



# HR Nightmares and Tricky Terminations

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## *The Chronically Late Worker*

- Leia Organa has been an administrative assistant for D. Vader, Inc. since 2010. She is known as the office gossip and is often late to work.
- Her supervisor emails her at noon: “We need to talk. Meet me in the HR conference room on Friday at 4:30 p.m.” At the meeting, attended by Leia, an HR generalist, and Leia’s supervisor, Leia was informed that she’s “5-10 minutes late almost every day” and this was unacceptable. And “you’re a gossip!”
- Leia was informed that she is being terminated for (1) continuing to gossip while on duty; and (2) excessive tardiness.
- Should Vader terminate Leia?



## *The Chronically Late Worker*

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## *The Chronically Late Worker*

- D. Vader does have an attendance policy:
  - *“Consistent attendance is necessary for the satisfactory performance of the job and to properly operate any business. Meets Expected Standard: ...8 or fewer tardies (i.e. arriving 5+ minutes past scheduled shift time)”*
- *Leia must clock in and out each work period.*
  - *Leia clocks in 5-10 mins. late one time each week on average over the past year*





## *The Chronically Late Worker*

- D. Vader does have an attendance policy and her time cards prove she's in violation
- There are no warnings in the file
  - Supervisor has said on several occasions: *"Leia, you're late again. I really need for you be at your desk and ready to work on time."*
  - Leia : *"I'm sorry."*
- D. Vader does not conduct performance evaluations
- Should D. Vader terminate Leia?



## *The Chronically Late Worker*

- D. Vader does have an attendance policy and her time cards prove she's in violation
- There are warnings in the file:
  - 3/17/13: Verbal warning - Tardiness
  - 4/20/14: Written warning – Tardiness
  - 1/7/15: Final written warning - Tardiness
- Performance evaluations
  - 6/30/14: “Leia is a conscientious employee but she is challenged to arrive on-time for work... Leia needs to avoid engaging in office gossip.”
- Leia is tardy on 1/26. Should D. Vader terminate Leia?



## *The Chronically Late Worker*

- Her supervisor emails her at 12:15 p.m.: “We need to talk. Meet me in the HR conference room on Friday at 4:30 p.m.”
- Leia responds at 1:00 p.m.: “Sorry, I can’t meet with you. I hurt myself at work. I have to go to the doctor. See you Monday.”
- On Monday, Leia emails her supervisor at 7:58 a.m.: “My doctor put me out on leave until ???”
- Should D. Vader terminate Leia?



## *The Whistle Blower*

- Ziggy Smalls works in the Food Safety Dept. at 2Pac Produce's salad processing plant. The Food Safety Dept. consists of seven men and women whose close collaboration has produced an outstanding food safety program.
- Ziggy has never been written up for performance issues.



## *The Whistle Blower*

- One day Ziggy discovers that certain presumptive positive pathogen tests were not being reported to FDA as required by the Food Safety Modernization Act. He told his boss, but his boss told him “Don’t worry about it; it’s being handled.’
- Afraid for public safety, Ziggy complains to the FDA and the company’s board of directors about improper food safety compliance.



## *The Whistle Blower*

- Following his complaint, his boss e-mails his coworkers telling them FDA is launching an investigation and identifying Ziggy as the whistle blower.
- Following that e-mail, coworkers start treating Ziggy differently. He feels left out of work assignments and believes he is being ostracized as a result of making his complaint. Also, a supervisor scolds him for not being a team player.



## *The Whistle Blower*

- Eventually, FDA finds the company did not engage in unlawful food safety practices.
- Ziggy's boss finds Ziggy's performance to be lacking due to insufficient collaboration, and he writes Ziggy up 3 times over a 6 week period, including a final written warning. Now he wants to terminate Ziggy.
- Should 2Pac terminate Ziggy Smalls?



## *The Menace*

- Clay Morrow, a truck loader and driver for Sam Crow Packing, was treading on thin ice with the company as a result of several oral and written reprimands. For instance, the company disciplined him for getting into verbal altercations with coworkers, making insensitive remarks about coworker JT's motorcycle accident, damaging company property, and threatening coworkers with violence. Sam Crow attached to Morrow's disciplinary record coworkers' statements concerning his "constant complaints and negative remarks" about his managers and the company.





## *The Menace*

- In Dec. 2012, Morrow asked for an accommodation for a hearing impairment. He complained that truck noise had caused his hearing to deteriorate and asked to be relieved from all duties that required him to be near a truck. Those duties were essential to Morrow's job, so Sam Crow rejected the request and recommended he wear hearing protection instead.
- Morrow filed a discrimination charge with the EEOC, claiming that Sam Crow had denied him a request for accommodation due to a hearing impairment.



## *The Menace*

- Then Morrow was involved in another altercation when a coworker asked him to remove his hearing protection so that the two of them could communicate about a work-related matter. Morrow swore at the coworker and acted in a sarcastic manner. As a result, Sam Crow placed Morrow on administrative leave while it investigated his behavior.



## *The Menace*

- HR interviewed several Sam Crow employees about their interactions with Morrow.
- One coworker said that Morrow had threatened to kick out his teeth if he did not join a union and another said Morrow threatened to shoot him in the kneecaps.



## *The Menace*

- Sam Crow ordered a fitness-for-duty evaluation to gauge whether Morrow could return to work and whether he posed a danger to himself or others. The physician concluded that Morrow is fit for duty and is not a danger to anyone.
- Sam Crow wants Morrow to meet “Mr. Mayhem” (i.e., termination).
- Should they do it?



## *The Menace*

- Sam Crow management took a vote – Morrow would meet Mr. Mayhem – due to his intimidating and threatening coworkers.
- Morrow filed another EEOC charge alleging ADA discrimination and retaliation (i.e., he was canned for his hearing impairment and for filing an earlier EEOC charge).



## *The Menace*

- Does the timing of Morrow's termination, which came shortly after he engaged in protected activity bolster his retaliation claim?



## *The Bone Setter's Patient*

- You grant Lucy Liu leave under FMLA to care for her ailing father in law. Lucy hops a plane to China to be with him, but he dies the next day.
- The company has a bereavement leave policy of three days.
- Lucy takes 2 weeks of personal leave and her bereavement leave through October 14, and you expect her to return to work on October 17.



## *The Bone Setter's Patient*

- She does not return, though. She calls in occasionally—speaking to a coworker and telling him to relay to you that she has hurt her back while away and will not be able to return for a few more weeks. You never get the message, and when she finally tries to return to work—in November—you want to terminate her.
- Should the Company terminate Lucy?





## *The Bone Setter's Patient*

- You're getting ready to terminate Lucy when she says:
  - “But I have a note from the doctor. See, I went to him while I was in China.”
- The note is from a “bone specialist” who practices Chinese medicine; gave her some special ointment; and rubbed her back.
- Should the Company terminate Lucy?



## *The Bone Setter's Patient*

- The company terminates Lucy.
- Lucy sues, claiming the company terminated her in violation of FMLA.
  - Was Lucy's extended absence covered under FMLA?
  - Was Lucy treated by a "health care provider"?

# Question Time!



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