

# Alan B. Pearl & Associates, P.C.

## Cat's Paw:



### *A New Discrimination Theory for Employee-Plaintiffs*

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The Supreme Court of the United States recently reviewed a new theory of employment discrimination known as the "cat's paw." Under this theory, an employer may still be held liable for the discriminatory attitude of a supervising employee even if that supervisor did not make the termination decision. In Staub v. Proctor Hospital, a unanimous Court endorsed the "cat's paw" theory of discrimination liability, and in turn reversed a lower decision.

Staub sued for discrimination under the Uniformed Services Employment and Reemployment Rights Act (USERRA). This statute prohibits employment discrimination based on military service. The employer was initially granted summary judgment in the court below because there was no evidence that the person ultimately making the termination decision held a discriminatory attitude towards Staub because of his military service.

The Supreme Court reversed, holding that the employer in this case was liable even though the ultimate decision maker held no antimilitary bias. Instead, an employer is liable for the acts of non-decision making supervisors which are the proximate cause of the adverse employment action so long as these supervisors were motivated by an antimilitary bias and intended to cause an adverse employment action. Staub's supervisors had written "bogus" warnings to his file because of their antimilitary bias.

Simply stated, if the decision maker is influenced by and relies on reports and memorandums issued by supervisors with antimilitary biases, the employer will be held liable.

**Employers need to be aware that proper training of supervisors is crucial to protecting the company from discrimination lawsuits.** Employers can now be held responsible for the discriminatory actions of supervisors who act on their biases but who don't necessarily make any termination decisions. Let Alan B. Pearl & Associates, P.C. review your disciplinary procedures and set up training to help supervisors understand the most effective way to do their jobs and limit exposure. Call today at 516-921-3400.

With over sixty years combined experience, the attorneys at **Alan B. Pearl & Associates** are prepared to assist with labor negotiations, grievances, arbitration, and opposing union organization efforts. Services also include preparation and review of employment agreements and restrictive covenants.

**Alan B. Pearl & Associates** prides itself on the exceptional and personalized service it provides to clients. There is no "voice mail" - instead, phone calls are returned promptly. The attorneys are well aware that time is critical in labor relations and employment matters.