

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3
4 ANTOINETTE GONZALES, CAROLL AUSTIN,
5 SARAH CLOVER, and ANNETTE MORA, and A
6 CLASS OF SIMILARLY SITUATED CITY EMPLOYEES,

7 Plaintiffs,

8 -vs-

NO: 1:09-CV-00520-JB-RLP

9
10 THE CITY OF ALBUQUERQUE, ED ADAMS,
11 Chief Administrative Officer, and
12 ESTHER TENENBAUM, Division Manager, in
13 their individual and official capacities,

14 Defendants.

15 DEPOSITION OF CAROLL AUSTIN

16 October 13, 2009

2:41 p.m.

17 One Civic Plaza, Fourth Floor
18 Albuquerque, New Mexico

19
20 PURSUANT TO THE FEDERAL RULES OF CIVIL
21 PROCEDURE, this deposition was:

22
23 TAKEN BY: EDWARD BERGMANN, ESQ.
24 ATTORNEY FOR DEFENDANTS

25
26 REPORTED BY: SUZAN E. SMITH, CCR, RPR
27 Russin Williams Reporting
28 1608 Fifth Street Northwest
29 Albuquerque, New Mexico 87102

1 APPEARANCES
 2 For the Plaintiffs:
 3 PAUL LIVINGSTON, ESQ.
 4 P.O. Box 250
 4 Albuquerque, New Mexico 87043
 5 For the Defendants:
 6 CITY OF ALBUQUERQUE LEGAL DEPARTMENT
 6 One Civic Plaza, Fourth Floor
 7 Albuquerque, New Mexico 87102
 6 BY: EDWARD BERGMANN, ESQ.
 8 MICHAEL I. GARCIA, ESQ.
 9 Also Present:
 10 Esther Tenenbaum
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1 digital recorder.
 2 MR. BERGMANN: It's a digital record.
 3 MR. LIVINGSTON: Under the same stipulation.
 4 MR. BERGMANN: Right. Same stipulation
 5 applies. The only official record will be that as
 6 transcribed by the court reporter.
 7 MR. LIVINGSTON: Understood. Although, at
 8 this time, I did give you advanced notice.
 9 MR. BERGMANN: We did receive advanced
 10 notice.
 11 MR. GARCIA: Verbal.
 12 MR. LIVINGSTON: Verbal. But it doesn't say
 13 it needs to be written.
 14 Q. (By Mr. Bergmann) Where are you currently
 15 employed?
 16 A. Verizon Wireless.
 17 Q. How long have you been employed at Verizon
 18 Wireless?
 19 A. Since May of this year, 2009.
 20 Q. In what capacity are you employed at Verizon
 21 Wireless?
 22 A. Customer service, part-time.
 23 Q. What is your current hourly rate?
 24 A. 12.98.
 25 Q. Approximately how many hours a week do you

1 CAROLL AUSTIN,
 2 having been first duly sworn, testified as follows:
 3 EXAMINATION
 4 BY MR. BERGMANN:
 5 Q. Good morning -- or good afternoon.
 6 A. Good afternoon.
 7 Q. Good afternoon. Thank you. I'm Ed
 8 Bergmann. I'm an attorney for the City of
 9 Albuquerque. And would you state and spell your name
 10 for the record, please.
 11 A. Caroll Austin, C-A-R-O-L-L A-U-S-T-I-N.
 12 Q. I'm going to ask you a series of questions.
 13 If at any time you don't understand a question that
 14 I've asked you, let me know. We'll stop and try it
 15 again. However, if you answer a question, I will
 16 assume that you understood the question and that your
 17 answer indicates that understanding.
 18 A. Okay.
 19 Q. If you need a break at any time, let me
 20 know.
 21 A. Will do.
 22 MR. BERGMANN: I assume you have your tape
 23 recorder on.
 24 MR. LIVINGSTON: It's not actually a tape
 25 recorder, Ed. It doesn't have any tape. It's a

1 work?
 2 A. Approximately 36 and -- minus.
 3 Q. So the average is about 36 hours?
 4 A. Maximum.
 5 Q. When did you first start working for the
 6 City of Albuquerque in any capacity at all?
 7 A. June of 2005.
 8 Q. Where did you start working for the City at
 9 that time?
 10 A. For 311 Citizen Contact Center.
 11 Q. Prior to working at the 311 Citizen Contact
 12 Center for the City of Albuquerque, what job did you
 13 hold?
 14 A. Citibank, and I was a collector.
 15 Q. How long were you a collector at Citibank?
 16 A. October 2003 to June of 2005.
 17 Q. What was your reason for leaving employment
 18 at the Citibank?
 19 A. The 311. I got a job offer with 311.
 20 Q. Prior to your employment at Citibank, where
 21 did you work?
 22 A. Alltel.
 23 Q. What did you do at Alltel?
 24 A. I was an access service coordinator.
 25 Q. How long did you work at Alltel?

