

# To be safe, always double-Check supervisor's allegations

When it comes to discharging an employee, be careful not to simply accept a supervisor's opinion of the employee's performance.

If the supervisor is effectively hiding an underlying problem with persons belonging to a protected class (i.e., race, age, religion, sex) and you don't check for yourself whether the employee deserves to lose the job, you may end up costing the company money.

*Here's how:* Under the "cat's paw theory," when management simply accepts a subordinate's opinion and doesn't independently investigate, it doesn't matter that upper management didn't even know the employee was a member of a protected class, much less that the employee's supervisor was a bigot or sexist.

**Recent case:** William Roberts worked for a female supervisor at Randstad North America. Roberts claimed she was anti-male and didn't or wouldn't relate to male employees.

After the supervisor complained that Roberts wasn't doing an effective job, HR investigated. Then, Randstad fired Roberts for "unsatisfactory performance and dishonesty."

Roberts sued, alleging that HR had taken the female supervisor's discrimination-tainted recommendation and ratified it. But the 11th Circuit Court of Appeals dismissed the case.

Although the court agreed that upper-level management can be held liable for discrimination if it accepts a lower-level supervisor's tainted recommendation, that wasn't the case this time. Upper management wasn't liable because HR conducted an independent investigation and based its decision on what the investigation revealed—not solely on the supervisor's recommendation. (*Roberts v. Randstad North America*, No. 06-14982, 11th Cir., 2007)

**Final note:** Until recently, it looked as if the U.S. Supreme Court was going to decide whether the "cat's paw theory" would be allowed in employment cases. But before the court had a chance to decide, the parties withdrew their case. For now, the 11th Circuit, of which Florida is a part, makes employers liable for a supervisor's discrimination-tainted recommendation unless higher-ups do an independent investigation before taking action against the employee. That's true even if the higher-up who made the discharge decision didn't know the employee belonged to a protected class.