U.S. Supreme Court Ruling in *Staub* May Expand Employer Liability

The U. S. Supreme Court recently issued its opinion in *Staub v. Proctor Hospital*, which speaks directly to a greater potential for employer liability in discrimination and retaliation claims. An employer is now responsible for an adverse employment decision if a supervisor under his/her authority has an illegal motive and influences, though does not actually make, the decision.

The ruling in *Staub* – which has been referred to as a “cat's paw” case – essentially applies a proximate-cause tort analysis to the issue of whether the employer is liable. In a cat's paw case, a plaintiff seeks to hold an employer responsible for the animus of a subordinate who was not charged with making the ultimate employment decision. As a result of this opinion, employers need to be all the more diligent in conducting thorough and independent investigations before taking adverse employment actions.

A look at the facts in *Staub* is helpful to put the high court's decision in perspective. Vincent Staub was employed as a medical technician by Proctor Hospital. He was a member of the U.S. Army Reserve, which required him to attend a drill session one weekend per month and train full time for two to three weeks a year. Two supervisors made derogatory comments about his military obligations. One of the supervisors issued a disciplinary “corrective action” for Staub’s violation of a company rule. The rule purportedly required him to stay in his work area when not with a patient and to report to his supervisors when he had no patients and his cases were completed. Staub disputed that such a rule existed. Subsequently, a co-worker complained to Human Resources (HR) about Staub’s unavailability. Staub’s supervisor informed HR that Staub had violated the corrective action.

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The HR manager reviewed the personnel file and decided to terminate Staub’s employment, noting that he had ignored the corrective action. Staub challenged his firing through the hospital’s grievance process, claiming that his supervisor had fabricated the allegations underlying the corrective action out of hostility toward his military obligations. The HR manager did not follow up with the supervisor and adhered to the decision to terminate. Staub then sued under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). A jury returned a verdict in Staub’s favor, which was reversed by the 7th Circuit U.S. Court of Appeals on the basis that the HR manager was not “wholly dependent on the advice” of the two supervisors, as she looked beyond what the supervisors said during the course of her investigation.

The Supreme Court reversed the 7th Circuit’s judgment. The high court held that “the ultimate decisionmaker’s exercise of judgment” does not “automatically render [] the link to the supervisor’s bias ‘remote’ or ‘purely contingent.’” Importantly, “if the employer’s investigation results in an adverse action for reasons unrelated to the supervisor’s original biased action…then the employer will not be liable. But the supervisor’s biased report may remain a causal factor if the independent investigation takes it into account without determining that the adverse action was, apart from the supervisor’s recommendation, entirely justified.” The Supreme Court upheld the jury verdict, as there was evidence that the supervisors’ actions, which were allegedly motivated by a discriminatory animus, were “causal factors underlying” the HR manager’s decision to terminate Staub’s employment. Even though there was no proof that the HR manager had any discriminatory motive whatsoever, and further that she had reviewed the personnel file and had spoken to another personnel officer before making the decision to terminate Staub’s employment, the termination notice nonetheless referred to Staub’s failure to comply with the corrective action.

In learning from this decision, employers should make sure that before an adverse employment decision is made, the situation is thoroughly investigated by trained personnel who were not involved in the recommendation for the adverse action. The final decisionmaker must ensure that the adverse employment decision is not based, in any part, on what could be perceived as personal bias on the part of a supervisor. This can be accomplished by a detailed investigation. The Staub decision should also act as further encouragement to employers to conduct training of their supervisors so that they do not make derogatory comments or engage in discriminatory conduct in the workplace.