

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

**U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

v.

RENT-A-CENTER EAST, INC.,

Defendant.

Case No. 16-cv-2222

Magistrate Judge Long

REVISED PLAINTIFF EXHIBIT NO. 1

As requested at today's status hearing, attached are revised versions of Plaintiff's Exhibit No. 1, the position statement submitted to the EEOC by Rent-A-Center. To conform the exhibit to the Court's earlier rulings, the EEOC has agreed with Rent-A-Center's proposal to eliminate the redaction of (i.e., make visible): the entirety of the opening paragraph, all of Section II, and footnote 2 in Section III. Accordingly, both versions reflect those changes.

Rent-A-Center additionally proposes to eliminate the redaction of footnote 1. The EEOC opposes that, on the grounds that footnote 1 inappropriately provides the jury with legal instructions about how the exhibit should be interpreted and misstates the law.

Accordingly, Exhibit A sets forth the revised exhibit as proposed by Rent-A-Center, and Exhibit B sets forth the revised exhibit as proposed by the EEOC.

May 8, 2018

Respectfully Submitted,

s/ Justin Mulaire
U.S. Equal Employment Opportunity Commission
33 Whitehall St., Fl. 5
New York, NY 10004
212-336-3744

CERTIFICATE OF SERVICE

I hereby certify that on today's date, I caused the PLAINTIFF EEOC'S REVISED PLAINTIFF EXHIBIT NO. 1 to be served upon counsel to Defendant via the court's Electronic Case Filing system, pursuant to Local Rule 5.3(A).

May 8, 2018

Respectfully Submitted,

s/ Justin Mulaire
U.S. Equal Employment Opportunity Commission
33 Whitehall St., Fl. 5
New York, NY 10004
212-336-3744



Littler Mendelson, PC
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Suite 1000
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January 12, 2015

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VIA HAND-DELIVERY AND FACSIMILE (312.869.8220)

Julianne Bowman
District Director (Acting)
U.S. Equal Employment Opportunity Commission
500 West Madison Street, Suite 2000
Chicago, IL 60661

Re: Kerr v. Rent-A-Center, Charge No. 440-2015-01054

Dear Ms. Bowman:

This letter states Rent-A-Center's ("RAC") position with respect to the Charge of Discrimination ("Charge") filed by Megan Kerr ("Complainant") (female), a former RAC employee formerly known as Jason Kerr (male), for alleged sex discrimination and harassment. Specifically, Complainant alleges that she was harassed, demoted, and discharged based on her sex change. For the reasons set forth below, it is clear that Complainant's Charge is baseless and should be dismissed.¹

I. RAC OVERVIEW

RAC is a nationwide rent-to-own company headquartered in Plano, Texas. RAC rents a variety of merchandise to individuals, including large household appliances, furniture, and electronics. RAC employs more than 20,000 individuals throughout approximately 2,700 retail

¹ This Position Statement is based on RAC's understanding of the facts as of the date of this correspondence. Although there has not been an opportunity for formal discovery or a complete formal investigation, this response is submitted for the purpose of aiding the U.S. Equal Employment Opportunity Commission ("EEOC") in its investigation and facilitating the informal resolution of these matters. This Position Statement, while believed to be accurate, does not constitute an affidavit and is not intended to be used as such in any agency or court proceeding, nor is it a binding statement of RAC's legal position. As additional facts likely would be uncovered through discovery or following a full investigation, RAC in no way waives its right to present new or additional information at a later date, for substance or clarification. Moreover, by submitting this Position Statement, RAC does not waive, and hereby preserves, any and all substantive and procedural defenses that may exist to the Charge and Complainant's allegations. RAC requests that any efforts to contact its current managers be directed through its counsel. RAC provides this document with the understanding that its contents and attachments are confidential and proprietary and that its contents will neither be disclosed nor given to Complainant, his attorneys, or his representatives.

