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# Supreme Court Recognizes Cat's Paw Liability in Employment Discrimination Case

*On March 1, 2011, the Supreme Court held in* Staub v. Proctor Hospital *that an employer may be liable for discrimination under USERRA when an unbiased decision maker bases an adverse employment action in part on information from a biased supervisor.*

## Background

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) bars an employer from denying an individual "employment, reemployment, retention in employment, promotion, or any benefit of employment" on the basis of his or her membership in a uniformed service or obligation to serve. Liability is established under USERRA "if the person's membership … is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership."

Vincent Staub worked as a technician for Proctor Hospital in Peoria, Illinois. As an Army Reservist, Staub was required to drill one weekend each month and train full-time two to three weeks each year. Staub's immediate supervisor and second-level supervisor allegedly harbored an anti-military bias and sought to "get rid of" him.

In January 2004, Staub was disciplined for purportedly violating a hospital rule that required him to stay in his work area unless working with a patient, and was directed to report to his supervisors when he had downtime. Three months later, after a co-worker complained about Staub's "frequent unavailability," Staub's supervisor informed Human Resources that Staub had violated the disciplinary warning by leaving his desk without notifying his supervisors, which Staub disputed. After reviewing Staub's personnel file, the hospital's Vice President of Human Resources fired him.

Following an unsuccessful challenge to his termination through the hospital's grievance process, Staub sued Proctor under USERRA, claiming that his discharge was motivated by his supervisors' hostility toward his military obligations. He contended that the Vice President of Human Resources who made the decision to fire him was not herself anti-military, but was influenced by those who were. A jury found for Staub, but the U.S. Court of Appeals for the Seventh Circuit reversed, noting that a "cat's paw" case could succeed only when the decision maker blindly relied on input from biased non-decision makers to reach the termination decision.

> ***BUCK COMMENT.*** *In a 17th century fable by Jean de La Fontaine, "The Monkey and the Cat," a clever monkey tricks a naive cat into retrieving chestnuts from a fire with flattery and false promises to share them. The monkey then takes the chestnuts and leaves the cat with nothing but burned paws. In the employment*

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*context, so-called "cat's paw" liability for an adverse employment action attaches when the bias of a supervisor without decision-making authority is imputed to the unwitting decision maker (the cat's paw).*

## Staub v. Proctor Hospital

In *Staub v Proctor Hospital* (No. 09-400, March 1, 2011), the Supreme Court considered whether an employer may be liable for employment discrimination based on the discriminatory animus of an employee who did not make, but influenced, the adverse employment decision. The Court noted that merely showing bias on the part of a supervisor, who is not the ultimate decision maker, is not enough to give rise to employer liability. Rather, the bias must be a "motivating factor" in, and the actions of the biased supervisor must be a cause of, the adverse employment action.

***BUCK COMMENT.*** *The Court did not address whether the cat's paw theory would apply when a co-worker's bias, rather than a supervisor's, influenced the challenged employment decision. After noting that Staub took advantage of the hospital's grievance process, the Court similarly declined to address whether the hospital would have had an affirmative defense if Staub had not followed that process.*

Looking at the facts in a light most favorable to Staub, the Court accepted that his supervisors had made derogatory comments about his military service and noted evidence showing their "specific intent" to have Staub fired. The Court found that the hostile supervisors' recommendations to Human Resources remained a causal factor in the termination decision because the hospital's "independent investigation" of Staub's conduct relied on "facts" provided by a biased supervisor.

Staub's termination notice expressly stated that he was being fired because he had "ignored" his supervisor's directive. Thus, in the Court's view, the employer "effectively delegated the fact finding portion of the investigation to the biased supervisor." Applying tort and agency law principles, the Court held that the employer is liable under USERRA if a supervisor motivated by bias acts with the intent to cause an adverse employment action and ultimately succeeds.

***BUCK COMMENT.*** *The Court noted that USERRA is very similar to Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination because of race, color, religion, sex or national origin. Under both statutes, discrimination is established when any of the employee's protected characteristics is a motivating factor in the employer's action, even though there are other motivating factors. Although Staub was decided under USERRA, its reasoning will likely be applied to Title VII claims as well. Presumably, the decision will not apply to claims brought under the Age Discrimination in Employment Act, which requires plaintiffs to prove that age was the "but for" cause of the challenged action rather than a motivating factor.*

Notably, the Court declined to adopt a rule that automatically insulates an employer that performs an independent investigation from cat's paw liability. However, an employer may still avoid liability under USERRA by proving that an adverse action was taken for reasons unrelated to the supervisor's biased action or was entirely justified.



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***BUCK COMMENT.** Because the Court assumed an inadequate investigation by the decision maker, it did not decide whether the conduct of a thorough, independent investigation would have shielded the hospital from liability in this instance. Justice Alito in his concurring opinion implies that it would have. Although the Court failed to clarify when or to what extent an independent investigation would shield an employer, it remains prudent for employers to have an investigation process in place to minimize the potential influence of "tainted" information on their decision makers.*

## Conclusion

The Court's decision expands the potential scope of employer liability, but provides only limited guidance on how employers may shield themselves against cat's paw claims when taking adverse employment actions. Despite Human Resources' or multi-tiered review of employment decisions, the actions of biased supervisors who are not involved in making the final decision can create liability for employers. Now more than ever, employers should ensure that they have effective anti-discrimination training programs in place to educate their supervisors, managers, and Human Resources personnel.

To reduce potential liability, employers should make certain that they have internal grievance procedures in place, and follow well-documented disciplinary processes. Particularly when an employee complains of supervisory bias, the ultimate decision maker should conduct an independent investigation and confirm that any adverse employment action is well-supported by legitimate nondiscriminatory reasons.

Buck's consultants would be pleased to discuss the impact of this decision on your employment policies and practices.

*This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.*


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