

Issue: Access to the Grievance Procedure: Ruling Date: June 8, 2007; Ruling #2007-1705;
Agency: Department of Corrections. Outcome: Access Denied.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ACCESS RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling No. 2007-1705
June 8, 2007

The grievant has requested a ruling on whether she had access to the grievance procedure when she initiated her April 1, 2007 grievance. The Department of Corrections (DOC or the agency) claims that the grievant does not have access to the grievance procedure because she was a probationary employee when the grounds giving rise to her grievance arose. For the reasons set forth below, this Department concludes that the grievant did not have access to the grievance process when she initiated her grievance on April 1.

FACTS

The grievant began employment with the agency on July 10, 2006, as a rehabilitation counselor. On March 6, 2007, the grievant resigned in lieu of termination prior to the completion of the one-year probationary period.

DISCUSSION

Department of Human Resource Management (DHRM) Policy 1.45 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 Because the grievant’s employment with the agency began on July 10, 2006, the grievant had not finished her twelve-month probationary period when she resigned on March 6, 2007. The General Assembly has provided that all *non-probationary* state employees may utilize the grievance

¹ DHRM Policy 1.45, *Probationary Period*. This Department notes that DOC Procedure No. 5-8 regarding probationary periods appears inconsistent with the DHRM Policy. For example, with certain exceptions, the DOC procedure provides that new employees “shall serve a probationary period of six calendar months from the actual date of employment.” DOC Procedure No. 5-8.7. If the two policies are read in harmony, a new employee with DOC would appear to be required to serve a six-month probationary period under the DOC policy and the full twelve-month probationary period under state policy concurrently. Consequently, the DOC policy does not determine the grievant’s status in this case. Rather, the DHRM Policy controls and mandates a full twelve-month probationary period for new employees. To the extent the two policies are in conflict, the DHRM policy would control. See DHRM Policy 1.01, *Introduction* (“Agencies are authorized to develop Human Resource policies that do not conflict with state policies or procedures.”).

process, unless exempted by law.² Employees who have not completed their probationary period do not have access to the grievance procedure.³ Accordingly, the grievant did not have access to the grievance procedure to initiate the April 1, 2007 grievance.

APPEAL RIGHTS AND OTHER INFORMATION

For more information regarding actions that you may take as a result of this ruling, please refer to the enclosed sheet. If you wish to appeal the determination that you do not have access to the grievance procedure to circuit court, please notify your Human Resources Office, in writing, within five workdays of receipt of this ruling.

Claudia T. Farr
Director

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

³ *E.g.*, EDR Ruling No. 2005-1032.