PUBLICATION

U.S. Supreme Court Recognizes Cat's Paw Liability Against Employers

March 02, 2011

On March 1, 2011, the U.S. Supreme Court held that an employer may be liable for employment discrimination, even if the employer's ultimate decisionmaker is not motivated by discriminatory intent. This is known as the "cat's paw" theory of liability. In *Staub v. Proctor Hospital*, the Court interpreted the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), which prohibits discrimination and retaliation against employees for their military service. However, *Staub* will have broad implications across employment litigation because the Court was interpreting the phrase "motivating factor" which is a common element of most discrimination and retaliation claims.

The fact pattern in *Staub* is straightforward. The employee received a disciplinary warning for wandering outside of his work area. The supervisor who gave the disciplinary warning had previously made "hostile" comments about the employee's military service. Three months after the initial disciplinary warning, the same supervisor reported to human resources that the employee was outside of his work area again, in violation of the disciplinary warning he had previously been given. The Vice President of Human Resources reviewed the employee's personnel file and terminated the employee.

The employer argued that it could not be liable because there was no evidence that the human resources decisionmaker was aware of the supervisor's hostility toward the employee's military leave. The employee argued that the supervisor's hostility toward his military leave tainted the termination decision because the decisionmaker relied on information that was influenced by the anti-military bias of the supervisor, whether or not the decisionmaker was aware of that bias.

The Supreme Court held that "if a supervisor performs an act motivated by…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." In other words, the issue is not the intent of the decisionmaker. Instead, the issue is the intent of the supervisor with the hostile motives, and whether that supervisor intended to cause the employee's termination, and did in-fact cause the employee's termination.

The Supreme Court goes a step further and says that an independent investigation by the decisionmaker would not have necessarily protected the company from liability, if that independent investigation takes into account the information that is tainted by discriminatory animus.

Staub creates a practical conundrum for human resources professionals. The only way for an employer to completely insulate itself from the cat's paw theory of liability is for the employer's decisionmaker to completely rely on information obtained from non-supervisory sources. That scenario is completely unrealistic in most disciplinary cases. Any time a supervisory employee is influencing the outcome of a disciplinary decision, there is a chance that the supervisor will be motivated by discriminatory or retaliatory motives, unbeknownst to the human resources professional. The human resources professional's only protection is to attempt to uncover any undisclosed motives by confirming the supervisor's information through as many sources as possible.