1 A. From about June -- I'm sorry. May of 2000
 2 to July of 2003.
 3 Q. Why did you leave Alltel?
 4 A. Moved back to New Mexico.
 5 Q. Where was Alltel located?
 6 A. North Carolina.
 7 Q. What were your duties and responsibilities
 8 at the 311 Citizen Contact Center?
 9 A. I was an Agent II. I was responsible for
 10 inbound calls from citizens, non-emergency city
 11 services, service requests for process. I took
 12 service requests basically and answered city
 13 information.
 14 Q. Did you undergo any training for this
 15 particular position?
 16 A. Yes.
 17 Q. When did you undergo that training?
 18 A. The first day was probably like July 14 --
 19 I'm sorry. June 14th.
 20 Q. How long did the training last?
 21 A. We went live July 1st, I believe. 4th.
 22 Something like that.
 23 Q. So approximately two weeks, you were in
 24 training?
 25 A. Right.

1 Q. Did you work the same shift, or did you work
 2 different shifts?
 3 A. It varied. Initially, I was actually hired
 4 on as an Agent I when I first got the position. And
 5 it was -- I believe it was a Monday through Friday,
 6 and it was changed to Tuesday through Saturday shift.
 7 Q. What hours of the day did you work?
 8 A. Normally 8:00 to 5:00.
 9 Q. You said you were initially hired on as an
 10 Agent I?
 11 A. Correct.
 12 Q. When did you become an Agent II?
 13 A. Would have been -- I believe it was March of
 14 '06. It was the first quarter of '06, I believe.
 15 Q. Was that a promotion?
 16 A. Correct.
 17 Q. And did you seek the promotion?
 18 A. Correct.
 19 Q. You applied for it?
 20 A. Yes.
 21 Q. What's the difference between an Agent I and
 22 an Agent II?
 23 A. Pay increase and basically, if a supervisor
 24 needs assistance on the -- to monitor calls, then they
 25 would pull you if they were in meetings. But it's the

1 same capacity as far as taking phone calls on a daily
 2 basis. Kind of a lead position as far as if you're --
 3 if new agents were coming in and training, they would
 4 sit with you, learn from you, things of that nature.
 5 Q. During your training, were the requirements
 6 of the job stressed with you? In other words, were
 7 you told what some of the key requirements of the job
 8 were?
 9 A. Yeah. We were -- it was a very short
 10 training, but we were given a lot of the, like, bullet
 11 points as to what needed to be done as far as the
 12 service request was concerned. But because it was
 13 kind of a short training, we kind of depended on
 14 senior reps that were already on the floor.
 15 Q. When do you recall that the subject of
 16 classified as distinguished from unclassified came up?
 17 A. I don't recall when it came up for the first
 18 time.
 19 Q. Could you tell me a year? If you don't
 20 recall an exact date, maybe you could give me a month
 21 and a year, if that's possible.
 22 A. I would -- oh, gosh. It was probably '04.
 23 And I couldn't recall -- I know it had to have been
 24 probably the first half of the year because I remember
 25 a conversation I wasn't wearing jackets. So it wasn't

1 winter or fall.
 2 Q. What do you recall being said? And first
 3 tell me who said it, and then tell me what you recall
 4 that the person said.
 5 A. I had a phone call from Becky Estrada, and
 6 she is just another rep at the center. And she said
 7 that her understanding was that the union was coming
 8 in and that we were going to lose our wages. And I
 9 asked, you know, "Who did you hear that from?" And
 10 she said that management -- somebody within management
 11 had went to her.
 12 Q. How did the subject of being classified
 13 versus unclassified fit itself into that statement?
 14 A. I don't think that it was -- I don't really
 15 know how it was brought up as, you know, we're not
 16 classified. It was a long time ago, so I don't
 17 remember the ins and outs or the details. I just
 18 remember saying, you know, the union is coming in and
 19 we're going to lose our wages.
 20 Q. Did you understand that the union coming in
 21 had some relationship to your being unclassified?
 22 A. Yeah. I guess at that point, I did. So
 23 maybe it was before that that it must have come out.
 24 Q. You did understand at that time that you
 25 held an unclassified position?

