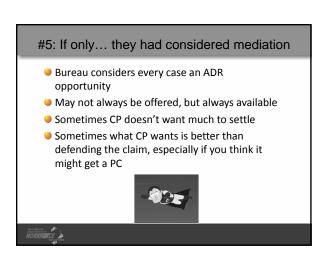
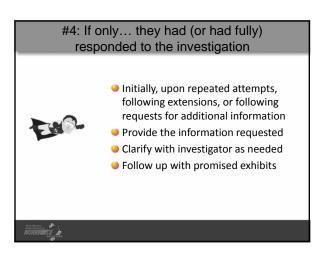
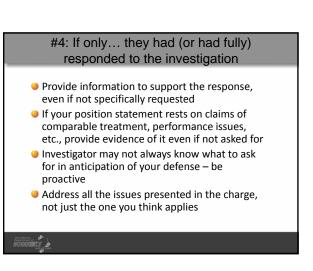


Hindsight Is 20/20: A Top Five List While you may not always be able to prevent a bad situation or a charge being filed, there are almost always opportunities to either help or hurt yourself through your response. We see cases in which a probable cause finding might have been avoidable, but for an unfortunate action taken or argument made in the response to the charge. In hindsight, the employer could have avoided a probable cause determination or adverse Commission finding, if only:







#3: If only... they had been more informed

- ... about the laws under which the charge was filed
- Spousal affiliation is not a protected status under the HRA?
- Charge was filed untimely because filed more than 180 days after the last date of harm?
- FPWA ≠ EPA : no 4th exception; 2 years to file; damages go back 6 years



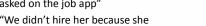
#3: If only... they had been more informed

- ... about the laws under which the charge was filed
- ADA arguments in an ADAAA world –
 "significantly/completely restricted," "not a
 disability," etc.
- Title VII arguments in an HRB world sexual orientation not specifically covered, arguing a Title VII-esque argument concerning the applicability of gender stereotyping theory

WORKFERCE

#2: If only ... they had not defended their action with a different unlawful/questionable action

- "We fired them based on our policy that complaining/stating intent to complain is insubordination"
- "We know they weren't disabled because they said so when we asked on the job app"
- "We didn't hire her because she was pregnant when she applied"





#1: If only... they had not retaliated against CP after charge filed

- Is it pretext? ...
- "We needed to do a reduction in force... of one position"
- "We suddenly decided to begin enforcing this rule and terminated CP for violating it"



New Mexico III.

#2: If only ... they had not defended their action with a different unlawful/questionable action

- "We solved the problem of her complaint by firing everyone involved: the alleged harasser, the person who complained about him, and the coworkers who witnessed it"
- "We didn't give him an accommodation for his medical condition/religious practice because nobody gets any special treatment/everyone has to do that task"

#1: If only... they had not retaliated against CP after charge filed

- Or is it not knowing what retaliation is?
- "We're not taking action on the hostile work environment because of the pending external complaint"
- "We didn't hire her for the new position she applied for because she has this ongoing complaint"
- "We let her husband go because of her complaint"





