

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

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

8 vs. Case No. 1:09-CV-00520-JB-RLP

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

14 DEPOSITION OF YOLANDA GARCIA
15 January 13, 2010
16 9:33 a.m.

17 City of Albuquerque Legal Department
18 Fourth Floor, One Civic Plaza, Northwest
19 Albuquerque, New Mexico 87102

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

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

24 REPORTED BY: M. Teresa Torrez, CCR
25 New Mexico CCR #159
RUSSIN WILLIAMS REPORTING
1608 Fifth Street, Northwest

1 with Richard Benison?
 2 A. I started that in December of 2007.
 3 Q. Did you, subsequent to when you started the
 4 process, wind up getting a 30-hour shift?
 5 A. Yes.
 6 Q. And when was that? If you can recall.
 7 A. That would have been in January of 2008.
 8 Q. And did you then continue with a 30-hour
 9 shift?
 10 A. Yes, sir.
 11 Q. And when did your employment cease with the
 12 City of Albuquerque?
 13 A. September 9th of 2009.
 14 Q. So from January of 2008 up until September of
 15 2009, you were working a 30-hour shift.
 16 A. Yes.
 17 Q. Are there any other matters that you believe,
 18 or actions that you believe, that the City of
 19 Albuquerque took against you that you believe are
 20 improper or that you are basing your claims on?
 21 Let me just tell you, you told me -- just
 22 to make it easier for you, you told me it had to do with
 23 your unclassified status, and then you said that --
 24 about the 30-hour shift, but you got a 30-hour shift in
 25 January of 2008. Is there anything else that the City

1 they switched it to the other woman, then we started
 2 doing it a different way, which like wasn't --
 3 unab- -- I was unable to take any more time off at all,
 4 which -- when I was told -- When I did take off, I was
 5 called at home and was told that I either had to come to
 6 work that moment, immediately, or I would be terminated,
 7 or I would have to make up the time at the end of the
 8 week, which was my day off, which I did do.
 9 Q. Was that because they told you that your FMLA
 10 time had run out? Is that what they told you?
 11 A. Correct.
 12 Q. Okay. Now, what was your understanding before
 13 the change, and then what was the change?
 14 A. Well, as per this letter, that it says right
 15 here that I've been approved for intermediate leave.
 16 Q. Well, let's -- let's identify the letter
 17 first, for the record.
 18 A. Okay.
 19 Q. In fact, let's mark it, since you're talking
 20 about it.
 21 (Exhibit 1 was marked for identification.)
 22 Q. Okay. Let me give you -- This is the one I've
 23 marked. It's -- I think it's the same exact document.
 24 A. Uh-huh.
 25 Q. Okay. Now, go ahead. You were talking

1 did that you consider to be improper or --
 2 MR. LIVINGSTON: Ed, I don't think you
 3 correctly included the termination.
 4 MR. BERGMANN: Okay. The termination.
 5 MR. LIVINGSTON: I mean, she did say --
 6 MR. BERGMANN: All right. Her
 7 termination. Okay.
 8 Q. (By Mr. Bergmann) Anything other than the
 9 things we've mentioned that -- that you are claiming are
 10 improper?
 11 A. Well, I guess I could claim that would be
 12 improper, as well is the copy of the letter that you
 13 took of -- that I was given when my FMLA was accepted.
 14 We were waiting for one department for a while, and then
 15 recently, just a few days before I was terminated, we
 16 were actually -- or, actually, about a month before, we
 17 were switched over to a different department, with a
 18 different woman that was handling it.
 19 And for some reason, the way I was
 20 understanding, and the way we were doing it in the
 21 office for the hours -- the times off that I was taking,
 22 was not -- it was turned around, and -- and I was told
 23 that we were doing it wrong at that time. So I was -- I
 24 was being very -- I was confused, very confused with it.
 25 And, you know, we were doing it one way, and then when

1 about --
 2 A. Okay.
 3 Q. -- the document that's been marked as
 4 Deposition Exhibit 1 for your deposition.
 5 A. Okay. So it states that I was approved for
 6 the FMLA from a -- a month, as well -- at this -- at
 7 that time, it was July 18th, 2008, lasting until the
 8 next year of July 18th, 2009, which gave do not exceed a
 9 12-week -- workweek and 480-hour FMLA rolling calendar
 10 year entitlement.
 11 And then when we switched over to the new
 12 department, with the new person that was handling it, I
 13 was told that, of course, the hours would drop down. I
 14 believe it was 320 hours, a lower amount of time. And
 15 then, of course, that I had already ran out; that I
 16 would have to wait to a certain day or date to re- -- to
 17 get new hours for the time to have off.
 18 Q. And was that -- Did you understand that they
 19 were saying that because your schedule had changed
 20 from --
 21 A. Correct.
 22 Q. -- 40 hours a week to 30?
 23 A. Correct. But on July 18th of 2008, I was
 24 already on a 30-hour week. I was already on a 30-hour
 25 shift, which I was given the full 480 hours.

