

**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, **YOLANDA GARCIA**, 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 11, 2005.

2. Before I worked for the City I worked at Citibank. I left Citibank believing that as a City employee I would have both benefits and job security.

3. I did not know the City position was "unclassified" when I decided to leave my job at Citibank and accept the position with 311 CCC.

4. When I was hired I attended a day long City Employee training which included incoming employees from all departments. In this training there was no mention of classified vs. unclassified employees. This was City Employee training.

EXHIBIT 6
AFFIDAVIT OF
YOLANDA GARCIA

When it was explained to me in training at the 311 call center that we were "unclassified" I understood that meant we could receive higher pay as an unclassified employee than we could if we were classified, but that we received all other benefits and had all the rights of other City employees.

5. During the four and a half years I worked at 311-CCC it was generally believed that even though we were unclassified we had all the benefits and rights of other City employees. No one ever told us that it was not true, that we did not have the same rights and benefits as other City employees.

6. I continued my job with the 311-CCC. Since I enjoyed my job, I was meeting expectations monthly, as the months and years went on there was changes made to the center, our ways of answering calls changed and some of the information we were giving out was no longer being provided to the citizens. We were just told per emails as the changes were made and no training was given, my time there before my termination I was in a meeting with my supervisor Donna Saya to coach me and to give advice. Lisa Martin had attended this meeting and asked me what she could do to help me with my performance, I asked her to send me to training with the new hires and she told me no, that I already knew the job I just need to do it right already.

7. All the time I worked at the 311-CCC I worked under strict performance and conduct rules and guidelines. We were told in training and later by all the

supervisors that disciplinary action against us would be taken if we violated the rules.

Even being ten minutes late to work was a violation of the rules.

8. Our supervisors at the call center were required to take telephone calls, monitor our phone calls, and give advice and counseling to the agents. All the decisions, including hiring, disciplining, and firing, were made by Esther Tenenbaum.

9. Neither I nor any other contact agents were ever offered any bonuses, awards, or other rewards other than candy bars, "kudos", and certificates.

10. I suffer from a severe medical condition called Rheumatoid Arthritis that causes pain, flaring to my joints, swelling, disfiguring of my fingers hands and feet, chronic fatigue. I also have a blood clot to my left leg and have Sjogren's Syndrome that causes dry eye, mouth, hard to swallow or speak and chew. I also had a mild stroke in July of 2009.

11. I started with FMLA approval in October of 2006 per Cindy Jaramillo, Management Analyst II, and was approved every year since then.

12. July 09, 2009 I had a mild stroke and I was notified at home by Esther Tenenbaum that my FLMA was to expire July 18th 2009, she made me aware that I had to have the FMLA paperwork filled out and brought right away I advised her that I would have to make an appointment to have my doctor fill out the paper work. I had gone to Cindy Jaramillo's office to get FMLA Papers to be filled out before I had my stroke, when I turned in two separate forms from two different doctors I was told the office of

Mary Scott was handling FMLA not Cindy Jaramillo, so I would need to get new paperwork filled out.

13. I was still out sick at this time and the several times Esther Tenenbaum called me at home she never informed me that I would need to go to Employee Health to get a release to work. I did not find out until I called the front desk and spoke to Carol McCoy when I was ready to come back to work and she informed that I need to go to Employee Health to return to work, so that left me out of work from 07/09/09 to 07/22/09, when I was released from Employee Health.

14. On September 9, 2009, I was asked by my Manager to go to the conference room where Esther Tenenbaum and Lisa Martin were waiting for me. Esther at this time presented me with a letter that stated my serviced were no longer needed and asked what items were mine at my desk and had my purse brought to me. She asked for my badge and was told that the rest of my items could be picked up later and then Art Martinez escorted me to the 1st floor to leave the building. I did not expect to be fired and was very surprised.

15. At a hearing in which the City dropped their appeal that awarded my unemployment benefits, Ms. Tenenbaum testified that she placed me on a 90 day review at the end of July 2009, and terminated me September 9, 2009, which did not give me 90 days to correct my quality and to continue my job duties and to prevent termination.

14. In the year 2006 my doctor requested for me to start working a part time schedule and it was placed on my FMLA forms, I was told that there are not any part time positions at 311. I then went to speak with Richard Benison, ADA Coordinator. He advised that I would have to have paperwork filled out by my doctor and brought to him to see if I qualify, which I did.

17. He then talked to Esther Tenenbaum about my work schedule which he stated did not go through, while at a later date Mr. Benison advised that the City had agreed to my reasonable accommodations and converted my hours to a three-quarter time position.

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

Yolanda Garcia
 YOLANDA GARCIA

COUNTY OF SANDOVAL)
) ss
 STATE OF NEW MEXICO)

SWORN and SUBSCRIBED TO before me this _____ day of September, 2010.

 NOTARY PUBLIC

My Commission Expires April 4, 2012.