1 A. In 2004 -- I'm sorry. Did I say 2004? I
 2 didn't start the job until 2005. I apologize. So it
 3 would have been 2006, because it was about a year
 4 after. At that point, yes, I guess I did.
 5 Q. Did anybody tell you or explain to you what
 6 it meant to be unclassified?
 7 A. No.
 8 Q. Did you ever ask anybody?
 9 A. I know I asked, like, Carol McCoy one time
 10 what we were -- what's the difference. And she said
 11 there was no difference, that the policy was if there
 12 was any kind of dispute with anything that went on,
 13 our job was to go to employee relations, and they
 14 acted in the same manner that the union did. Because
 15 our normal steps would be to go to the union.
 16 Q. Did you ever look at any of the policies or
 17 procedures of the City? In other words, any of the
 18 City's policies and procedures about employees?
 19 A. Pertaining only to union or pertaining to
 20 anything?
 21 Q. Pertaining to anything. Let's start with
 22 that first.
 23 A. Yes.
 24 Q. Tell me what you what policies and
 25 procedures you looked at.

1 A. Physical layoff and accrued -- what is it
 2 called? Leave without pay.
 3 Q. When did you look at those policies? If you
 4 could tell me a year and month, that would be helpful.
 5 A. October of '07.
 6 Q. Why did you look at those policies?
 7 A. Because I was in a situation of having to
 8 undergo a second surgery and was brought in to discuss
 9 how much time I had left and what my options were
 10 and --
 11 Q. Let me just stop you there. Who brought you
 12 in?
 13 A. Oh, Esther did.
 14 Q. Meaning Esther Tenenbaum?
 15 A. Correct.
 16 Q. Was anybody else present during that
 17 conversation, if you can recall?
 18 A. Betty Dinelli.
 19 Q. Who is Betty Dinelli?
 20 A. She's an admin, basically payroll.
 21 Q. As nearly as you can recall, would you tell
 22 me the subject of that conversation or what went on in
 23 the conversation?
 24 A. I was brought in. We went over my family
 25 leave, like, summary. And at that time, I had

1 approximately 40-some-odd hours that were available of
 2 FMLA available to me that was left.
 3 Q. Forty-some hours?
 4 A. Forty. It was like 47 hours or
 5 approximately. What was said -- because I was
 6 undergoing a lot of pain, I was advised that -- I knew
 7 that I would have to undergo surgery at that point. I
 8 was advised that I could -- because I didn't have very
 9 much time and they didn't know how much time I would
 10 need to be out, I could opt to go ahead and go and
 11 have the surgery now, or I can put it off to try to
 12 accrue more hours. Because it's a rolling calendar
 13 year, and I would accrue more hours as I put off my
 14 surgery.
 15 Q. Who told you that? Was that Esther
 16 Tenenbaum?
 17 A. Esther Tenenbaum.
 18 Q. What did you say in that conversation?
 19 A. I asked specifically because I'd had a
 20 workmen's comp injury. We went over the hours that
 21 equaled 50 -- it's on the papers. I'm not sure.
 22 Fifty-some-odd hours. And I asked, you know, "Doesn't
 23 that come back to me?" Because at that point, I was
 24 unsure as to how much time I was going to need, and it
 25 was taken out of my FMLA.

1 And so she said that I would need to contact
 2 Mary Scott. The paper I submitted was her handwriting
 3 giving me direction to kind of find out about physical
 4 layoff. Because that's what they thought was going to
 5 happen, was the physical layoff. And that I would be
 6 put into some capacity, but they couldn't guarantee
 7 what position. And then to contact Mary Scott because
 8 she was the Human Resources person, and she would give
 9 more information.
 10 Q. Did you, subsequent to the conversation with
 11 Esther Tenenbaum, contact Mary Scott?
 12 A. Yes.
 13 Q. How long after your conversation with Esther
 14 Tenenbaum did you contact Mary Scott?
 15 A. Probably same day, maybe next morning.
 16 Q. Was that by telephone that you contacted
 17 her?
 18 A. Through e-mail.
 19 Q. Through e-mail. All right. What did you
 20 ask her, and what did she respond to you?
 21 A. I asked her in regards to physical layoff
 22 what was the rules and regulations about it. Because
 23 we didn't really know. You know, it was kind of a new
 24 department. So Esther said, "I'm not sure myself, so
 25 you can ask her."

