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ACCESS RULING

In the matter of the Department of Social Services
Ruling Number 2024-5716
June 6, 2024

On or about May 23, 2024, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) received a dismissal grievance initiated by the grievant to challenge her separation from employment. The grievant filed this grievance under the state employee grievance procedure and argues that she was employed by the state Department of Social Services (“the agency”). In response, the agency challenges whether the grievant has access to the state employee grievance procedure to initiate this grievance.

By letter dated May 15, 2024, it appears that the Lee County Department of Social Services (the “County”) notified the grievant that her employment was terminated. The letter also noted that the grievant was in her probationary period of employment. On or about May 23, 2024, the grievant initiated a dismissal grievance with EDR, challenging her separation. The agency asserts that, because the grievant worked for a locality (the County), she does not have access to the state employee grievance procedure.

The General Assembly has provided that all non-probationary state employees may utilize the state employee grievance process, unless exempted by law.¹ Generally speaking, employees who are employed in positions designated as exempt from the Virginia Personnel Act (“VPA”) do not have access to the state employee grievance procedure.² Pursuant to Virginia Code § 2.2-2905, employees of localities (counties, cities, and towns) are exempt from the Act and, accordingly, also do not have access to the state employee grievance procedure.³

EDR is the finder of fact on questions of access.⁴ In this case, based on all the information provided by the parties, EDR finds that the grievant was employed by the County prior to her separation. Additionally, it appears that the grievant’s employment was terminated during her probationary period of employment. Even if the grievant were a state employee, only non-

¹ Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3.

² Va. Code §§ 2.2-2905, 2.2-3002.

³ Va. Code § 2.2-2905(12).

⁴ See Va. Code § 2.2-1202.1(5); see also *Grievance Procedure Manual* § 2.3.

probationary employees have access to the state grievance procedure.⁵ As such, both her status as a county employee and her termination during probation would be barriers to the grievant's access to the state employee grievance procedure. Accordingly, the grievant lacks access to the grievance procedure. The dismissal grievance filed by the grievant with EDR is unable to proceed and the file will be closed.⁶

EDR's access rulings are final and nonappealable.⁷

Christopher M. Grab
Director
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⁵ Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3; *see generally* DHRM Policy 1.45, *Probationary Period*.

⁶ This ruling only determines that the grievant lacks access to the state employee grievance procedure. It does not address, and has no bearing on, whether other legal or equitable remedies may be available to the grievant in another forum.

⁷ Va. Code § 2.2-1202.1(5).