1 Q. Okay.
 2 A. Even though I was already at a 30-hour time
 3 limit.
 4 Q. So somebody subsequently told you that, in
 5 fact, it should have been based on a 30-hour week rather
 6 than a 40-hour week.
 7 A. Correct.
 8 Q. Okay.
 9 A. And then also the way we were doing the
 10 payroll is, I was taking my time off on the pay -- on
 11 the FMLA time. And then when it came to the new
 12 standard, it was -- it -- that -- I was told I shouldn't
 13 have done it that way.
 14 Q. Who was it that -- who was the person -- the
 15 new person you were dealing with that told you these
 16 things?
 17 A. Well, Esther had told me those items. And
 18 then also Mary, the person that was handling the new
 19 FMLA as well.
 20 (A discussion was held off the record.)
 21 Q. Was it Mary Scott?
 22 A. Yes.
 23 Q. Okay. Where are you currently employed?
 24 A. I am not.
 25 Q. When did you first start working for the City

1 Q. And there's a date of birth on the right-hand
 2 side there. Is that your date of birth?
 3 A. Yes.
 4 Q. And did you apply for a full-time position?
 5 A. Yes.
 6 Q. And did you apply as a result of a -- a
 7 newspaper advertisement?
 8 A. Yes.
 9 Q. And the pay rate there, is that the pay rate
 10 that you received?
 11 A. Yes.
 12 Q. And what was your position before you applied
 13 to work at the City of Albuquerque?
 14 A. I was a bill collector at Citibank.
 15 Q. How long did you work at Citibank?
 16 A. Five years.
 17 Q. And as a bill collector at Citibank, did you
 18 work in a call center, or what kind of a facility did
 19 you work in?
 20 A. Yes, sir, a call center.
 21 (Whereupon, Mr. Michael A. Garcia
 22 exits the deposition room.)
 23 Q. And when you started employment with the City
 24 of Albuquerque as a Citizen Contact Agent I, did you --
 25 were you aware that that was an unclassified position?

1 of Albuquerque?
 2 A. In June of 2005.
 3 MR. BERGMANN: Could you mark that,
 4 please.
 5 (Exhibit 2 was marked for identification.)
 6 Q. I'm going to show you a document I have --
 7 I've marked as your -- as your Deposition Exhibit 2.
 8 It's a New Hire form. It's effective 6/11/2005. I'm
 9 going to ask you to look at that.
 10 A. Okay.
 11 Q. Okay. There's some information on it. Let me
 12 just see whether it is accurate. First --
 13 MR. LIVINGSTON: I'm -- I'm going to
 14 object to the form of the question, Ed. She's probably
 15 never seen this before.
 16 MR. BERGMANN: That's all right.
 17 MR. LIVINGSTON: And if you're gonna just
 18 ask her questions about information on here which you've
 19 already asked basically, date of hire, for example, I --
 20 I object to the form of the question.
 21 MR. BERGMANN: Okay.
 22 Q. (By Mr. Bergmann) Go ahead. Look -- look at
 23 the document. There's an address there. Is that your
 24 address?
 25 A. Yes.

1 A. No.
 2 MR. BERGMANN: Could you mark that,
 3 please.
 4 (Exhibit 3 was marked for identification.)
 5 Q. I show you a document which has been marked as
 6 Exhibit 3 to your deposition. It is an Employment
 7 Information Form. It lists your name. Is that your
 8 signature on the bottom?
 9 A. Yes, sir.
 10 Q. Now, prior to signing this document, did you
 11 read it?
 12 A. Yes, sir.
 13 Q. Did you understand the document?
 14 A. To my knowledge, I did at the time.
 15 Q. Okay. Under "Employment Status," it says
 16 "Unclassified." Did you understand what that meant?
 17 A. No, sir.
 18 Q. Did you ask anybody what that meant?
 19 A. No, sir.
 20 MR. BERGMANN: Can you mark this one.
 21 (Exhibit 4 was marked for identification.)
 22 Q. Let me show you a document which has been
 23 marked as Exhibit 4 to your deposition. It's dated
 24 June 6th of 2005. Was your work location the Plaza Del
 25 Sol -- Del Sol, sorry, Building, 6th Floor?

