In Staub Case, a First Test of Civil Rights Law for Service Members

The Supreme Court case Staub v. Proctor Hospital has been cast as an important test of a theory of liability in employment discrimination cases.

That's certainly true. It asks: Can an employer be held liable for discrimination when biased supervisors influenced, but did not make, the employment decisions that triggered the claim of discrimination?

But Staub is noteworthy not just because of this examination of this so-called "cat's paw theory." It is also the first time the Court has examined the civil rights law under which the case was brought: the Uniformed Services Employment and Reemployment Rights Act, or USERRA, a law passed in 1994. It was aimed at protecting non-career military personnel from civilian workplace discrimination based on their service.

University of Washington law professor Eric Schnapper emphasized the military aspect of the case at the end of the hour-long argument on Tuesday, telling justices that "USERRA is unique," and was based on the desire of Congress to "safeguard those who safeguard us." As a result, he urged the Court to read the statute broadly to find liability against employers even when the ultimate decision-maker did not have anti-military animus, but was influenced by supervisors who did.

Unlike other civil rights laws, Schnapper also said, there is an "economic incentive" for employers to discriminate. Accommodating military personnel who can be deployed for long periods and who train in between deployments can be expensive, Schnapper said, but Congress decided it was "essential in out national defense" that they be protected.

Schnapper suggested, in fact, that the Court could rule narrowly in the case to affect only USERRA without deciding on the "cat's paw" theory for other civil rights laws that have slightly different wording.

Whether or not the justices will agree that the law should be interpreted to tilt toward the military employee is uncertain. But the fact that Schnapper made the point during his rebuttal suggests he may have felt he needed to bolster his case by invoking military needs.

No matter the outcome, the argument was an important airing for a law that is not generally well known, but that is generating increasing levels of litigation. "It's one of the hotter employment laws out there," says Mathew Tully of the D.C. firm Tully Rinckey, a 35-lawyer firm in Washington, D.C. and Albany, N.Y. that specializes in USERRA claims. The volume of claims under the law, he says, has increased three or four-fold since the terrorist attacks of Sept. 11, 2001, which triggered deployments of reservist and National Guard troops, disrupting their normal employment.

If you weren't aware or can't imagine that reservists or National Guard personnel would face antimilitary discrimination on the job, then the facts of the Staub case are an eye-opener. Vincent Staub was an angiography technician at the Peoria, Ill. hospital and an Army reservist

who had weekend training and was also called into active duty for several months in 2003. A supervisor called his military service "bullshit" because of the scheduling problems his service caused at the hospital. Another supervisor described Staub's weekend duty as "a bunch of smoking and joking and a waste of taxpayers' money." Staub was eventually fired, prompting his lawsuit.

Those examples of "talking trash" are not unusual, said Tully, who was himself a victim of similar treatment. Before becoming a lawyer, Tully was a corrections officer for the federal Bureau of Prisons. But because he was also in the Army National Guard, he was accused of disloyalty to his employer and won a claim under USERRA that paid his way to law school. Tully said he is hopeful that Staub will win his case before the high court, even though it is not always favorable to workplace civil rights plaintiffs. Said Tully, "If there is one civil rights law Justice Scalia should like, it's this one."

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