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Supreme Court Finds Merit in “Cat’s Paw” Theory of Discrimination

This week, the United States Supreme Court issued a ruling in a case involving a theory of discrimination known as “cat’s paw.” Cat’s paw cases are those cases where an employer is held liable for discriminatory animus held by a supervisor even where the supervisor did not make the ultimate employment decision. The term comes from an Aesop fable in which a monkey induces a cat to pull roasting chestnuts from a fire by flattering the cat. After the cat retrieves the hot chestnuts, the monkey grabs them and runs off, leaving the cat to nurse its burned paws. The fable is applied to discrimination cases where the supervisor recommends an adverse action to a superior member of management, and the senior person makes the ultimate decision. Basically, like the monkey, the supervisor has convinced the senior member of management to do his dirty work. In those circumstances, even though there might not be any proof that the senior member of management harbors any discriminatory animus towards the employee, the employer may nonetheless be held liable if the discriminatory attitude of the supervisor can be imputed to the unbiased manager.

The Supreme Court’s ruling this week attempts to clarify the circumstances under which a cat’s paw analysis will result in a finding of discrimination. The case was *Staub v. Proctor Hospital* and involved a member of the Army Reserves who was fired by the Hospital, allegedly because his supervisors objected to absences related to his military service. At trial, the jury found that the employee’s military status was a motivating factor in the Hospital’s decision to terminate his employment, but the United States Court of Appeals for the Seventh Circuit reversed the trial court decision. Under established law in the Seventh Circuit, a “cat’s paw” case could not succeed unless there was evidence that the supervisor exercised “singular influence” over the decisionmaker, with the result that the decision to terminate could be considered the result of “blind reliance.” The employee appealed the Seventh Circuit’s decision to the Supreme Court, which issued a decision on March 1, 2011.

In its decision, the Court concluded that if a supervisor performs an act that is motivated by anti-military animus and intended by the supervisor to cause an adverse employment action, the employer is liable for discrimination under USERRA if the act is the proximate cause of the ultimate action. The Court rejected the Hospital’s argument that an employer should be able to avoid a charge of discrimination by isolating the decisionmaker from the employee’s supervisor. The Court concluded that where the decisionmaker bases her decision on a review of the employee’s personnel file and that file contains acts and recommendations of the employee’s supervisor that were designed and intended to produce the ultimate result, it is appropriate to hold the company responsible for discrimination. Under USERRA, when a biased supervisor’s

action is a factor in the ultimate employment decision, it is the employer's burden to show that the decision was made for reasons unrelated to the supervisor's original biased acts. In the *Staub* case, the decisionmaker had conducted an independent investigation, but that investigation relied in part on facts provided by the biased supervisor, with the result that the cat's paw theory of liability applied, and the biased supervisor and ultimate decisionmaker were both tainted with the discriminatory attitude. The Court held that, under USERRA, if a supervisor performs an act that is intended by the supervisor to cause an adverse employment action, and if that act is a proximate cause of the ultimate employment decision, the employer will be liable.

The Court's decision is expressly limited to USERRA cases, where the burden of proof is slightly different than in traditional discrimination cases. Under USERRA, it is the employer's burden to prove that the adverse action would have taken place even if the employee were not a member of the military. Under traditional employment discrimination law, the employer's burden is to merely articulate a legitimate, non-discriminatory reason for the claimed action, and it is then the employee's burden to show that that decision is a pretext for illegal discrimination. Nonetheless, the Court's decision cites to cases that were brought under Title VII, the federal law against discrimination based on membership in protected classes, and the logic of the Court's ruling might mean that an employee who is trying to demonstrate pretext will have an easier time doing so if he can show evidence that his supervisors were motivated by discriminatory animus, especially where the ultimate decisionmaker relied heavily upon the supervisor's actions.

Serious questions remain. While the ultimate termination decision was close in time to the conduct of the biased supervisor, what if a termination is the result of a progressive disciplinary system? Would a claim that a discipline issued months or even years before by a purportedly discriminatory supervisor undermine the ability to later discharge the employee for actual misconduct? And the Court expressly declined to address the issue as to whether the existence of an internal grievance procedure not used by the employee would provide the employer with an affirmative defense to such charges. What's the lesson here? When an employee challenges an employment decision and alleges discriminatory attitude on the part of his supervisor as the motivation for the adverse action, the ultimate decisionmaker may not be able to simply rely on the supervisor's version of events and still be shielded from liability. A more thorough investigation is warranted where there is any accusation or reason to believe that discrimination may have contributed to the adverse action. Otherwise, the employer may find itself with burned paws and a negative verdict.

If you have questions about this decision, contact any of the attorneys at Skoler Abbott & Presser, P.C., at (413) 737-4753.