supreme Court of the United States unanimously ruled that under the "cat's paw" theory, an employer can be held liable for discrimination if it takes an adverse action (i.e., termination) against an employee, when the final decision maker is influenced by a biased or discriminatory lower-level supervisor.

Background

The plaintiff, Staub, was a member of the United States Army Reserve and employed as an angiography technician by Proctor Hospital. As a member of the U.S. Reserve, Staub was required to attend military drills one weekend a month and full-time training for two to three weeks a year. Staub presented evidence that two of his immediate supervisors were hostile to his military obligations and, as a result, sought to "get rid of [Staub]." In an alleged attempt to effectuate the plaintiff's termination, a supervisor issued a "corrective action" to Staub for violating a purported company rule. Four months after the corrective action was issued, one of Staub's supervisors advised Proctor's Vice President of Human Resources (VP) that Staub had violated the corrective action, a fact disputed by Staub. Upon being informed of this violation, the VP reviewed Staub's personnel file and terminated him, citing the violation of the corrective action.

Staub sued the hospital under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), alleging he was terminated because of hostility toward his military obligations. USERRA is very similar to the more familiar Title VII (a point acknowledged by the Court and discussed below) and prohibits discrimination against a person because of his or her membership in the uniformed services or due to his or her military obligations. An employer violates USERRA if the employee's membership or obligation is a "motivating factor" in the employment decision, unless said decision would have been taken in the absence of the employee's membership.

Note: Staub did not claim the VP harbored any animus toward his military obligations, but rather that the VP's decision was influenced by his supervisors' animus.

Decision

Relying on principles of tort and agency law, the Supreme Court ruled that "…[I]f 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."

The Court also reasoned that an employer may escape liability by establishing that an independent investigation resulted in the complained of adverse employment action for reasons unrelated to the supervisor's biased action or report.

Implications

• **Increased Difficulty Defeating Remote Claims of Discrimination**: This case is undoubtedly a victory for plaintiffs and legitimizes claims of discrimination based on actions by supervisors who influence, but have no authority to take adverse employment actions against an employee. In fact, it is possible an employer may be liable if a co-worker, rather than a supervisor, committed a discriminatory act that influenced the ultimate employment decision. The Court acknowledged but did not address this issue.

• **Application to Other Anti-Discrimination Statutes**: In its analysis, the Supreme Court acknowledged the similarities between USERRA and Title VII. This is an implicit invitation for lower courts to apply the reasoning of this case to Title VII cases and other similar anti-discrimination statutes.

• **Breadth of Investigations**: Although the Court explained that an employer may escape liability by showing an independent investigation led to the complained of adverse action, the Court did not provide any guidance as to breadth of the investigation required to establish this potential defense. Instead, it is arguable that the Court muddied the water for employers when it explained that conducting an investigation is not "claim-preclusive" and will not automatically relieve the employer of fault.

Necessary Actions for Prudent Employers

Employers must ensure all employees are trained to identify, report and take action to prevent and address discrimination and other biased-related actions. Decision makers should be trained to conduct thorough investigations into the basis and support for recommendations or allegations of supervisors or co-workers that impact, influence or trigger the review of, or decisions regarding, an employee. Specific attention must be paid to identifying potential biases or discriminatory animus by employees.

In fact, employees may be well-served to hire outside personnel to conduct independent investigations, thereby inserting a layer of scrutiny that may otherwise be unavailable through an internal investigation.

Under the cat's paw doctrine, independent investigations will not insulate an employer from liability in every instance. Thorough investigations, proper training of staff and a robust complaint mechanism remain the primary safeguards and potential defense for employers faced with claims of discrimination.

For more information about this Alert, please contact Andrez S. Carberry at 212.878.7964 or acarberry@foxrothschild.com or any member of Fox Rothschild's Labor & Employment Department.