

# The Take-Aways from the Supreme Court's "Cat's Paw" Decision

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In a much anticipated decision, *Staub v. Proctor Hospital*, 113 S. Ct. 1186 (Mar. 1, 2011), the United States Supreme Court, established the standard for determining liability in "cat's paw" employment discrimination cases. The term "cat's paw" derives from a 17th century fable where a cat is duped by a monkey to steal chestnuts from a fire (whereby the innocent cat burns its paws and the wily monkey makes off with the chestnuts). In the employment setting, the term refers to situations where an innocent, unbiased decisionmaker (*ala* the cat) is influenced into taking an adverse employment action by a biased, self-serving supervisor (*ala* the monkey).

*Staub* held that for an employer to be liable for an adverse employment action in such situations, (1) the biased supervisor must have performed an act (e.g., giving an unsatisfactory performance review or reporting an employee for a policy violation) that was motivated by illicit animus *and* was *intended* by the supervisor to cause the ultimate adverse employment action (e.g., employment termination or non-promotion), *and* (2) the biased supervisor's act, *in fact*, must have been a proximate cause of the ultimate adverse employment action.

Although the case arose under the Uniformed Services Employment and Reemployment Rights Act (USERRA), which prohibits discrimination based on an individual's membership in a uniformed service, the *Staub* Court expressly noted that Title VII and USERRA have similar textual provisions, providing for liability when unlawful animus is a "motivating factor" in an adverse employment action, and the new *Staub* standard is likely to apply well beyond USERRA cases.

## Facts and Procedural History

*Staub* involved a discriminatory discharge claim brought by Plaintiff Vincent Staub, who was a member of the U.S. Army Reserve while employed at Proctor Hospital. The events leading to Staub's discharge began when his direct supervisor (Mulalley) placed him on a corrective action plan for violating a hospital workplace rule (which Staub maintained did not exist and, in any event, denied violating). Subsequently, Mulalley's supervisor (Korechuk) reported to the hospital's Human Resources Vice President (Buck) that Staub had violated the terms of the action plan (which Staub also denied). Relying on Korechuk's report, Buck reviewed Staub's personnel file and decided to terminate his employment. The termination notice provided that Staub had violated his corrective action plan.

Staub grieved his termination under the hospital's complaint mechanism, contending that Mulalley had been hostile to his military obligations and had fabricated the events giving rise to the corrective action plan. Buck did not confront Mulalley about Staub's complaint, however, and, after discussing the matter with another HR official, stood by her original termination decision.

At the trial on Staub's discriminatory discharge claim, there was no allegation that Buck (the sole decisionmaker) harbored any anti-military animus; rather, Staub claimed that the discriminatory actions of Mulalley and Korechuk influenced Buck's decision, such that the hospital should be held liable for that decision. Mulalley had referred to Staub's military obligations as "a strain on the department," and asked one of Staub's co-workers to help her "get rid of him." Korechuk referred to Staub's obligations in pejorative terms, and said it was nothing more than "a bunch of smoking and joking and a waste of taxpayers' money." There was also evidence that Korechuk was aware of Mulalley's desire to "get rid of" Staub.

The jury returned a verdict for Staub, finding that his military status was a motivating factor in the hospital's discharge decision. On appeal, the U.S. Court of Appeals for the Seventh Circuit reversed, setting aside the jury verdict and awarding judgment as a matter of law to the hospital. In doing so, it held that a "cat's paw" claim, such as that alleged by Staub, was not sustainable unless a biased supervisor/non-decisionmaker exercised "singular influence" over the actual decisionmaker such that the discharge decision had been the result of "blind reliance" on the biased supervisor. The Seventh Circuit concluded that there was insufficient evidence on which a reasonable jury could have found for plaintiff under this standard, given that Buck had not only relied on Mulalley and Korenchuk's reports, but also had reviewed Staub's personnel file and consulted with another HR officer before confirming her discharge decision.

### **The Supreme Court's Rejection of the Seventh Circuit Standards**

The Supreme Court reversed and established a new standard for assessing an employer's liability in "cat's paw" cases. The Court explained that under USERRA, an employer is liable for an adverse employment decision if an employee's military service is a "motivating factor" in that decision. The Court reasoned that where the plaintiff does not accuse the actual decisionmaker of bias, but challenges the motives of a supervisor who did not make the decision, the employer is liable 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.

Applying this standard, the Court concluded that there was sufficient proof that Staub's supervisors intended for their actions to result in his discharge and that their actions were in fact a proximate cause of that discharge.

The Court also rejected the hospital's argument that a decisionmaker's purportedly independent investigation (and rejection) of an employee's claim that a supervisor's animus motivated his or her actions should absolve the employer of liability. The Court "decline[d] to adopt such a hard-and-fast rule." It explained that in some cases, an independent investigation may result in a finding that a supervisor's biased actions were not a "causal factor" in the adverse employment action. In other cases, however, the Court reasoned, the biased actions could be a "causal factor" notwithstanding the investigation (such as in the case before it).

## Implications of *Staub* for Employers

Although *Staub* will undoubtedly lead plaintiffs to assert claims under the “cat’s paw” theory, the decision is *not* a boon for all employees.

- *First*, *Staub* does not universally relax the burden of proof for employees in “cat’s paw” cases.
  - In some jurisdictions, such as the Seventh and Fourth Circuits, where a rigid “blind reliance” or “rubber stamp” rule had been applied, “cat’s paw” plaintiffs will now face a lower hurdle to establish employer liability.
  - In many other jurisdictions, however, where “cat’s paw” plaintiffs were required to show only that a biased non-decisionmaker played a “meaningful role in” or “had influence in” a challenged employment decision, such as in the Second and Third Circuits, the reverse may be true; in these jurisdictions, *Staub* may well posit a *higher* hurdle for plaintiffs and a greater potential for defenses by employers.
- *Second*, the outcome in *Staub* is limited by the particular facts of the case.
  - There was *direct* evidence in *Staub* that two supervisors harbored extreme anti-military bias, and that one even had a goal to “get rid of” Staub because of such bias. Such employee-favorable evidence is not typically present in the majority of discrimination cases, most of which are premised on circumstantial evidence.
  - The Court also expressly limited its decision to cases involving biased *supervisors’* actions which proximately cause adverse employment decisions; the Court expressed “no view as to whether the employer would be liable if a co-worker, rather than a supervisor, committed a discriminatory act that influenced the ultimate employment decision.
  - Due to the procedural posture of the case, the Court was constrained to consider all of the evidence in a light highly favorable to plaintiff; the evidence tending to substantiate the hospital’s decision to discharge Staub (which should be evaluated by a court in the summary judgment context) did not even make it into the Supreme Court’s discussion.
  - Further, the *Staub* decision was clearly influenced by the less-than-robust investigation undertaken by the hospital’s HR executive who received Staub’s internal discrimination complaint.
- *Finally*, the *Staub* decision serves as a reminder for employers to regularly review and update their procedures:

- For communicating policies and practices to employees; governing discipline and its documentation; and regarding the training of Human Resources professionals so that they are sensitized to potential "cats paw" situations.

#### Related Professionals

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