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U.S. Supreme Court Rules that Human Resources Departments No Longer Insulate Employers from Discrimination Claims

By **Lionel M. Schooler** and **Courtney Carlson**

INTRODUCTION. On March 1, 2011, the Supreme Court issued its decision in *Staub v. Proctor Hospital. Staub*, a case brought under the Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA), is the first U.S. Supreme Court decision addressing the "cat's paw" line of cases, that is, cases involving an adverse employment action which give the appearance that the action is being taken by a neutral party when in reality it is motivated, at least partly, by a biased supervisor.

FACTUAL BACKGROUND. Vincent Staub worked as an angiography technician at Proctor Hospital until 2004, when he was fired. While employed there, Staub was a member of the Army Reserve, which required him to attend training one weekend per month and to train full time for two to three weeks per year. His supervisors were hostile to his military obligations (i.e., scheduled him for additional shifts without notice as "pay back," made comments that his military obligations amounted to "a bunch of smoking and joking," and asked others to help "get rid of him."). In January 2004, Staub's immediate supervisor issued a "Corrective Action" disciplinary warning against him for allegedly violating a company rule requiring him to stay in his work area when not working with a patient. The directive required him to report to his supervisor when he had no patients and when his work was completed. Staub claimed the company had no such rule and, even if it did, he had not violated it.

A few months later, Staub's supervisor informed Human Resources that he had left his desk without informing a supervisor in violation of the Corrective Action. Staub challenged the veracity of this claim but the Human Resources Department ultimately relied on the supervisor's information and, after reviewing his personnel file, fired Mr. Staub.

The employer therefore claimed that the supervisor in question was not involved in the decision to terminate employment, and that the individuals who were involved did not have any discriminatory animus towards Staub. Staub filed suit claiming his supervisor's hostility towards his military obligations violated USERRA. The trial court agreed and awarded damages, but the federal court of appeals in Chicago disagreed, on the basis that the supervisor in question did not make the ultimate decision to fire him.

DECISION BY THE SUPREME COURT. The Supreme Court reversed the appellate court's decision. The Court held that an employer may be liable under the USERRA for an adverse employment action (which includes but is not limited to termination of employment) even if the final decision maker acted free from

discriminatory intent, where a supervisor's discriminatory intent contributes to ***causing*** the adverse employment action. The Court's decision flows from its previous decisions applying agency principles to hold employers liable for the actions of management level employees.

The Court noted that an aggrieved employee must prove the following to expose the employer to potential liability: (1) the supervisor performed an act motivated by discriminatory animus; (2) the supervisor intended that the discriminatory act would "cause" an adverse employment action (that is, cause "some direct relation between the injury asserted and the injurious conduct alleged"); and (3) the discriminatory act is the "motivating factor" of the cause of the ultimate adverse employment action. Under this analysis, therefore, the act of a "neutral decisionmaker" does not automatically constitute a "superseding cause" under the Court's decision in *Staub*.

CONCLUSION. The decision in *Staub v. Proctor Hospital* reiterates and expands the doctrine from previous Supreme Court cases that employers may be held responsible for discriminatory conduct of their management personnel and are not immune from liability simply by directing a "neutral" representative of the Human Resources Department to review personnel files and put in place a decision to direct an adverse employment action. The Court's reference to the resemblance between the anti-discrimination provisions of the USERRA and those of Title VII of the 1964 Civil Rights Act suggest that this decision will not be limited to service personnel pursuing USERRA claims.

Therefore, understanding and applying the nuances of the Court's decision likely will present new challenges to employers faced with implementing so-called adverse employment action based, in part, upon input from supervisors who are not involved in the final decision-making process.

For assistance in dealing with "cat's paw" situations and related issues, contact either the Jackson Walker employment law attorney with whom you regularly confer or contact one of us at the phone numbers or e-mail addresses shown below:

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