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stores across the United States and employs approximately 21,000 coworkers. Each store generally operates with a lean staff of between four and six employees comprised of a Store Manager, an Assistant Manager (hourly, non-management position), and two or more Customer Account Representative (hourly, non-management position(s)). Each Store Manager reports to a District Manager, who reports to a Regional Director.

II. RELEVANT POLICIES

A. Equal Employment Opportunity Policy

RAC is an Equal Employment Opportunity Employer that is committed to providing equal employment opportunity for all persons without regards to gender, race, color, religion, national origin, age, marital status, disability, sexual orientation, or any other status or tract protected by law. [See Relevant Excerpts of RAC's Coworker Handbook, attached as Exhibit ("Ex.") A, at 26]. RAC maintains that discrimination or harassment based on any of these protected categories is strictly prohibited. [*Id.*].

B. Anti-Harassment and Anti-Discrimination Policy

RAC maintains a no tolerance policy and finds discrimination and harassment is against both the law and RAC policy whether it involves harassment by coworkers, by a manager, or by persons doing business with, or for, RAC. [*Id.* at 26]. If RAC determines that discrimination or harassment of any kind has occurred, it will take immediate corrective action, commensurate with the circumstances, up to and including termination, and will also act to deter any future discrimination or harassment concerns. [*Id.* at 27].

C. Open-Door Reporting Policy

RAC values direct and open communication between all coworkers. Therefore, it maintains an Open Door Reporting Policy. This policy provides RAC employees with several alternative reporting procedures, including reporting any concerns of discrimination or harassment to: (1) their immediate supervisor, District Manager, or Regional Director; (2) the Coworkers Relations Hotline; or (3) the third-party Compliance Hotline. RAC encourages that all coworkers have a responsibility to report suspected violations of its policies. [*Id.* at 26]. Upon receipt of such a complaint, RAC conducts a prompt, fair, and objective investigation and endeavors to protect the privacy and confidentiality of all parties to the extent possible, consistent with a thorough investigation. [*Id.* at 26-27]. In addition to its Coworker Handbook, RAC utilizes an Open Door Poster to alert employees to this resource. [See Open Door Poster, attached as Ex. B].

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D. Vehicle Operation

RAC's Vehicle Operation policy specifically states: "*Company-owned vehicles may not be used for personal business or occupied by any family members, friends, or other unauthorized persons at any time.*" [See Ex. A, p. 29] (emphasis added). It further provides that failure to abide by this policy will result in discipline up to and including termination. [*Id.*].

E. Standards of Conduct

RAC employees are expected to know and adhere to RAC's policies and procedures related to its Standards of Conduct. RAC's Coworker Handbook provides several examples of unacceptable coworker conduct, including violating any Company practices, policies, and/or procedures. It specifically provides that failure to comply with RAC's Standards of Conduct may be cause for disciplinary action up to and including termination from employment. [See Ex. A, pp. 22 – 23].

III. STATEMENT OF RELEVANT FACTS

A. Complainant's Employment History at RAC

On May 21, 2005, RAC hired Complainant as a full-time Customer Account Representative at Store No. 2292 in Sherman, Texas. At the time of Complainant's hire, Complainant was a male and his name was Jason Kerr. Upon hire, Complainant signed the Coworker Handbook Acknowledgement form acknowledging that he had read and understood the Coworker Handbook. He also acknowledged that RAC could terminate his employment at any time, with or without cause. [See Acknowledgement Form, attached as Ex. C; see also Coworker Integrity Commitment Acknowledgement Form; Manager/Supervisor Integrity Commitment Acknowledgement Form; and Behavioral Training Log, attached as Ex. C].

On March 11, 2006, RAC promoted Complainant from Customer Account Representative to Assistant Manager at Store No. 2292. [See Offer of Promotion, attached as Ex. D; see also Complainant's Job History, attached as Ex. E, p. 6]. On March 8, 2007, District Manager Christopher Scott ("DM Scott") (male) promoted Complainant a second time to Store Manager of Store No. 4693 in Sherman, Texas. [See Offer of Promotion, attached as Ex. F; see also Ex. E]. On July 12, 2007, DM Scott demoted Complainant from Store Manager back to Assistant Manager. He also transferred Complainant back to Store No. 2292. [See Ex. E, p. 6]. Complainant had only held the Store Manager position for four months. This was Complainant's only demotion while working for RAC.

