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Second Circuit Expands "Cat's Paw" Theory of Liability

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On August 29, 2016, the Second Circuit Court of Appeals, in Vasquez v Empress Ambulance Service, Inc. (No 15-3239-cv), expanded the theory of employment discrimination liability generally referred to as the "cat's paw" theory.

The term "cat's paw" comes from a 17th century Aesop fable about a monkey and a cat. In this fable, the monkey dupes a cat into stealing chestnuts from a fire. In 1990, Judge Posner of the Seventh Circuit Court of Appeals coined the term to describe the theory of liability where an employer may remain liable for the discriminatory animus or intent of a biased supervisor, even if the biased supervisor was not the decision maker, if the employee shows that the employer's decision was influenced by the biased supervisor. According to Posner's opinion, "[i]n the fable, a monkey induces a cat by flattery to extract roasting chestnuts from the fire. After the cat has done so, burning its paws in the process, the monkey makes off with the chestnuts and leaves the cat with nothing."

The Second Circuit's decision in Vasquez, expands the cat's paw theory to hold an employer liable for adverse decisions based on the discriminatory animus or intent of a low-level co-worker with no supervisory responsibilities.

In Vasquez, the plaintiff complained to her employer about the sexual advances of a co-worker, which included the transmission of a graphic photograph to the plaintiff's cell phone. The co-worker managed to create a fake text message dialogue with the plaintiff in which it appeared that they had been in a consensual sexual relationship. When Empress conducted an investigation of the incident, management rejected plaintiff's offer to turn over her cell phone for inspection or otherwise refute the fake text dialogue. Rather, without considering plaintiff's evidence that the text dialogue was fake, Empress concluded plaintiff had a sexual relationship with the co-worker and terminated her employment.

Plaintiff brought suit against Empress under Title VII, claiming that Empress had wrongfully terminated her in retaliation for complaining of sexual harassment. Empress moved to dismiss Vasquez's complaint for failure to state a claim and the district court granted the motion, holding that the retaliatory intent of a low-level employee, who had no decision-making authority, could not be attributed to Empress and that, therefore, Empress could not have engaged in retaliation against Vasquez.

The Second Circuit reversed the district court's dismissal, ruling that "that an employee's retaliatory intent may be imputed to an employer where, as alleged here, the employer's own negligence gives effect to the employee's retaliatory animus and causes the victim to suffer an adverse employment decision." Noting that Empress "blindly credited" the co-worker's evidence and "obstinately refus[ed] to inspect Vasquez's phone or to review any other evidence

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proffered by Vasquez in refutation," the Court ruled "an employer may be held liable for an employee's animus under a 'cat's paw' theory, regardless of the employee's role within the organization, if the employer's own negligence gives effect to the employee's animus and causes the victim to suffer an adverse employment action."

For more information, please contact Scott Schwefel at (860) 606-1712. You may also contact the Shipman Shaiken & Schwefel, LLC attorney with whom you usually work to discuss a comprehensive approach for complying with state and federal laws and regulations governing your workplace.