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ACCESS RULING

In the matter of the Department of Juvenile Justice
Ruling Number 2022-5400
April 20, 2022

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) on whether she has access to the grievance procedure to initiate an April 11, 2022 grievance with the Department of Juvenile Justice (the “agency”).

FACTS

The grievant began working for the agency on October 18, 2021. On or about April 11, 2022, she filed a grievance with the agency alleging that she is “being treated unfairly in [her] unit.” In the grievance, the grievant describes an incident when a supervisor allegedly behaved in an “unprofessional” and “aggressive” manner that the grievant claims caused her to experience an anxiety attack. The grievant further asserts, among other things, that she submitted an incident report about the supervisor’s conduct to management but received no response, that the supervisor avoids her and has given unwarranted criticism about her work performance, and that the work environment has affected her mental health. As relief, the grievant requests a transfer to another work area.

The agency subsequently notified the grievant that it was administratively closing the grievance because she is a probationary employee and thus does not have access to the grievance procedure. The grievant now appeals the agency’s determination to EDR, seeking to re-open the grievance.

DISCUSSION

Pursuant to DHRM Policy 1.45, *Probationary Period*, employees serve a 12-month probationary period that is “effective from the date[] of their employment.”¹ The General Assembly has provided that all non-probationary state employees may utilize the grievance process, unless exempted by law.² The *Grievance Procedure Manual* further states that, in order

¹ DHRM Policy 1.45, *Probationary Period*, at 1.

² Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3.

to have access to the grievance procedure, the grievant “[m]ust have been a non-probationary employee of the Commonwealth at the time the management action or omission that formed the basis of the dispute occurred.”³

In this case, the grievant has not yet completed her 12-month probationary period, which is currently scheduled to end on or about October 18, 2022. Accordingly, EDR finds that she does not have access to the grievance procedure to initiate the April 11, 2022 grievance raising concerns about her work environment and the supervisor’s conduct. The parties are advised that the grievance should be marked as concluded.

Nevertheless, the grievant has articulated potentially legitimate concerns that warrant further comment. DHRM Policy 2.35, *Civility in the Workplace*, and its associated guidance make clear that agencies must not tolerate workplace conduct that is disrespectful, demeaning, disparaging, denigrating, humiliating, dishonest, insensitive, rude, unprofessional, or unwelcome. Moreover, Policy 2.35 further places affirmative obligations on agency management to respond to credible complaints of prohibited conduct and take steps to ensure that such conduct does not continue.⁴ The grievant does not have access to the grievance procedure at this time because of her probationary status, but she has effectively provided the agency with a complaint about alleged prohibited conduct under Policy 2.35. EDR therefore recommends that the agency review and take action on the grievant’s concerns as appropriate, consistent with its obligations pursuant to Policy 2.35.

EDR’s access rulings are final and nonappealable.⁵

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³ *Grievance Procedure Manual* § 2.3.

⁴ Under Policy 2.35(D)(4), “[a]gency managers and supervisors are required to: Stop any prohibited conduct of which they are aware, whether or not a complaint has been made; Express strong disapproval of all forms of prohibited conduct; Intervene when they observe any acts that may be considered prohibited conduct; Take immediate action to prevent retaliation towards the reporting party or any participant in an investigation; [and t]ake immediate action to eliminate any hostile work environment when there has been a complaint of workplace harassment.”

⁵ Va. Code § 2.2-1202.1(5).