

Cat's Paw Liability Finally Defined
Or
U.S. Supreme Court Doesn't Pussy Foot Around
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A hospital in downstate Peoria, Illinois has successfully provided the US Supreme Court with a stage upon which to expand an employer's liability for discrimination claims.

The "Cat's Paw" theory is often cited in employment law and has been subject to several interpretations, depending upon the Judicial District of the decision. This refers to instances where the discriminatory actions of one individual (say a Supervisor against an employee), influences the actions of a superior (say a V.P. of HR who terminates that employee without knowing of the discriminatory actions but for a reason they believe is appropriate.)

On March 1, 2011, in *Staub v. Proctor Hospital*, the U.S. Supreme Court provided clarity on this issue. It was held that an employer may be held liable for employment discrimination based upon a protected status, notwithstanding that the eventual decision maker was not motivated by such discriminatory intent. In this case it became clear that two supervisors were the motivating factor, based upon their discriminatory intent, for the VP of HR's decision to fire said employee (Staub). In some jurisdictions, unless a plaintiff employee could show that the ultimate decision maker (in this case the VP of HR) had a discriminatory motive, the employee could not prevail.

Now the law of the land provides that an employer may be held liable even though the final decision was not tainted with any discriminatory motive. What is required is that the motive of the supervisor(s) with the errant agenda, included the desire to cause an adverse employment action and that such adverse employment action did occur.

Based upon this case, a prudent employer may wish to consider the following:

- Do not rely simply on the personnel file and the statements of a supervisor(s) in making a decision to proceed with an adverse employment action. This may be a good rule to follow no matter how "justifiable" those allegations appear on their face.
- Conduct a timely, independent investigation, including not only the supervisor(s), but any additional parties who may be able to provide relevant feedback. For instance the employee to be terminated might be a good start.
- If an employer can then reasonably conclude that a legitimate, non-discriminatory reason exists for an adverse employment action, they have acted in good faith to the best of their ability. No guarantee of a positive outcome for the employer, however they have followed the script as it has now been written.

What is it they say about things "playing in Peoria"? Looks like the Cat's Paw came into town and left its mark. Stay tuned... The above article is provided for informational purposes only and is not to be construed as legal advice on behalf of the author and / or the publication in which it appears. If you wish to contact the author, you may do so at gregstobbe@sbcglobal.net.