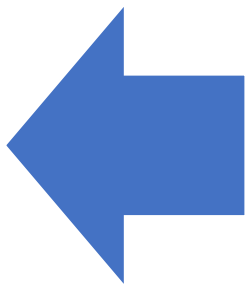


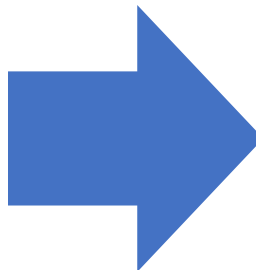
REVEALING THE HIDDEN CAUSE OF RETALIATION CLAIMS

Retaliation is the most frequently alleged basis of discrimination

**PROTECTED
ACTIVITY**



**ADVERSE
ACTION**



PROTECTED ACTIVITY + ADVERSE ACTION = RETALIATION

Protected Activity:

- ▶ Filing a Claim
- ▶ Being a Witness
- ▶ Talking About Discrimination/Harassment
- ▶ Failure to Comply with Directives that Lead to Discrimination
- ▶ Resisting Advances/Protecting Another from Advances
- ▶ Requesting Accommodation
- ▶ FMLA
- ▶ Whistleblower
- ▶ Workers' Comp

Adverse Action:

- ▶ Termination
- ▶ Change in Shift
- ▶ Change in Supervisor
- ▶ Demotion
- ▶ Low Performance Review
- ▶ Corrective Action/Warning/PIP
- ▶ Change in Work Location
- ▶ Change in Assignments/Duties/Responsibilities
- ▶ Vague Mistreatment

THE CORRECTION PROCESS

Correction



Correction



Correction



Correction



Termination



FRUSTRATION LEVEL

What Really Happens:

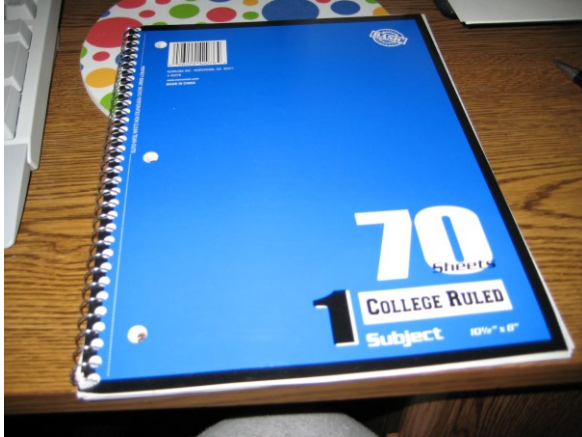
- ▶ March 15, 2021 Employee Counseled re: Attendance
- ▶ April 18, 2021 Employee Counseled re: Attendance
- ▶ April 22, 2021 Employee Counseled re: High Error Rate
- ▶ May 9, 2021 Employee Counseled re: Missed Deadline
- ▶ May 13, 2021 Employee Claims Being Harassed by Supervisor
- ▶ May 23, 2021 Supervisor Provides Write Up and Final Warning

What Our Records Show:

- ▶ March 15, 2017 Employee Counseled re: Attendance
- ▶ April 18, 2017 Employee Counseled re: Attendance
- ▶ April 22, 2017 Employee Counseled re: High Error Rate
- ▶ May 9, 2017 Employee Counseled re: Missed Deadline
- ▶ May 13, 2017 Employee Claims Being Harassed by Supervisor
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WHAT WENT WRONG?

HOW WE FIX IT!



SUPERVISOR'S
DAILY JOURNAL

July 17, 2017
Spoke with J. Doe re: tardiness

July 18, 2017

July 19, 2017
Conversation with M. Smith about high error rate. Also reminded her to proofread emails before she sends them to clients.



Consider This...

- ▶ April 10 – Experienced New Guy Hired
- ▶ April 18 – Meeting with Contractors Goes Great
- ▶ April 28 – Supervisor Assists New Guy to Meet Monthly Reporting Deadline
- ▶ May 16 – Late for Meeting with Contractors, Not Prepared, Looks Sluggish
 - **Supervisor meets with New Guy and Reports Incident to County Manager*
- ▶ May 31 – Without Supervisor, Monthly Reporting Deadline Missed
 - **Supervisor sends email to New Guy and restates expectations*
- ▶ June 13 – Meeting with Contractors Goes Well
- ▶ June 29 – It All Falls Apart

Should We Terminate?



- ❖ Buy Those Journals
- ❖ Train Supervisors
- ❖ Create a Defense!
- ❖ ***Be The Hero!***