

Issue: Access to the Grievance Procedure; Ruling Date: August 30, 2017; Ruling No. 2018-4601; Agency: Virginia Department of Transportation; Outcome: Access Denied.



**COMMONWEALTH of VIRGINIA**  
**Department of Human Resource Management**  
**Office of Equal Employment and Dispute Resolution**

**ACCESS RULING**

In the matter of the Virginia Department of Transportation  
Ruling Number 2018-4601  
August 30, 2017

On August 11, 2017, the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management (“DHRM”) received a Dismissal Grievance Form A from the grievant. The Virginia Department of Transportation (the “agency”) challenges the grievant’s access to the grievance procedure. For the reasons set forth below, EEDR concludes that the grievant does not have access to the grievance process to initiate this grievance.

FACTS

In this case, the agency indicates that the grievant began working with the agency in a classified position on June 10, 2017. On July 12, 2017, the grievant was issued a letter terminating him from employment due to allegations of acts that would interfere with the agency’s ability to effectively interact with the public. The grievant subsequently filed a dismissal grievance directly with EEDR to challenge his separation from employment. Upon receipt of a copy of the dismissal grievance, the agency has since informed EEDR that the grievant was terminated prior to the end of his probationary period and, thus, should not have access to file this grievance.

DISCUSSION

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>1</sup> The grievant had not completed his twelve-month probationary period when he was terminated on July 12, 2017. The General Assembly has provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.<sup>2</sup> Employees who have not completed their probationary period do not have access to the grievance procedure.<sup>3</sup> Accordingly, the grievant does not have access to the grievance procedure to initiate a grievance to challenge his termination. As a result, this dismissal grievance will not proceed to a hearing and EEDR will close its file.

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

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

<sup>3</sup> *E.g.*, EDR Ruling No. 2005-1032.

EEDR's access rulings are final and nonappealable.<sup>4</sup>



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<sup>4</sup> Va. Code § 2.2-1202.1(5).