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**ACCESS RULING**

In the matter of the Department of Corrections  
Ruling Number 2019-4915  
May 2, 2019

On April 23, 2019, the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”)<sup>1</sup> received a Dismissal Grievance Form from the grievant. Because the grievant was separated during her probationary period, the Department of Corrections (the “agency”) challenges whether she has access to the grievance procedure.

DHRM Policy 1.45, *Probationary Period*, provides that employees “who begin either original employment or re-employment in classified positions must serve 12-month probationary periods effective from the dates of their employment.”<sup>2</sup> The General Assembly has provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.<sup>3</sup> The grievant began working in a classified position at one of the agency’s facilities on September 25, 2018, and was terminated from employment on March 15, 2019. As a result, she had not completed her twelve-month probationary period at the time of her separation. Employees who have not completed their probationary period do not have access to the grievance procedure.<sup>4</sup> Accordingly, the grievant does not have access to the grievance procedure to initiate a grievance challenging her termination.<sup>5</sup> As a result, this dismissal grievance will not proceed to a hearing and EDR will close its file.

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<sup>1</sup> The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

<sup>2</sup> DHRM Policy 1.45, *Probationary Period*.

<sup>3</sup> Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3.

<sup>4</sup> *E.g.*, EDR Ruling No. 2011-2940.

<sup>5</sup> Although the agency has not disputed the timeliness of the grievant’s submission, the grievance procedure provides that an employee must initiate a written grievance within thirty calendar days of the date he or she knew or should have known of the event or action that is the basis of the grievance. Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.2. When an employee initiates a grievance beyond the thirty calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed. Even assuming the grievant had access to the grievance procedure, she was terminated on March 15, 2019, and thus should have filed the grievance no later than thirty calendar days from that date. The grievant initiated her grievance with EDR on April 23, 2019, more than thirty calendar days after her termination. As such, the grievance is untimely, and the grievant has provided no evidence of just cause for the delay. Ultimately, however, this issue need not be addressed

EDR's access rulings are final and nonappealable.<sup>6</sup>



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further, because the grievant does not have access to the state employee grievance procedure during her probationary period.

<sup>6</sup> Va. Code § 2.2-1202.1(5).