1 And then I said, "Okay." So I sent her an
 2 e-mail asking, you know, what were all my options as
 3 far as this is concerned and as far as taking leave
 4 without pay possibly? And she gave me the Web site
 5 where to look up the physical layoff.
 6 Q. Did you look that up?
 7 A. I did.
 8 Q. What happened next?
 9 A. I realized that, at that point, that it said
 10 that it didn't pertain to me because I was
 11 unclassified. So it made me wonder, "Well, that
 12 doesn't work so I need to figure out kind of more what
 13 could happen to my job." Because it was a medical
 14 necessity, I didn't know what to do. So I went to --
 15 I kind of just kind of, you know, still kept looking
 16 and asked the questions.
 17 And that's when Mary Scott said I could --
 18 she had previously told me about leave without pay.
 19 And so I asked her more about that, and then went back
 20 to Esther about it.
 21 Q. So you went -- Mary Scott, she talked to you
 22 about a leave without pay?
 23 A. Uh-huh.
 24 Q. And then you went back and you talked to
 25 Esther Tenenbaum about that?

1 A. Correct.
 2 Q. And tell me what Mary Scott -- was this,
 3 again, through e-mail?
 4 A. Correct.
 5 Q. Can you tell me what she responded to you,
 6 if you can remember?
 7 A. She said that it would be something that my
 8 director could approve for a leave without pay.
 9 Q. And did you, as a result of that, go and see
 10 Esther Tenenbaum?
 11 A. Correct.
 12 Q. And tell me what happened in that
 13 conversation.
 14 A. I told her that it was -- that I was told
 15 that Tanda Matters could approve the leave without
 16 pay. And she said that that was fine, that I could
 17 submit the information in a formal letter, and that
 18 she -- she said it needed to be in a formal letter
 19 because she didn't know how far up the chain of
 20 command that it would have to go from her.
 21 Q. Did you prepare a formal letter?
 22 A. I did.
 23 Q. And what happened after that?
 24 A. Approximately three and a half weeks --
 25 because I submitted it almost a month before my

1 surgery was scheduled. This was December of '07, that
 2 I had told -- was directed to push my surgery off. So
 3 I pushed the surgery out as far as I could. And my
 4 surgeon was like, "We can't wait. It could be life
 5 threatening. We don't know what's going on. We have
 6 to get you in."
 7 So when the surgeon said we have to
 8 schedule, they scheduled it a month out. And so when
 9 I submitted the time, I asked, like, my supervisor
 10 Michael Barnes, I asked Carol McCoy, I'm like, "Do you
 11 know when I'm getting this paperwork back?"
 12 And they're like, "No, we haven't heard
 13 anything."
 14 So I just was like, "It's a medical
 15 necessity. It'll come back. It's fine. I'm not
 16 worried." Because I knew it was a medical necessity.
 17 So finally, I think Michael Barnes went in and asked
 18 on my behalf what was happening -- or I don't know who
 19 I asked. I brought it up -- maybe it was to Charles
 20 Cowen. I'm really not 100 percent sure on that one.
 21 And I was brought into the office with Charles Cowen
 22 and Esther Tenenbaum. And I was advised approximately
 23 five days before my surgery was scheduled that they
 24 were going to deny it, and that I could either quit or
 25 resign.

1 Q. And then what happened?
 2 A. She told me that anybody in my position
 3 would go ahead and resign and --
 4 Q. Pardon me for interrupting. I don't mean to
 5 do that. But when you said the word "she," just for
 6 the record, can we have who that is?
 7 A. I apologize.
 8 Q. That's all right.
 9 A. Esther Tenenbaum said I should resign and
 10 anybody in my position would not jeopardize their
 11 health any longer than they had to.
 12 Q. So did you resign?
 13 A. No.
 14 Q. What happened next? Sorry.
 15 A. I contacted Human Rights within the City of
 16 Albuquerque to find out because it was medical
 17 necessity and put my life in danger. And so I
 18 contacted Human Rights, talked to Richard Weiner. He
 19 suggested that I contact the Department of Labor and
 20 find out if that was something that could fall under
 21 the disability kind of thing, because it was a medical
 22 necessity. So that's what I did.
 23 Q. When you contacted the Department of Labor,
 24 was it the Federal Department of Labor or the State
 25 Department of Labor?

