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Employer Alert

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Supreme Court Scratches the Surface of Discrimination Claims with "Cat's Paw" Theory of Liability

On March 1, 2011, the United States Supreme Court decided that an employer could be held liable for a discriminatory firing even if the final decision maker had no discriminatory motive. In *Staub v. Proctor Hospital*, the plaintiff brought suit under the Uniformed Services Employment and Re-Employment Rights Act of 1994, 38 U.S.C. § 4301 at seq. ("USERRA"), claiming that his termination was motivated by anti-military animus. While this case was decided under the provisions of USERRA, the analysis used by the Court is likely to be applied to other employment discrimination statutes.

The facts of the case were fairly straightforward. Through their actions and comments, the employee's supervisors exhibited animus toward the employee's military service obligations because the employee had to attend drills based on his membership in the United States Army Reserve. This bias resulted in a corrective action issued by his supervisors. Subsequently, the Vice President of Human Resources received a complaint that the employee had violated the terms of the corrective action. The Vice President reviewed the employee's file and decided to terminate him based in part on the underlying corrective action. Notably, the employee did not claim that the Vice President had a discriminatory motive, but that she improperly relied on the corrective action issued by his ill-motivated supervisors.

This case involved what has been coined the "cat's paw" theory of liability where the ultimate decision maker does not have a discriminatory motive, but relies on the discriminatory decisions of a lower level employee or supervisor. The United States Supreme Court found that the employer has liability in this situation because the Vice President did not conduct her own investigation to determine if termination was appropriate. Essentially, the Court held that an employer will be liable if some underlying discriminatory conduct is the "proximate cause" of an adverse employment action. This decision places a significant burden on employers to make certain that no discriminatory conduct occurred in the disciplinary process prior to making a final decision. Finally, this decision reinforces the principle that it is critical for employers to ensure that supervisors at all levels be well-trained with respect to the appropriate grounds for discipline and the prohibitions against relying on illegal factors in making any employment-related decision.

Questions or Assistance?

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