

## Virginia Workplace Law

### Cat's Paw Decision Puts Fable in Employment Law

By: Mike DeCamps. *Monday, January 2, 2012*



Reflecting back over the last year, perhaps one of the most interesting employment cases involved “**The Cat’s Paw**” fable about the perils of allowing oneself to take action without regard to consequences due to the manipulative encouragement of another. The fable involves a conniving monkey who convinces a cat by flattery to extract roasting chestnuts from a fire. Of course, the cat’s paws are seriously burned and the monkey, through his deception, is able to make off scott free with the chestnuts.

So what does any of this have to do with employment law? Well, about 20 years ago a Federal Judge injected the Cat’s Paw theory into employment discrimination law (**Shager v. Upjohn and Adgrow Seed, 913 F.2d 398**).

The **United States Supreme Court** brought that concept forward again in a **2011 decision (Staub v. Proctor Hosp., 131 S. Ct. 1186; 179 L. Ed. 2d 144)**, now known as the Cat’s Paw decision. The Court found that an employer could be held liable for discriminatory conduct when an unbiased HR director fires an employee for seemingly legitimate reasons if a manager motivated by discrimination set the termination process in motion. The Court concluded that even though the HR director conducted an independent investigation, if the termination takes into account the biased supervisor’s report, then the termination is tainted by the underlying discrimination.

The lesson in all of this for HR personnel who are instructed to carry out terminations is to fully investigate the reasons and motives behind management’s direction to fire employees and be sure that the decision is fair and **non-discriminatory**, and in particular, not based on a biased report. As one commentator succinctly put it, HR directors should not let management monkey around with employment decisions.

If you have doubts about how to handle such situations, we encourage you to contact legal counsel to assist in making the right decision. Any of the Virginia employment attorneys at Sands Anderson PC would be glad to help.

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