In July 2010, Complainant moved to Illinois and transferred to Store No. 319 located in Rantoul, Illinois. [*Id.* at p. 5]. Complainant held the Assistant Manager position at this store.

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On September 13, 2010, RAC transferred Complainant to Store No. 754 located in Rantoul, Illinois. [*Id.* at p. 4]. Complainant continued to hold the Assistant Manager position.

On May 23, 2011, RAC transferred Complainant back to Store No. 319. Complainant continued to hold the Assistant Manager position. [*Id.*]. At the time, Complainant was supervised by Store Manager Russell Kasper (“SM Kasper”) (male). SM Kasper reported to District Manager Jason Carnahan (“DM Carnahan”) (male).

B. Complainant Informed RAC About His Sex Change

In or around March 2013, Complainant informed RAC that he was changing his name (Jason Kerr to Megan Kerr) and gender (male to female).

In or around October 2013, Complainant complained to DM Carnahan that SM Kasper had told unidentified RAC customers that she used to be a male. Complainant did not complain of discrimination or harassment. DM Carnahan immediately addressed this with SM Kasper and gave him verbal coaching. Complainant made no further complaints about SM Kasper, this issue, or any other concerns after DM Carnahan addressed this issue.

On February 13, 2014, Jason Morris (male) replaced SM Kasper as the Store Manager for Store No. 319. From February 13, 2014 until her termination on July 21, 2014, SM Morris was Complainant’s direct supervisor.

C. Complainant Terminated for Violating Company Policy

On Saturday, July 19, 2014, SM Morris noticed that Complainant was acting unusual. Complainant made several requests to go out on deliveries alone even though the two Customer Account Representatives, who were responsible for deliveries, were at work. At the time, SM Morris was aware that Complainant had been evicted from her place of residence and suspected that Complainant was using one of the company vehicles to move personal items – a clear violation of Company policy.

SM Morris’s suspicion prompted him to drive by Store No. 319 on Sunday, July 20, 2014, to check on the RAC vehicles. The store was closed that day. At the time, two vehicles (a cube-shaped moving truck and a moving van) should have been in the parking lot. When SM Morris arrived at the store, he found the RAC moving truck missing from the parking lot and Complainant’s personal vehicle (a tan car) parked at the store. To document this violation, SM Morris took a date-stamped picture of the parking lot. [*See* 7/20/14 Picture, attached as Ex. G]. That day, SM Morris also picked up RAC Customer Account Representative Brock Duncan-Fox (“Duncan-Fox”) to help him search for Complainant and the missing RAC moving truck. Despite their efforts, SM Morris and Duncan-Fox were unable to locate Complainant or the RAC truck.

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That day, July 20, 2014, SM Morris called DM Carnahan to report this incident. Both agreed that Complainant should be terminated for violating Company policy (i.e., using a company vehicle for personal reasons).

The following morning, Monday, July 21, 2014, SM Morris confronted Complainant. He asked Complainant if she had used the RAC moving truck for personal reasons that weekend, including moving her belongings from her place of residence to a new location. Complainant admitted that she had done so.² As a result, SM Morris informed Complainant that she was terminated for violating Company policy, effective July 19, 2014. In response, Complainant simply stated, "Okay, thank you," and left the store. During this conversation, Complainant did not complain of discrimination or harassment.

During her tenure at RAC, Complainant never complained of discrimination or harassment based on her sex or otherwise. Further, despite being aware of RAC's Open-Door Reporting Policy, Complainant never called RAC's Coworker Relations to report any issues during her nine-year tenure with the Company.

² Two days later, Complainant contacted Assistant Manager Elena Reeves and again admitted during a conversation that she had used the RAC moving truck for personal reasons that weekend.

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Sincerely, 
Michael A. Wilder



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