

## Supreme Court Adopts Broad Standard for Determining “Cat’s Paw” Liability

March 4, 2011

In a unanimous decision, the U.S. Supreme Court on March 1 adopted a broad new standard for determining employer liability for so-called “cat’s paw” claims under the Uniformed Services Employment and Reemployment Rights Act (USERRA). Specifically, the Court, in *Staub v. Proctor Hospital*, held that an employer may be liable for discrimination where the ultimate decision maker lacked discriminatory intent when making an employment decision, but relied, at least in part, on a supervisor who had such intent. The Court also held that conducting an independent investigation does not necessarily shield an employer from “cat’s paw” liability.

### “Cat’s Paw” Claims

The term “cat’s paw” stems from a 17th century French fable in which a monkey convinces a gullible cat to steal chestnuts from a fire. The cat pulls the chestnuts from the fire—burning her paw with each attempt—only to have the monkey eat all the chestnuts. In employment discrimination cases, the term refers to situations in which a decision maker is influenced by another’s bias when taking an adverse employment action, such as terminating an employee.

### Lower Court Proceedings in *Staub v. Proctor Hospital*

While employed in a civilian position by Proctor Hospital, plaintiff Vincent Staub was a member of the U.S. Army Reserve. One of Staub’s supervisors was hostile to his military obligations and, as a result, placed him on an undeserved and pretextual corrective action plan. The supervisor later fabricated a violation of the corrective action plan. Relying in part on Staub’s “violation” of his corrective action plan, Proctor’s vice president of human resources—who was unaware of the supervisor’s discriminatory views—terminated Staub’s employment.

After his termination, Staub brought a claim under USERRA, a statute prohibiting discrimination on the basis of an individual’s membership in a uniformed service. A jury returned a verdict in Staub’s favor, finding that his “military status was a motivating factor in [Proctor’s] decision to discharge him.” On appeal, the U.S. Court of Appeals for the Seventh Circuit reversed and set aside the jury verdict. In doing so, it held that a “cat’s paw” claim could succeed only when a nondecision maker exercised “singular influence” over a decision maker. In other words, the Seventh Circuit held that such a claim could succeed only when the termination decision was the product of the decision maker’s “blind reliance” on the biased supervisor.

## The Supreme Court's New Standard for Determining Liability in "Cat's Paw" Cases

In *Staub*, the Supreme Court rejected the Seventh Circuit's approach and held that "if 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." Further clarifying its holding, the Court explained that "[p]roximate cause requires only 'some direct relation between the injury asserted and the injurious conduct alleged.'" Thus, the Court concluded that if an individual's military service is a "motivating factor" in his or her termination, an employer may be liable even if an unbiased company representative made the ultimate decision to terminate the employee. A plaintiff is merely required to show that a biased supervisor's discriminatory intent was a proximate cause of—that is, had some direct relation to—the termination decision.

The Court also held that an employer's reliance on an independent investigation does not, as a matter of law, preclude a finding of liability. Although the Court noted that in some cases an independent investigation by the decision maker may very well result in a finding that a supervisor's biased actions were *not* a "causal factor" in the adverse employment action, it concluded that in other circumstances a "supervisor's biased report" could remain a "causal factor" even in the face of an independent investigation. Strikingly, as a result of this case-by-case approach adopted by the Court, an employer that makes an employment decision with no bias based on an unbiased factual investigation could still face liability for a discriminatory action.

### Implications of *Staub v. Proctor Hospital*

The first and most important implication of *Staub* is that it is likely to make the "cat's paw" theory of liability more attractive to plaintiffs in that it invalidates the more restrictive "cat's paw" evidentiary rules previously applied by certain courts (including the Seventh Circuit). The Court, in effect, opened the door to a new theory of liability that was not previously available for some plaintiffs. This impact will be widespread because, while *Staub* concerned a case brought under USERRA, the similarity between that statute and Title VII—a similarity explicitly recognized in the Court's decision—suggests that the case's central holding will be applicable to Title VII and other antidiscrimination statutes.

The decision was not, however, a complete victory for plaintiffs' lawyers. For a plaintiff to succeed under a "cat's paw" theory, the Court requires a showing that the supervisor who influenced the decision maker was not only motivated by discriminatory animus, but also that she or he *intended for the conduct to result in an adverse employment action*. In many cases, plaintiffs may fall short of meeting this burden, clearing the way for summary judgment. Moreover, the opinion pointed out in a footnote that the Court was only ruling upon situations where a *supervisor* attempted to influence the actions of the decision maker, stating "[w]e express no view as to whether the employer would be liable if a co-worker, rather than a supervisor, committed a discriminatory act that influenced the ultimate employment decision."

Finally, while *Staub* makes clear that conducting an independent investigation is not a complete shield from liability, the Court's decision nonetheless highlights the importance of conducting a thorough investigation prior to terminating—or taking other adverse action against—an employee. Rather than solely relying on an immediate supervisor's report or looking through an employee's personnel file, both of which could be colored by a biased supervisor's discriminatory intent, an employer's human resources department should conduct an independent investigation in order to determine whether there is, in fact, a legitimate nondiscriminatory reason for the adverse action.

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