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Gallagher Sharp Newsflash: Employer Liability Under Cat's Paw Theory

Yesterday, March 1, 2011, the Supreme Court of the United States held that an employer may be held liable for the discriminatory motives of a supervisor who influences an employment decision, but does not make the ultimate decision. This theory of employer liability is known as the "cat's paw" theory.

In *Staub v. Proctor Hosp.*, Slip Op. 09-400, Staub worked at Proctor Hospital and was also a member of the United States Army Reserves. While at the hospital, Staub's direct supervisor, Janice Mulally, who was in charge of scheduling, was openly hostile to his military obligations. Mulally scheduled Staub to work additional shifts without notice to "pa[y] back the department for everyone else having to bend over backwards to cover [his] schedule for the Reserves." Mulally also commented that Staub's military duty had been a "strain on th[e] department" and asked Staub's co-worker for help in getting rid of him. Staub also claimed that Mulally issued a "Corrective Action" disciplinary notice that was not justified based upon non-existent rules. Mulally's supervisor, Michael Korenchuk, was also hostile to Staub's military service.

After Staub received "Corrective Action," one of his co-workers' complained to human resources about Staub's frequent unavailability. Human resources directed Korenchuk to address Staub's availability issues. Prior to Korenchuk addressing the issue, Staub left his desk for lunch without informing Korenchuk. Staub claimed that he did inform Korenchuk of his absence from his desk. Korenchuk complained to human resources. Human resources relied upon Korenchuk's accusations and terminated Staub's employment.

Staub sued Proctor Hospital under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") claiming that his discharge was motivated by hostility to his obligations as a military reservist. He did not claim that the human resources employee who made the ultimate decision to terminate his employment had a discriminatory animus. Rather, he claimed that Mulally and Korenchuk did have such animus and their actions influenced the decision to terminate his employment. The case proceeded to a jury trial, with a verdict in Staub's favor. The United States Court of Appeals for the Seventh Circuit reversed the decision of the jury.

The matter was appealed to the Supreme Court of the United States. The 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."

Although this case involved USERRA, its implications are much broader. This is the first time that the United States Supreme Court recognized the cat's paw theory of employer liability. As a result of Staub, the

biases of supervisors are relevant when determining liability on the part of the employer. Going forward, ultimate decision makers should not solely rely upon information in an employment file, but should investigate whether legitimate, non-discriminatory reasons justify the adverse employment decision.

The opinion can be found at:

<http://www.supremecourt.gov/opinions/10pdf/09-400.pdf>

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