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April 2011 www.nexsenpruet.com

EMPLOYMENT LAW

U.S. SUPREME COURT OUTLINES EMPLOYER LIABILITY FOR DISCRIMINATION UNDER "CAT'S PAW" THEORY

In a unanimous decision, the U.S. Supreme Court recently ruled that an employer can be held liable for employment discrimination based upon the discriminatory animus of a supervisor who influenced, but did not make, the ultimate employment decision. *Staub v. Proctor Hospital,* No. 09-400 (S.Ct. March 1, 2011). The case is an important one for employers, who can now be liable for discrimination where the decision-maker who takes the adverse employment action against the employee has no discriminatory animus if he or she is relying upon recommendations of a supervisor who does.

Facts of the *Staub* Case

Vincent Staub, a member of the U.S. Army Reserve, worked as an angiography technologist for Proctor Hospital in Peoria, Illinois. His reserve duties required him to attend drill one weekend per month and train fulltime for two to three weeks a year. According to Staub, his immediate supervisor, Janice Mulally, and Mulally's supervisor, Michael Korenchuk, were hostile to Staub's military obligations. Staub alleged that Mulally scheduled him for additional shifts without notice so that he would "pa[y] back the department for everyone else having to bend over backwards to cover his schedule for the Reserves." She allegedly complained about his military duty and indicated to one of Staub's co-workers that she wanted to get rid of him. Moreover, Korenchuk referred to Staub's military obligations as "a bunch of smoking and joking and [a] waste of taxpayers[']] money."

In January 2004, Mulally issued Staub a "Corrective Action" disciplinary warning for violating a company rule requiring him to stay at his work area whenever he was not working with a patient. Staub claimed that there was no such company rule, and that even if there was, he did not violate it. The Corrective Action included a directive requiring Staub to report to Mulally or Korenchuk whenever he had no patients and the angio cases were completed.

In April 2004, Korenchuk informed Linda Buck, Proctor Hospital's Vice President of Human Resources, that Staub had left his desk without informing a supervisor, a violation of the January Corrective Action. Buck then reviewed Staub's personnel file and terminated him. The termination notice from Buck stated that Staub had ignored the directive in the January Corrective Action. Staub challenged his termination through the hospital's grievance process, claiming that Mulally had fabricated the allegation that he violated a company rule in January 2004 because of her hostility toward his military obligations. Buck did not investigate Staub's allegation, and the termination was upheld.

The Supreme Court's Decision

Staub sued Proctor Hospital under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). He contended that his termination was motivated by hostility toward his military obligations – though not by Buck, who was the ultimate decision-maker, but by Mulally and Korenchuk, who influenced Buck's decision. The jury found in Staub's favor at trial, and Proctor Hospital appealed to the Seventh Circuit Court of Appeals.

The appeals court observed that Staub had brought a "cat's paw" case because he sought to hold his employer liable for the animus of a supervisor who did not make the ultimate employment decision.[1] The court found in favor of Proctor Hospital, holding that Staub could not be successful under a "cat's paw" theory where the nondecision-makers, Mulally and Korenchuk, did not exercise "singular influence" over the decision-maker, Buck, such that the decision to terminate was the product of "blind reliance" on the part of Buck. The court noted that Buck did not rely solely on Mulally and Korenchuk but also read Staub's personnel file and talked to one of Staub's co-workers.

Staub appealed to the U.S. Supreme Court. The Supreme Court ruled in Staub's favor, holding 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." The court disagreed with the Seventh Circuit's narrow view of the "cat's paw" theory, noting that it would have the improbable consequence that if an employer isolated a personnel official from an employee's supervisors, vested the decision to take adverse employment actions in that official, and asked that official to review the employee's personnel manual before taking the adverse action, the employer would be shielded, in effect, from discriminatory acts and recommendations of supervisors that were designed and intended to produce the adverse action.

Considerations for Employers

While this case addresses a discrimination claim under USERRA, the Supreme Court's opinion makes it clear that the same analysis will likely apply under other federal laws prohibiting discrimination and retaliation in employment. As a result of this decision, it is even more important for human resource professionals and management to conduct a meaningful review of recommendations of supervisors before taking any adverse employment action against an employee. It is equally important for frontline managers to receive training regarding employment laws so that they understand what types of actions and statements are in violation of these laws.

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[1]As the Supreme Court explained in its decision, the term "cat's paw" derives from a fable conceived by Aesop and put into verse by La Fontaine in 1679. In 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.

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