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**ACCESS RULING**

In the matter of the Department of Corrections  
Ruling Number 2022-5324  
November 12, 2021

On November 9, 2021, the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) received a Dismissal Grievance Form A from the grievant. Because the grievant was separated during his probationary period, the Department of Corrections (the “agency”) challenges whether he has access to the grievance procedure.<sup>1</sup>

DHRM Policy 1.45, *Probationary Period*, states 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 further 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 July 2, 2021, and was terminated from employment on or about October 21, 2021. As a result, he had not completed his 12-month probationary period at the time of his 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 his termination. Therefore, this dismissal grievance will not proceed to a hearing and EDR will close its file.<sup>5</sup>

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<sup>1</sup> Although the grievance is dated November 1, 2021, the grievant appears to have delivered it directly to the agency on or about November 3, 2021. The agency then forwarded the grievance to EDR. *See Grievance Procedure Manual* § 2.5 (stating that dismissal grievances should be initiated directly with EDR).

<sup>2</sup> DHRM Policy 1.45, *Probationary Period*, at 1.

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

<sup>4</sup> *E.g.*, EDR Ruling No. 2020-5017; EDR Ruling No. 2019-4920.

<sup>5</sup> This ruling does not address whether any legal or other remedy may be available to the grievant based on his concerns about his termination. This ruling only determines that he is ineligible to pursue his claims through the state employee grievance procedure.

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

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