

Issue: Access to the Grievance Procedure; Ruling Date: February 22, 2019; Ruling No. 2019-4866; Agency: George Mason University; Outcome: Access Denied.



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

ACCESS RULING

In the matter of George Mason University
Ruling Number 2019-4866
February 22, 2019

On February 7, 2019, 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. George Mason University (the “University”) 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 University has indicated that the grievant began her employment in a classified position on August 1, 2018. The University further states that the grievant was notified on December 6, 2018, that she would be terminated from employment on January 21, 2019. The grievant subsequently filed a dismissal grievance directly with EEDR to challenge her separation from employment. Upon receipt of a copy of the dismissal grievance, the University has informed EEDR that the grievant was terminated prior to the end of her probationary period and, thus, does 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.”¹ The grievant had not completed her twelve-month probationary period when she was terminated on January 21, 2019.² The General Assembly has provided that all *non-probationary* state employees may utilize the grievance

¹ DHRM Policy 1.45, *Probationary Period*.

² While the University appears to argue that the grievance is untimely because the grievant was notified of her termination on December 6, 2018, it was not effective until January 21, 2019. However, the University has not submitted any record to demonstrate that the grievant was so notified on this date. The letter submitted is dated December 20, 2018, and indicates that the grievant’s employment would be terminated on January 7, 2019. It is unclear what occurred to allow the grievant to remain employed through January 21. Nevertheless, a grievance filed within thirty calendar days of the effective date of the grievant’s termination would be considered timely. We need not address this issue further, however, because the grievant does not have access to utilize the state employee grievance procedure during her probationary period.

process, unless exempted by law.³ Employees who have not completed their probationary period do not have access to the grievance procedure.⁴ Accordingly, the grievant does not have access to the grievance procedure to initiate a grievance to challenge her termination.⁵ As a result, this dismissal grievance will not proceed to a hearing and EEDR will close its file.

EEDR's access rulings are final and nonappealable.⁶



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Director
Office of Equal Employment and Dispute Resolution

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

⁴ *E.g.*, EDR Ruling No. 2005-1032.

⁵ This ruling only determines that the grievant lacks access to the state employee grievance procedure, and has no bearing on whether other legal or equitable remedies may be available to her in another forum.

⁶ Va. Code § 2.2-1202.1(5).