CLIENT ALERT: United States Supreme Court Recognizes “Cat’s Paw” Theory of Employer Liability in USERRA Discrimination Case

On March 1, 2011, the United States Supreme Court unanimously adopted the “cat’s paw” theory of liability in an employment discrimination case. The “cat’s paw” refers to a situation where a biased subordinate (who lacks ultimate decision-making power) uses the final decisionmaker as a dupe in a deliberate scheme to trigger a discriminatory employment action.

In Staub v. Proctor Hospital, Inc., No. 09-400, — 562 U.S. — (Mar. 1, 2011), Vincent Staub, a member of the Army Reserve, sued his former employer for discrimination under the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”). USERRA makes it unlawful for an employer to discriminate on the basis of an employee’s military service. Staub, who had military obligations that prevented him from working certain times during the year, claimed he was discharged by the Vice President of Human Resources (the decisionmaker) for allegedly violating a disciplinary warning. While Staub did not contend that the decisionmaker was motivated by animus toward his military service and obligations, he did allege that the decisionmaker was influenced by the discriminatory animus of his supervisors, who were hostile toward his military obligations. A jury had found the employer liable, but the Court of Appeals for the Seventh Circuit reversed, concluding that the employer was entitled to judgment as a matter of law because the decisionmaker was not wholly dependent on the input of the biased supervisors.

The United States Supreme Court reversed the Seventh Circuit. In an opinion written by Justice Scalia, the Court relied on principles of agency and proximate causation to hold that the final decisionmaker’s exercise of his own judgment does not automatically render the non-decision-making supervisor’s bias irrelevant. In other words, a supervisor’s discriminatory animus could be a motivating factor in a decision, even if the decisionmaker’s unbiased judgment was an additional motivating factor. Specifically, the Court stated 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.”

In a concurring opinion, Justice Alito, joined by Justice Thomas, opined that the Court’s decision should have been based on the text of the statute — specifically the phrase “motivating factor in the employer’s action” — rather than on principles of agency and tort law. The majority rejected Justice Alito’s contention that they had strayed from the text of the statute.

Justice Kagan, who was Solicitor General before joining the Court last year, did not participate in the case.

This case has several implications for employers. It will likely make it more difficult for employers to prevail on summary judgment motions based on the lack of discriminatory bias of the final decisionmaker. Moreover, although Staub involved claims under USERRA, it is likely that lower courts interpreting claims under Title VII and other federal anti-discrimination laws will adopt the Court’s reasoning and find that an employer has liability if discriminatory animus of a supervisor is a cause of an ultimate adverse employment decision.

It is important to bear in mind that the “cat’s paw” theory provides a basis for employer liability only where a purportedly biased supervisor’s action was a proximate cause of the adverse action. The Court observed, however, that if “the employer’s investigation into allegations of discriminatory animus on the part of a supervisor results in adverse action for reasons unrelated to the supervisor’s

original biased action, then the employer will not be liable." Accordingly, an employer who is faced with allegations of a discriminatory adverse employment action is well-advised to investigate those allegations both to determine their merit and to determine whether other non-discriminatory reasons support the adverse employment action at issue.

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