



## Employers: Beware of the Cat's Paw

By Arthur Yermash, Esq.

On March 1, 2011, the US Supreme Court issued an important decision affirming the viability of the “cat’s paw” theory of liability against employers in employment discrimination cases. Under the cat’s paw theory, an employer may be liable for discrimination against an employee when a supervisor is motivated by bias against the specific employee; performs an act that is intended to cause an adverse employment action (i.e. demotion, termination, write-up, etc.); and ultimately and that supervisor’s bias act is the proximate cause for the adverse employment action against that employee.

In *Staub v. Proctor Hospital*, Vincent Staub sued Proctor Hospital under the Uniformed Services Employment and Reemployment Rights Act of 1994 “USERRA” claiming that his discharge was motivated by hostility to his obligations as a member of the U.S. Army Reserves. Staub worked for Proctor Hospital as an angiography technologist. During his employment, Staub was simultaneously serving in the United States Army Reserve, which required him to attend drill one weekend per month and to train full-time for two to three weeks per year. Staub alleged that his supervisors Janice Mulally and Michael Korenchuk, were openly hostile to him because of his military obligations. Staub claimed that Mulally was actively seeking to get terminate him. In January 2004, Staub was issued a disciplinary warning by Korenchuk that Staub left his desk without informing a supervisor in direct violation of the previous disciplinary warning.

As a result of the disciplinary warning from Korenchuk, Staub was terminated by Mulally and Korenchuk’s supervisor, Ms. Buck.

Staub challenged his termination. His contention was not that Ms. Buck had any hostility towards him, but that his supervisors (Mulally and Buck) did, and that their actions influenced Ms. Buck’s ultimate employment decision. Staub sued Proctor Hospital alleging that his termination violated USERRA, which prohibits discrimination against employees serving in a uniformed service, such as the Army Reserve, and claimed that Ms. Mulally and Mr. Korenchuk were biased against his military obligations and their actions influenced Ms. Buck in her termination decision. A jury found that Staub’s military status was a “motivating factor” in Proctor’s decision to discharge him and awarded him \$57,640 in damages. Upon review, the Supreme Court held that an employer will be liable under USERRA when “a supervisor performs an act motivated by anti-military animus that is *intended* by the supervisor to cause an adverse employment action, and that act is a proximate cause of the ultimate employment action. The Supreme Court held that the hospital was at fault because Staub’s supervisors, motivated by their hostility towards Staub’s military obligations, intended to and in fact were successful in convincing Ms. Buck that Staub had violated the terms of a prior disciplinary warning.



The Court rejected the hospital's argument that, since the Ms. Buck ultimately made the decision on her own independent review, that that act should neutralize the effect of the other supervisors' bias. The Court also limited its decision to actions by supervisors, and expressly declined to address whether the employer would be liable if a co-worker, rather than a supervisor, committed a discriminatory act that influenced the ultimate employment decision.

Employers should carefully review and evaluate internal investigation practices and grievance procedures. While employers cannot eliminate all risk of liability, whenever an employee complains that discriminatory motives may be to blame for certain employment actions, employers should conduct independent reviews and investigations. The key for employers is to establish clear and effective policies for minimizing discrimination in the work force. The failure to properly investigate a claim of bias may result in liability. In addition to USERRA, employers can anticipate courts applying the Staub decision in future cases arising under Title VII, the ADA, and other federal and state employment laws.



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*Clients who have any further questions or concerns about the information contained in this Advisory should not hesitate to contact us.*

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***Fun Fact:*** The term “cat’s paw” derives from an ancient fable in which a monkey persuades a cat to extract a roasting chestnut from a fire. The cat retrieves the chestnut but burns his paw in the process, allowing the monkey to take off with the chestnut while the cat has nothing to show for his labor. In the employment discrimination context, “cat’s paw” refers to a situation in which a biased employee, who may lack the ultimate decision-making power, uses the formal decision maker as a dupe in a deliberate scheme to trigger a discriminatory employment action.

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