U.S. Supreme Court Holding Addresses "cat's paw" Theory of Liability

The United States Supreme Court laid a heavy burden on employers yesterday by holding that they can be liable for adverse employment decisions even in instances where the individual making the decision did not act with a discriminatory motive, but instead merely relied in part on the input of others who did have such motives.

In *Staub v. Proctor Hospital*, plaintiff Vincent Staub sued the Hospital under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), alleging he was fired under a "cat's paw" theory of liability, whereby a decision-maker is influenced by a reporting supervisor's bias when he or she makes a determination that adversely affects an employee.

Staub was a member of the United States Army Reserve, and thus was required to attend drills one weekend each month, as well as training exercises for two to three weeks full-time each year. Staub alleged that two of his supervisors viewed his military duties disparagingly, and one of the supervisors allegedly filed a false complaint against him with the Hospital's Human Resources Department. Relying in part on this complaint, one of the Hospital's HR executives terminated Staub's employment. A jury found in Staub's favor on the premise that his discharge was motivated by hostility directed at his military service requirements, but the Seventh Circuit Court of Appeals reversed on grounds that the HR executive's decision was not "singularly" based on Staub's supervisors' anti-military animus.

The Supreme Court granted certiorari, and in a unanimous decision, overturned the Court of Appeals, determining instead that an employer may be held liable, so long as the action taken by the biased supervisor is the proximate cause of the adverse employment action. More specifically, the Court, in its majority opinion authored by Justice Scalia, noted that "if a supervisor performs an act motivated by anti-military animus that is *intended* . . . to cause an adverse employment action," then the employer should be held liable for the action.

While *Staub* involved a USERRA military discrimination claim, this "cat's paw" theory (now doctrine!) of liability is anticipated to extend to claims of discrimination brought under other federal laws as well (Title VII, ADEA, ADA, etc.). Thus, employers must now be even more careful before making adverse employment decisions in situations involving individuals who fall within the protections of one of these laws.

The high court did provide some hope for employers who conduct independent investigations regarding adverse employment actions, rather than relying on a supervisor's recommendation. In such instances, when "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."

Realizing such investigations are not always possible, employers also can try to avoid a "swinging cat's paw" by **(1)** implementing consistently monitored and enforced anti-discrimination policies and **(2)** conducting proper supervisor training.

Should you need any assistance in developing such policies or providing such training, please contact Scott Simmons at (423) 785-8475 or any other member of Miller & Martin's Labor & Employment Law Department.

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