U.S. Supreme Court Adopts "Cat's Paw" Doctrine in Discrimination Cases

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Employers may be liable for discrimination even though the final decision maker had no discriminatory intent

On March 1, 2011, the U.S. Supreme Court issued its much anticipated decision in *Staub v. Proctor Hospital*, addressing for the first time the "cat's paw" doctrine of employer liability in discrimination cases. Under the cat's paw doctrine, an employee seeks to hold his employer liable based on the discriminatory intent of a supervisor who was not responsible for making the ultimate employment decision.

Facts

This case arose under the Uniformed Services Employment and Reemployment Rights Act (USERRA). Staub, an angiography technician for Proctor Hospital, was a member of the Army Reserves, which required him to attend drill one weekend a month and to train full time for two to three weeks a year. Mulally, Staub's immediate supervisor, and Korenchuk, Mulally's supervisor, were hostile to Staub's military obligations. Mulally told one department employee that Staub's military duty had been a strain on the department and asked the employee to help Mulally "get rid" of Staub. Korenchuk ridiculed Staub's military service as a waste of time and taxpayer money. In January 2004, Mulally issued Staub a "Corrective Action" disciplinary warning for purportedly violating a rule requiring him to stay in his work area even when he had no patient. Staub disputed the corrective action claiming there was no such rule and, even if there were, he did not violate it.

On April 2, 2004, Day, a co-worker of Staub's, complained to Buck, the hospital's vice president of human resources, about Staub's frequent unavailability and abruptness. Shortly thereafter, Korenchuk advised Buck that Staub had left his desk without informing a supervisor, in violation of the January Corrective Action – an accusation disputed by Staub. Buck relied on Korenchuk's accusation and, after reviewing Staub's personnel file, decided to fire Staub. The termination notice stated that the decision was based on Staub's having ignored the directive in the January Corrective Action. Staub challenged his termination through the hospital grievance process, denying that he had violated the Corrective Action and claiming that Mulally had fabricated the allegations on which the Corrective Action was based out of hostility toward his military obligations. However, Buck refused to change her final decision.

The Supreme Court Held That:

- An employer may be liable for discrimination under USERRA, even though the final decision maker had no discriminatory intent, where another supervisor performs an act motivated by anti-military intent that is intended by the supervisor to cause an adverse employment action, and that act is a proximate cause of the ultimate employment action; in other words, the ultimate decision maker relies on the supervisor's act in making the final employment decision.

- Intent and responsibility for the adverse employment action can be attributed to an earlier agent, e.g., Staub's supervisors, if the adverse action is the intended consequence of the agent's discriminatory conduct. As long as the agent intends, for discriminatory reasons, that the adverse action occur, he has the scienter, i.e., knowledge, required for liability under USERRA.
The only way an employer can escape liability for discrimination is if the ultimate decision maker's investigation results in an adverse action for reasons unrelated to the supervisor's original biased action.

The supervisor's biased report may remain a causal factor for the discrimination if the independent investigation takes it into account without determining that the adverse action was, apart from the supervisor's recommendation, entirely justified.

If the independent investigation relies on facts provided by the biased supervisor – as is necessary in any case of cat’s paw liability – then the employer (either directly or through the ultimate decision maker) will have effectively delegated the fact-finding portion of the investigation to the biased supervisor.

**What This Means for Employers**

- An employer will no longer be able to rely on the ultimate decision maker’s independent investigation as a defense to liability for the discriminatory intent of lower level supervisors, unless the employer can identify a reason for the adverse action that is wholly unrelated to the information or reports provided by the lower-level supervisors.

- To avoid liability, before making employment decisions based on information/reports from an employee’s supervisors, employers will now need to determine whether the employee claims that his supervisors were discriminating against him on the basis of his protected class and whether the adverse employment action can be justified on some basis other than the information/report from the employee’s supervisor.

- The Supreme Court noted that USERRA is similar to Title VII of the Civil Rights Act of 1964. Accordingly, courts will in all likelihood apply this same analysis to cat’s paw cases under Title VII, the Americans With Disabilities Act, and the Age Discrimination in Employment Act.

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