1 A. It was the State. And I actually sent an
2 e-mail. Because at the time, Richard Weiner advised
3 that I needed to get the denial in writing. So I
4 requested the denial from Esther Tenenbaum. I cc'ed,
5 I believe, Tanda Matters and Cynthia Jaramillo.
6 Q. Did you get the denial in writing?
7 A. No.
8 Q. You did not?
9 A. No.
10 Q. What happened next?
11 A. I then -- it was a few hours. It was
12 probably the better part of the day. Esther had left
13 the office. And then when she came -- I think she
14 left the office and came back. And Charles Cowen came
15 to me and said, "You've been approved. Go ahead and
16 fill out the P30, and we'll get it signed."
17 Q. So it changed from, "You've been denied," to
18 "Now you've been approved"?
19 A. Correct.
20 Q. So what did you do next?
21 A. I filled out the P30. I didn't know how
22 many hours I would need. So I handed it to Charles.
23 He took it into Esther's office and shortly came back
24 outside of the office, and said, "You need to put
25 hours."

1 I said, "I don't know how many hours. It
2 could be a couple of days. It could be -- the doctor
3 said it could be, worse case scenario, six weeks."
4 And he said, "Put the total amount." And I
5 had missed something on the paper, because at one
6 point, he brought it back. Third time, it was finally
7 a charm. And he took it in and said he would get it
8 taken care of for me. This was Thursday the 17th, I
9 believe.
10 Q. For the record, what's a P30?
11 A. I'm sorry. It's a request for time off.
12 Q. So you submitted the -- the third time you
13 said was a charm, you submitted the P30?
14 A. Correct.
15 Q. And who did you submit that to?
16 A. Back to Charles Cowen.
17 Q. What's his position?
18 A. He's an assistant manager to Esther. As far
19 as I know, he did like FMLA. He did scheduling,
20 anything to do with schedules and time sheets. I
21 mean, not time sheets. Well, somewhat time sheets.
22 And like vacation, things like that.
23 Q. What happened next?
24 A. He actually left home that day, and so I
25 just trusted that it was done. He was not feeling

1 well, and so he went home sick. Friday, he didn't
2 come in. I talked to my supervisor, asked Michael
3 Barnes to please send him an e-mail because I hadn't
4 gotten my paperwork back. He sent the e-mail, copied
5 me on it, asking for the papers and how they were
6 going to fill out my P30 while I'm out on FMLA.
7 And I got a copy of it. Monday, I went to
8 work. It was a holiday. Esther Tenenbaum and Charles
9 Cowen were not in the holiday. Tuesday, I flew out to
10 Texas. And that's when I was first notified that it
11 was not on the calendar, so I had no record of any
12 paperwork or anything.
13 Q. When you say you were first notified that it
14 was not on the calendar, who notified you of that?
15 A. I actually called in to make sure that I was
16 on the calendar because I worried that, you know, I
17 hadn't gotten my paper back yet. And I was worried
18 because I didn't -- you know, it was a holiday.
19 Nobody was there. I needed to make sure I had
20 documents showing that I was scheduled.
21 Q. What does "on the calendar" mean?
22 A. You're scheduled off.
23 Q. So in other words, your name would be there,
24 but it would simply say "off" or something like that?
25 A. "FMLA" or whatever, correct.

