DATE

PRIVILEGED & CONFIDENTIAL
SUBMITTED FOR PURPOSES OF RESOLUTION OF CHARGE ONLY

NAME
Investigator
Equal Employment Opportunity Commission
ADDRESS

Re: [Complainant Name] v. [Respondent Name]; EEOC No.: 0000000000

Dear Mr./Ms. INVESTIGATOR:

This letter and accompanying documents set forth the position of Respondent, ("[RESPONDENT NAME]" or the "Company") with respect to the above-referenced charge of discrimination filed by [NAME] ("[Complainant Name]" or "Complainant").

I. Introduction.

[RESPONDENT NAME] did not discriminate against or harass Complainant based on race, religion or any alleged disability [OR OTHER BASIS]. Moreover, [RESPONDENT NAME] did not retaliate against Complainant for allegedly complaining to [RESPONDENT NAME] about any alleged discrimination. To the contrary, Complainant lost her job because of [REASONS, e.g., her repeated attendance issues, insubordination and poor performance.] She was counseled, given written warnings and placed on a performance improvement plan. Despite all such efforts, she failed to improve her performance and lost her job because of it. She was not discriminated against or harassed in any way. Accordingly, Complainant’s claims should be dismissed.

II. Summary of Facts

[RESPONDENT NAME] and COMPANY DESCRIPTION – background on the Company and industry is important, as well as a description of the “do-gooder” nature of the Company, a

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1 This position statement is submitted on the basis of the Company’s investigation of the facts to date. It is not an affidavit, nor is it intended to be used as evidence in any proceeding connected in any way with this charge. By submitting this position statement, the Company in no way waives its right to present different, new or additional facts or arguments based upon subsequently acquired information or evidence. Additionally, this position statement is submitted to the EEOC for the purposes of potential conciliation and/or resolution only. Accordingly, the statements contained herein are privileged and confidential.

2 [Position Name], despite being aware of [RESPONDENT NAME]’s strong EEO policy and complaint mechanism, never submitted a complaint of discrimination.
description of the EEO and Anti-Harassment Policies, and facts about the provision of such policies to employees including complainant].

[RESPONDENT NAME] Hires [Complainant Name]. On DATE, Complainant was offered the position of [Position Title]. As a [Position Title], Complainant reported to [Supervisor]. Complainant began work on DATE. (A copy of [Complainant Name]’s Offer of Employment is attached Exh. 1). As a [Position Title], Complainant’s duties and responsibilities included [DESCRIBE DUTIES]. (A copy of [Complainant Name]’s Job Description is attached as Exh. 2).

During [Complainant Name]’s initial period of employment, her performance was generally acceptable, although she did occasionally display the attitude and attendance issues that ultimately cost her her job.

[Description of Facts Relevant to Termination Decision/Non-Promotion, etc.]
[Complainant Name] Sends Rude E-mail To Colleague. On DATE, [Complainant Name] sent a rude e-mail to one of her colleagues, complaining that a response to an earlier e-mail had not been promptly received. The offensive tone of the e-mail upset the recipient and prompted a complaint. (A copy of [Complainant Name]’s DATE e-mail is attached as Exh. 3).

[Complainant Name] Receives Written Warning. On DATE, [Complainant Name] was loud, inappropriate and unprofessional in dealing with [NAME and TITLE]. Her behavior was disorderly and occurred in a public area of the facility, in plain view of co-workers. [Complainant Name] acknowledged her unprofessional conduct and received a written warning for her poor performance. (A copy of [Complainant Name]’s e-mail acknowledgement is attached as Exh. 4). [Complainant Name], as part of the written warning, was directed to immediately cease and correct this type of inappropriate and unprofessional behavior and communications.

[Complainant Name] Placed On Performance Improvement Plan. Despite repeated attempts by [RESPONDENT NAME] to assist [Complainant Name] in improving her job performance, she could not or would not take the steps necessary to improve, and her performance and attendance remained well below expectations. Accordingly, on DATE, she was placed on a Performance Improvement Plan. (A copy of [Complainant Name]’s Performance Improvement Plan is attached as Exh. 5). That plan informed her that she was not meeting [RESPONDENT NAME]’s legitimate expectations with respect to attendance, initiative and communications. The Plan included a detailed explanation of the reasons Complainant’s performance did not meet expectations, as well as the steps necessary for her to improve. For example, the Plan included a list of the twenty-one (21) separate unscheduled absences, as well as an action plan describing how to improve her attendance. The Plan also specifically referenced instances where [Complainant Name] failed to take ownership of assignments and failed to take action(s) unless prompted by others. Finally, the Performance Improvement Plan included a date on which [RESPONDENT NAME] and [Complainant Name] would meet to review her performance and discuss any progress and the next steps. Despite being placed on a performance improvement plan, [Complainant Name] made little effort to improve her performance. On DATE, a Monday, [Complainant Name]
failed to report to work or call in—she simply did not show up. [Complainant Name] received a written warning for her violation. (A copy of the written warning is attached as Exh. 6).

[Complainant Name] Counseled Regarding Attendance And Performance. On DATE, [Complainant’s Supervisor] met with [Complainant Name] regarding her attendance and performance. At the meeting, [Complainant’s Supervisor] once again outlined how unscheduled absences should be handled, expressed the need for [Complainant Name] to take more initiative and discussed specific assignments that [Complainant Name] had failed to complete. [Complainant’s Supervisor] also told [Complainant Name] that she would be suspended for one day as a result of her latest attendance policy violation. (A copy of [Complainant’s Supervisor]’s e-mail documenting the meeting is attached as Exh. 7).

[Complainant Name] Asleep On The Job. [Complainant Name]’s attendance and performance continued to decline, and on DATE, she was found sleeping on the job. (A copy of the DATE written warning is attached as Exh. 8). [Complainant Name] was found at her desk, in a public area, with her head resting on her crossed arms. [Complainant Name]’s name had to be called three times before she responded.

Meeting Regarding PIP. On DATE, [RESPONDENT NAME]’s HR Manager, and [Complainant’s Supervisor] met with [Complainant Name] regarding her performance. At that meeting, the PIP was reviewed. Respondent’s HR Manager first addressed Complainant’s poor attendance. Complainant admitted that she did not follow the proper procedures with regards to her absences. Respondent’s HR Manager then discussed whether Complainant took the steps required to improve her initiative. Complainant responded that she had not implemented the steps required. Complainant also stated, “I know what my job is. It doesn’t change.” Respondent’s HR Manager then inquired about the communication between Complainant and Complainant’s supervisor, [Complainant’s Supervisor]. [Complainant’s Supervisor] stated that communication with Complainant continued to be difficult, and that [Complainant Name] had failed to set up weekly meetings as required by the PIP.

Based upon the outcome of this meeting and Complainant’s demonstrated lack of progress on the Performance Improvement Plan, including [Complainant Name]’s wholesale failure to improve her attendance, initiative, and communication, [RESPONDENT NAME] terminated her employment. (A copy of Respondent’s HR Manager’s notes documenting the meeting is attached as Exh. 9).

Unemployment Compensation Agency Finds Gross Misconduct. Following the termination of her employment, [Complainant Name] applied for unemployment compensation benefits. After the opportunity to review and consider the evidence surrounding the termination of her employment, the Department of Unemployment Compensation found, not only that the termination of [Complainant Name]’s employment was warranted, but that she had engaged in gross misconduct on the job. (A copy of the unemployment compensation determination is attached as Exh. 10).