1 did she hold?
 2 A. She was trainer and -- and she --
 3 Unfortunately, I don't know what -- what the name of the
 4 position was.
 5 Q. Who else was on -- was there besides Elisa
 6 Martin and Esther Tenenbaum?
 7 A. It would have been one of -- one of the
 8 supervisors that would have been my supervisor at the
 9 time.
 10 Q. Were -- Was that written warning related to
 11 your -- the 85 percent figure?
 12 A. Correct.
 13 Q. And did you receive a number of those written
 14 warnings?
 15 A. Yes.
 16 (Exhibit 5 was marked for identification.)
 17 Q. I'm going to show you a -- a multi-page
 18 document, three -- three pages. It talks about
 19 "Progressive Disciplinary Action: 'Termination.'"
 20 Would you look at that document, and then when you're
 21 done looking at the document, let me know.
 22 Having looked at this, does this
 23 information -- is it something that's familiar to you?
 24 A. Yes.
 25 Q. And is this chronology accurate relative to

1 the warnings and discussions you had with people?
 2 A. Yes.
 3 MR. BERGMANN: Let me take a couple of
 4 minutes.
 5 (A recess was taken from 1:53 p.m. to 1:57 p.m.)
 6 Q. (By Mr. Bergmann) Did you file for
 7 unemployment compensation?
 8 A. Yes.
 9 Q. And did you receive unemployment compensation?
 10 A. Yes.
 11 Q. Are you still receiving unemployment
 12 compensation?
 13 A. Yes.
 14 Q. In the meetings when you received those
 15 written warnings and this, who did you meet with? Was
 16 it a manager and a supervisor generally or --
 17 A. It was Lisa Martin and my supervisor.
 18 Q. And they talked to you in the meeting?
 19 A. Yes.
 20 Q. And then you talked to them?
 21 A. Yes.
 22 Q. Other than the documents that you brought with
 23 you today, do you have any other documents that relate
 24 to this case?
 25 A. No.

1 Q. So what you brought was the extent of it.
 2 A. Yes.
 3 MR. BERGMANN: I don't have any other
 4 questions.
 5 MR. LIVINGSTON: I have a few.
 6 MR. BERGMANN: Sure.
 7 EXAMINATION
 8 BY MR. LIVINGSTON:
 9 Q. Did you have a -- a stroke at work at one
 10 point?
 11 A. Yes. I had that on July 9th of 2009.
 12 Q. Could you tell us what happened.
 13 A. I was at my desk. My eyes started to blur.
 14 My stomach started to hurt, and then my chest. And then
 15 my arm started to hurt, and I started to shake very
 16 badly.
 17 I then proceeded to get up and walk to the
 18 front station where all the managers were at to speak to
 19 my manager, Donna at the time, to let her know I didn't
 20 feel good. Excuse me. I get emotional with it. She
 21 was unavailable. She was on the phone.
 22 So then I proceeded to walk over to David
 23 Chavez, one of the other supervisors. Told him I didn't
 24 feel good. And then at that time, I got really, really
 25 dizzy, and I went to grab on to the pod, and that's when

1 I went -- I passed out. He had grabbed my arm and held
 2 on to me.
 3 And then Esther came out, put me in a
 4 chair, rolled me out to her office. 911 was called. My
 5 husband was also called. The fire and rescue did
 6 arrive. Unfortunately, just took my vitals, didn't do
 7 anything else. No EKG was done, which I was told by the
 8 doctor should have been done. Was told by the EMT that
 9 pretty much didn't find anything wrong with me, just to
 10 go to my regular doctor. From there I went to the
 11 hospital, was checked out, and was told I actually did
 12 have a stroke.
 13 Q. Did you lose time at work because of that?
 14 A. Yes. I lost two weeks.
 15 Q. And was that covered under FMLA, or do you
 16 know how that --
 17 A. Well, it was --
 18 MR. BERGMANN: Objection to the question.
 19 She can go ahead and answer.
 20 A. It -- I did exhaust my FMLA at the time. I
 21 was called by Esther and told that I was exhausted and
 22 that I needed to have the papers filled out and re- --
 23 and sent in, which I did. So it was re- -- the
 24 paperwork was refilled out, turned in, and was approved.
 25 And then I also did have to go to -- God, was it -- the