

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ANTOINETTE GONZALES, et al.,

Plaintiffs,

vs.

No. CIV-09-0520 JB/RLP

CITY OF ALBUQUERQUE, et al.,

Defendants.

AFFIDAVIT

I, **CAROLL AUSTIN**, being duly sworn upon my oath, hereby swear and affirm that I have personal knowledge of the following facts and allegations and that they are true and correct to the best of my knowledge:

1. I was employed by the City at the 311-Citizen Contact Center since June, 2005.
2. Prior to working for the City I worked at Citibank. I left my employment at Citibank to take the 311 job with the City. One of the main reasons I wanted to work for the City was that I thought I would have job security.
3. I did not know the 311-CCC position was "unclassified" when I decided to leave my job at Citibank and accepted the position with the City.
4. When it was explained to me that we were "unclassified" I understood that meant only that we could receive higher pay as an unclassified and non-union employee than we could if we were classified, but that we received all other benefits and had all the rights of other City employees, and if for any reason we had any issues we would go to

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employee relations and all issues would go through the same process

5. I had to undergo surgery to have my gallbladder removed because I had gallstones and this caused extreme pain. I spoke to Esther Tenenbaum in September 2007 and advised that I would have to have my gallbladder removed and would need to take time off but was unsure how much time I would need to recover. At this time Esther Tenenbaum, Betty Dinelli and I sat in on a meeting to go over how much time I had available. I was advised at this time I had approximately 40 hours + left of FMLA. At this time Esther advised that I should continue to work to try and get more of my FMLA time back per it is used on a running calendar year. I took her advice and continued to work but because I was in a lot of pain I continued to use my FMLA but when I spoke to my Doctor in December 2007 I was advised they were going to schedule my surgery for January 24, 2008 and that this could be dangerous for me to continue to wait.

6. I spoke to Mary Scott from HR and she advised if I didn't have enough time available to me I could request time off without pay from Department Director Tanda Meadors. I spoke to Esther Tenenbaum about the request and she advised that I would need to put the request for time off without pay in letter format and she would submit it to Tanda Meadors. I immediately submitted the request to Esther Tenenbaum. I asked at least once a week if my request was approved. I finally heard the week before my surgery was scheduled that my request was denied.

7. I called Human Rights with the City of Albuquerque spoke to Richard Weiner and he advised that because this was a medical necessity I needed to ask for the denial in writing. I did submit emails to Tanda Meadors, Esther Tenenbaum and Mary

Scott but got only a response from Esther but no reason for denial. Esther was left for the rest of the day and the next day Charles Cowen came to me and said my time off was approved and to fill out my P30 (paperwork to request time off). I submitted the paperwork at least 3 times per they wanted more information on each request.

8. I left for the day and this was the Thursday before my surgery was scheduled. I went to work on Friday and neither Charles Cowen or Esther Tenenbaum were in the office. I went to work on Monday January 22, 2008 and neither Charles Cowen or Esther were at work again. I spoke to Michael Barnes on 01/22/2008 (immediate supervisor) and asked him to please get my approved paperwork back. He sent Charles Cowen an email asking for paperwork.

9. I flew to Lubbock TX on 01/23/08 and because I didn't have any paperwork in hand I called into the supervisor line to make sure my approval was showing scheduled in our system. I spoke to Carol McCoy (supervisor) and she asked why I was calling per I was approved. I told her I wasn't able to get paperwork and I was just making sure. She said I was not showing as approved in system but she would put in the system I was on FMLA because everyone knew this was approved.

10. The next day 01/23/08 I called into supervisor line before my surgery approximately at 4am and Antoinette Gonzales (supervisor) and she asked why I was calling if I was approved, I told her I wasn't showing in system the day before that I was approved. She said hold on while I look and came back and said I am still not showing in system but would also put me down for FMLA because she knew I was approved. She asked if this call in was for today only I told her to please put me down for 01/25/08 also.

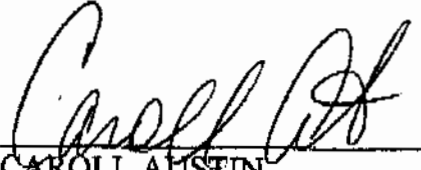
The day after my surgery I called and left a message for my supervisor Michael Barnes to make sure he got a copy of my approval. Michael Barnes called me back and told him he would get the paperwork for me and call me back in 5 mins. In about 20mins I got a phone call and it was Esther Tenenbaum. She said Carol this is Esther. I said hello she said Carol I am calling to let you know you don't have to call in daily anymore. I said oh good thank you she said "because your services are no longer needed." I was completely shocked and said ok. She said she will mail me my belongings. I asked if I could pick it up when I recovered. She said that would be fine but I would need to call her before just showing up. I said ok.

11. During new hire orientation there was a time that seasonal and temporary employees were told they didn't have to return after lunch break because the rest of the benefits that would be covered were for permanent employees only.

12. With respect to the FMLA, I was not aware that the City was taking my FMLA leave time for my on-the-job injury. No one informed me that my FMLA time was being used up. In October 2007 when Betty Dinelli, Esther Tenenbaum and I had a meeting to go over the amount of hours I had left I asked why my FMLA was used for on the job injury. I called Department of Labor and learned that FMLA time can be used for on the job injuries but only if you are notified in writing. I did not receive any notification that my FMLA time was being used. Esther Tenenbaum advised this was the norm, but to call risk management to get clarification. I called and was advised that because on the back of P30 forms FMLA could be used, that was all the notification that was needed. I called the Dept. of Labor back and was told that is not acceptable it would have to be a

formal letter sent to you from the City of Albuquerque. I told Esther Tenenbaum and she didn't respond or take any action.

I swear and affirm that the foregoing statements are true and correct and that they are made under penalty of perjury. I signed this on September 6, 2010.


CAROLL AUSTIN