1 Q. You had the surgery?
2 A. I did.
3 Q. In Texas?
4 A. Correct.
5 Q. Whereabouts in Texas?
6 A. Lubbock.
7 Q. Texas Tech?
8 A. Yes.
9 Q. What happened next then?
10 A. I contacted -- that day, I contacted to -- I
11 talked to Carol McCoy, and she said -- that's when I
12 found out I wasn't on the calendar. And she said,
13 "Well, you've been approved anyway, so we'll just put
14 you down for your FMLA."
15 And I said, "Well, am I supposed to just
16 call every day or -- you know, what am I supposed to
17 do?"
18 And she said, "Just call in until you're on
19 the calendar."
20 And I said, "Okay." So the next day was my
21 surgery, which -- that would have been Tuesday and
22 Wednesday was my surgery. I called in 4:00 in the
23 morning or so because I had surgery very early.
24 Antoinette was supervisor -- Antoinette
25 Gonzales was supervisor on duty, and her exact words

1 were, "Why are you calling? You're on FMLA, and
2 you're already scheduled."
3 I said, "But I'm not on the calendar."
4 And she said, "Oh. Well, let me double
5 check." So she double checked, and she said, "You're
6 right. You're not." She said, "Is this for today or
7 for today and tomorrow?"
8 I said, "For today and tomorrow since I'll
9 be through surgery."
10 She said, "Okay."
11 I went and had surgery on Wednesday.
12 Thursday -- my supervisor and I had off schedules, so
13 unfortunately, I wasn't able to speak to him any of
14 the time. Thursday, was the first day that I called
15 in and left a message for him. He contacted me back.
16 At that point, he said, "Oh, yeah. I'll get your
17 P30."
18 I said, "Michael, I haven't got my P30
19 back." I said, "Can you please get it for me?"
20 He said, "No problem. I'll go do that right
21 now. Call you back in five minutes." I waited about
22 20 minutes.
23 Esther called back, and she said, "Caroll,
24 this is Esther."
25 And I said, "Hi. How are you?"

1 She said, "You don't have to worry about
2 calling in any longer."
3 And I was like, "Oh, wonderful."
4 "Because your services are no longer
5 needed."
6 Q. Did she tell you why or anything, explain
7 that to you, what she meant by that?
8 A. I think I just was so much in shock that I
9 didn't -- I didn't even ask. I was just stunned. It
10 was the day after surgery. I was still in recovery.
11 So I was kind of more surprised. And I said, "Okay."
12 And she said, "What do you want me to do
13 with your stuff?"
14 And I said, "Well, I can pick it up when I'm
15 better."
16 And she said, "Well" -- Esther said, "Well"
17 -- Tenenbaum, "Well, you can't come into the center
18 unless I'm here. So you need to make sure you call
19 me."
20 And I said, "Well, that's fine. I'll go
21 ahead and do that."
22 And she said, "Okay. Good-bye."
23 Q. That was it?
24 A. That was it.
25 Q. Now. Did you receive any written

1 communications from the 311 center regarding your
2 requests or anything? Was anything ever sent to you
3 in writing?
4 A. The first thing, I did get my P30 back with
5 all my belongings after my surgery was completed,
6 probably beginning of February. Like maybe somewhere
7 in the middle of February, it was shipped to my home.
8 Q. You said that you had contacted the State
9 Department of Labor?
10 A. Correct.
11 Q. What were you told by the State Department
12 of Labor when you contacted them?
13 A. I actually contacted them on two different
14 occasions. The first one was because the on-the-job
15 injury. I was asking them if -- because I had read on
16 their Web site, if my FMLA could be pulled. Because
17 on their Web site, it says that it cannot unless it's
18 been done in writing, that they've notified you in
19 writing that they're pulling your FMLA.
20 And I said, "Well, okay." So that was part
21 of our conversation the day that Esther Tenenbaum and
22 Betty Dinelli sat in. I said, "They said that it
23 cannot be pulled." And the lady -- I think her name
24 was Patty, I think, because I wrote it down. I think
25 that was her name -- called while I was in the meeting

1 with them, with Esther and Betty. And she said that
2 it cannot be done unless it's been in writing. She
3 said I'd have to get notice by letter form, not just
4 policies.
5 Because prior to that, Esther had said --
6 Esther Tenenbaum said that it was -- I would need to
7 contact our -- I can't remember what it's called. The
8 department that deals -- risk management. I don't
9 remember who I spoke to. But they said it's on the
10 back of the P30s that we fill out, that that's
11 considered in writing. I reiterated that to the
12 Department of Labor.
13 That's what was being researched. Patty
14 contacted me back, and that's when she said, "No, it
15 has to be in letter form in writing saying that
16 they're pulling your FMLA."
17 Q. And by pulling your FMLA, did that mean they
18 weren't counting it toward FMLA?
19 A. They used my FMLA.
20 Q. Oh, they used --
21 A. When I had an on-the-job injury.
22 Q. I see. They counted your absence due to the
23 on-the-job injury toward your FMLA entitlement?
24 A. Correct.
25 Q. After all of this occurred, you know, you

