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## **\*\*EMPLOYMENT LAW ALERT\*\***

Look Out for Expanded Employer Liability in Discrimination Cases

By: S. Whitney Rahman

On March 1, 2011, the United States Supreme Court held that employers can be liable for discrimination in some cases even when the decisionmaker had absolutely no intent to discriminate. In Staub v. Proctor Hospital, No. 09-400 (March 1, 2011), employee Staub claimed that his immediate supervisors were hostile to the fact that he was a military reservist, and had made comments hostile to his military service. He claimed that their discrimination was the underlying reason for a warning he received. The warning resulted in a directive requiring Staub to report to a supervisor after he had finished his assignments. When Staub violated this directive, the employer's vice president of human resources reviewed his file and decided to terminate his employment.

Straub sued, claiming his termination violated the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"). He won his case at trial, but the Seventh Circuit Court of Appeals overturned the verdict, holding that the employer could not be held

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liable, even if the supervisors' actions were discriminatory, because the ultimate decisionmaker did not have a discriminatory intent.

The Supreme Court disagreed, holding that, if a supervisor takes an action motivated by discriminatory animus that the supervisor intends to cause an adverse employment action, and if that action is a proximate cause of the ultimate employment action, the employer will be liable, despite the lack of discriminatory intent by the ultimate decisionmaker. While this case was decided under USERRA, it likely will be used to analyze claims under other antidiscrimination laws as well.

#### **WHAT DOES THIS MEAN FOR YOU?**

This case will make it more difficult for employers to win discrimination cases, because even the actions of employees minimally involved in the final decision can result in a finding that discrimination occurred. Decisionmakers will need to investigate carefully the actions that underlie termination and other adverse employment decisions, to ensure there is sufficient evidence to uphold those decisions, and that there was no antidiscriminatory animus on the part of anyone involved. This may be particularly difficult when the termination is the result of a progressive discipline policy. This case also makes it more important than ever to make sure that all supervisors are well trained on all antidiscrimination laws, including employer obligations under laws such as USERRA.

If you have any questions on this or any other employment or labor issue, please contact S. Whitney Rahman or John W. Roland at 610-372-5588.