



CLIENT NEWS BRIEF

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EMPLOYERS MAY BE HELD LIABLE FOR DISCRIMINATION WHERE EMPLOYMENT DECISION IS INFLUENCED BY SUPERVISOR'S DISCRIMINATORY INTENT OR MOTIVE

The United States Supreme Court has ruled that an employer may be held liable for discrimination in employment decisions based on the discriminatory animus of an employee who influenced, but did not make, the ultimate employment decision. (Staub v. Proctor Hospital (2011) 562 U.S. ____; "Staub"). The ruling makes it clear that if the biased motives of a subordinate supervisor influence the chain of events that lead to an adverse employment action, the employer may be liable for discrimination, even if the ultimate decisionmaker had no discriminatory intent.

In Staub, the court considered whether Vincent Staub, a member of the United States Army Reserve, had been terminated from his employment in violation of the Uniformed Services Employment and Reemployment Rights Act (USERRA). Two of the employer's agents – supervisors of Mr. Staub – complained to management that Mr. Staub's military service was a strain on their department, that his unavailability one weekend per month and two to three weeks per year was impacting other employees who were having to "bend over backwards to cover his schedule for the Reserves," and that he violated a "Corrective Action" disciplinary warning by breaking a company rule, which, according to the testimony heard at trial, was not actually a rule of the company. The decisionmaker decided to fire Mr. Staub based in part on the supervisors' accusations.

Mr. Staub sued under USERRA, claiming that his discharge was motivated by hostility to his military obligations. His contention was not that management had any such hostility, but that the two supervisors did, and their actions influenced management's ultimate employment decision. In that regard, Mr. Staub alleged that the discriminatory motive of one of the hospital's agents should be aggregated with the act of another agent to impose liability on the employer, Proctor Hospital.

The court held that if a supervisor performs an act motivated by, in this case, anti-military animus that is intended by the supervisor to cause an adverse employment action, and if that act is a direct cause of the ultimate employment action, then the employer is liable under USERRA. The court explained that the person who makes the ultimate employment decision makes such decision on the basis of performance assessments

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by other supervisors. Therefore, it would be incongruous to suggest that “if an employer isolates a personnel official from an employee’s supervisors, vests the decision to take adverse employment actions in that official, and asks that official to review the employee’s personnel file before taking the adverse action, then the employer will be effectively shielded from discriminatory acts and recommendations of supervisors that were designed and intended to produce the adverse action.”

As the court noted, the USERRA statute is “very similar to Title VII,” which prohibits employment discrimination on the basis of race, color, sex, religion and national origin. In Title VII cases, as was the case in Staub, discrimination is established when one of those enumerated factors serves as a “motivating factor for any employment practice, even though other factors also motivated the practice.” (42 U.S.C. §§2000e-2(a), (m).) Given the court’s acknowledgment of the similarities between USERRA and Title VII, it would seem likely that challenges to employment actions based on Title VII violations will be similarly analyzed and scrutinized.

It is important, particularly in light of this decision, for employers to closely examine an employee’s overall record before considering adverse action. The person ultimately making the employment decision will need to ensure that any action taken is on account of bona fide violations of school district rules and regulations, and not the result of personal bias on the part of a manager, supervisor, or other co-workers.

If you have any questions regarding this case, or any other questions regarding employment discrimination, please do not hesitate to contact one of our [eight offices](#) located statewide or consult our [website](#).

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