1 give this to me. So that's why I took it and wrote on
2 the back of what the situation was from my
3 perspective.
4 Q. And it was Sandra who?
5 A. Sandra Griffie. She had the same position
6 as Charles Cowen did.
7 Q. What did Sandra Griffie say to you with
8 respect to your comments about there could have been a
9 system issue?
10 A. She said that she couldn't put it in
11 question because there was no real way to find out,
12 but because their system shows that it happened that
13 way, there's nothing else that she could do, that it
14 would be considered a lifetime written warning. So
15 even if in 25 years from now that I forget to log off,
16 in her words, I would be fired.
17 Q. Would you look at the next page, which is --
18 looks like it's dated March -- looks like it's got --
19 it's got a date at the top of March 20, 2007. It
20 mentions Charles Cowen. Do you remember that -- that
21 particular writeup?
22 A. I must not have the same page. What page
23 are you on?
24 MR. LIVINGSTON: Could we start over,
25 because I'm lost too.

1 MR. BERGMANN: Okay.
2 MR. LIVINGSTON: But I wasn't paying
3 attention.
4 MR. BERGMANN: They may not be stapled in
5 the same order, which we'll have to clear up. Let me
6 see the document and see if they match.
7 THE WITNESS: Is there any way we can take a
8 break?
9 MR. BERGMANN: Sure. If you'd like to. I'm
10 going to take a minute to compare this. Please do.
11 (Recess from 3:36 p.m. until 3:43 p.m.)
12 Q. (By Mr. Bergmann) I think we had talked
13 about page 1, 2, 3. The next one in sequence would be
14 page 4. That's the one you didn't sign. And you
15 talked about -- explained the reason, and you said you
16 had made the notations on the back and explained
17 those.
18 A. Uh-huh. Correct.
19 Q. And we will try to find that. If we do,
20 we'll substitute it.
21 A. Okay.
22 Q. Okay. The next document in order is the
23 document that has a date at the top of July 20, 2006.
24 MR. LIVINGSTON: Not mine.
25 MR. GARCIA: Did I mess another one up?

1 MR. LIVINGSTON: That's the 311 Citizen
2 Contact.
3 MS. ESTHER TENENBAUM: That's because you
4 skipped through the reports that were attached, the
5 ones she didn't want to sign. Those are reports to
6 support that. So keep going and then the next
7 disciplinary action is going to be -- there you go.
8 MR. BERGMANN: Sorry. Those were attached,
9 the --
10 MR. LIVINGSTON: What date did you say?
11 MR. BERGMANN: July 20, '06.
12 MR. LIVINGSTON: Through October 20, '06.
13 MR. BERGMANN: Yes. That's right.
14 MR. LIVINGSTON: The actual date of that is
15 July 20, it looks like.
16 MR. BERGMANN: Right. It's a review period.
17 Q. (By Mr. Bergmann) It's apparently -- and if
18 you look at the next page, is that your signature on
19 it, dated July 20?
20 A. Yes.
21 Q. And it looks like -- is that Antoinette
22 Gonzales' signature? Or it appears to be her
23 signature. Do you remember this particular situation?
24 A. No.
25 Q. Do you remember in July of 2006, a meeting

1 with Antoinette Gonzales?
2 A. Again, she was a supervisor, so I had many
3 meetings with many -- I mean, we had meetings all the
4 time with supervisors.
5 Q. And this particular document dated July 20,
6 '06, would have summarized a meeting with the
7 supervisor?
8 A. Correct. Well, it looks -- yes, I signed --
9 I don't know. I mean, yes, it was -- this is a form.
10 MR. LIVINGSTON: Let me object to the
11 question. The document is what it is and speaks for
12 itself.
13 MR. BERGMANN: Right, but I'm trying to get
14 her --
15 MR. LIVINGSTON: I don't know what it would
16 have done. I don't know if you're asking her to
17 speculate.
18 MR. BERGMANN: I'm not asking her to
19 speculate.
20 MR. LIVINGSTON: She just said she didn't
21 remember that.
22 Q. (By Mr. Bergmann) You don't remember the
23 meeting?
24 A. No.
25 Q. But you do remember that you did have