

EMPLOYMENT BULLETIN

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U.S. Supreme Court Upholds “Cat’s Paw” Theory of Discrimination

The United States Supreme Court recently upheld the “cat’s paw” theory for proving discrimination. Under the cat’s paw theory, a plaintiff can prove discrimination even when the ultimate decision-maker to the adverse action did not harbor any discriminatory animus toward the plaintiff. The “cat’s paw” refers to a theory of liability in which a lower level supervisor harbored discriminatory animus toward the employee and, because of that animus, tainted the “innocent” decision-maker’s decision to take the adverse action.

In *Staub v. Proctor Hospital*, the employee, Staub, worked as a medical technician at Proctor Hospital. He also served in the United States Army Reserve, which required him to drill one weekend per month and to train full-time for two to three weeks per year. Staub believed that his immediate supervisor (“Mulally”) and second level supervisor (“Korenchuk”) were hostile towards his military obligations.

In January 2004, Mulally and Korenchuk issued Staub a disciplinary warning for allegedly violating a hospital rule which required employees to stay at their work areas when not working with patients. Proctor’s corrective action plan for Staub included a directive advising Staub to report to Mulally and Korenchuk when he had no cases and when his work was complete.

In April 2004, a co-worker complained to Proctor’s Director of Human Resources about Staub’s frequent unavailability. Mulally and Korenchuk were asked to resolve this issue. Subsequently, Korenchuk informed the Director of Human Resources that Staub had left his desk without notifying a supervisor in violation of the January warning. After reviewing Staub’s personnel file, the Director of Human Resources terminated Staub’s employment.

Staub sued Proctor under the Uniformed Services Employment and Reemployment Rights Act (“USERRA”), alleging that his termination was motivated by Mulally’s and Korenchuk’s hostility toward his obligations as a military reservist. USERRA prohibits covered employers from denying “initial employment, re-employment, retention in employment, promotion, or any benefit of employment” on the basis of U.S. armed forces membership or obligations. An employer violates USERRA if armed forces membership “is a motivating factor” for an adverse employment action.

The jury agreed with Staub and awarded him \$57,640 in damages. On appeal, the Seventh Circuit reversed, holding that because the Director of Human Resources was not wholly dependent on the advice of Mulally and Korenchuk, Proctor was not entitled to judgment. The United States Supreme Court granted *certiorari*.

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The Supreme Court held that “if a supervisor performs an act motivated by anti-military 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’s holding is limited to situations where: (1) a supervisor performs an act motivated by discriminatory intent; (2) the supervisor intends an adverse employment action to result; and (3) the supervisor’s act is the proximate cause of the ultimate employment action carried out by the decision maker. Thus, if the supervisor’s unlawful motivation persuades the decision maker in whole or in part, then the adverse employment action will be unlawful.

In this case, the Court concluded that a reasonable jury could have believed that Mulally and Korenchuk intended for Staub to be fired when they disciplined him and later reported his alleged violation to the Director of Human Resources. Moreover, “a reasonable jury could have believed that these actions were motivated by Mulally and Korenchuk’s hostility towards Staub’s military membership.”

What does this mean for employers? First, the “cat’s paw” theory of liability is applicable to many other anti-discrimination laws, not just USERRA. Therefore, Employers should *not* rely solely upon the recommendations of supervisors in making their employment decisions; instead, it is important for the decision maker to undertake an independent review of the circumstances before implementing any recommended action. In this way, employers will have a better opportunity to identify and eliminate discriminatory practices in the workplace. Finally; employers *should* train supervisors to comply with the anti-discrimination and anti-retaliation laws.

Babst Calland’s Employment and Labor Services Group will continue to keep employers apprised of further developments related to this and other issues. If you have any questions or need assistance in addressing the above-mentioned area of concern, please contact John McCreary at (412) 394-6695 or jmccreary@babstcalland.com or Shefali Patel at (412) 773-8701 or spatel@babstcalland.com.