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**IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

**No. A-1-CA-40908**

**CHELSEA BETHKE,**

Plaintiff-Appellant,

v.

**NEW MEXICO STATE UNIVERSITY,**

Defendant-Appellee.

**APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**  
**James T. Martin, District Court Judge**

Western Agriculture, Resource and Business Advocates, LLP  
A. Blair Dunn  
Jared R. Vander Dussen  
Albuquerque, NM

for Appellant

Kemp Smith LLP  
CaraLyn Banks  
Las Cruces, NM

for Appellee

**MEMORANDUM OPINION**

**DUFFY, Judge.**

{1} Plaintiff appealed following the dismissal of her complaint under the New Mexico Human Rights Act (NMHRA). We previously issued a notice of proposed summary disposition in which we proposed to affirm. Plaintiff has filed a memorandum in opposition. After due consideration, we remain unpersuaded. We therefore affirm.

{2} The relevant background information and principles have previously been set forth. We will avoid undue reiteration here and focus instead on the content of the memorandum in opposition.

{3} Plaintiff continues to assert that the district court erred in concluding that the exclusion set forth in NMSA 1978, Section 41-4A-3(D) (2021), operates as a bar to her claim. [DS 3-8; MIO 2-5] The district court's determination was premised upon the plain language of the statutory subsection, which provides, "Individuals employed by a public body shall be prohibited from using the New Mexico Civil Rights Act to pursue a claim arising from the individual's employment by the public body." *Id.* Insofar as Plaintiff's complaint clearly specifies that her claim arises from her employment with Defendant, [RP 1-4] and insofar as Defendant is indisputably a public body for purposes of the NMHRA, [CN 2-3] the district court's determination was well founded.

{4} In her memorandum in opposition Plaintiff continues assert that the exclusion set forth in Subsection (D) should not apply because she is *no longer* employed with Defendant. [MIO 2-5] To that end, Plaintiff reads the term "employed" in the present tense only, contending that it "cannot simultaneously mean currently employed and previously employed[.]" [MIO 3] However, contrary to Plaintiff's assertions, the term "employed" is grammatically consistent with both current and past tense usages (i.e., an individual *is employed* or *was employed*). We therefore reject Plaintiff's argument. See, e.g., *Flores v. Herrera*, 2015-NMCA-072, ¶¶ 15-19, 352 P.3d 695 (holding that a term compatible with both present and past tenses signified applicability with respect to both past and present employment status), *rev'd on other grounds*, 2016-NMSC-033, 384 P.3d 1070.

{5} Plaintiff further contends that the district court's reading of the statutory exclusion creates ambiguity. [MIO 2, 3] We disagree. The plain language makes clear that the statutory exclusion applies with respect to any individual "employed" by a public body, whose claim "aris[es] from the individual's employment by the public body." Section 41-4A-3(D). The fact that this provision is equally applicable to the claims of individuals currently and previously so employed does not render it ambiguous.

{6} In the final analysis, we conclude that adoption of Plaintiff's restrictive view of the exclusion set forth in Section 41-4A-3(D) would entail reading a limitation into the statutory language. This we decline to do. See, e.g., *Flores*, 2015-NMCA-072, ¶ 19 (declining a similar invitation to read a temporal limitation into a statutory provision). See *generally Reule Sun Corp. v. Valles*, 2010-NMSC-004, ¶ 15, 147 N.M. 512, 226 P.3d 611 ("Under the plain meaning rule, when a statute's language is clear and unambiguous, we will give effect to the language and refrain from further statutory interpretation. We will not read into a statute language which is not there, especially when it makes sense as it is written." (internal quotation marks and citation omitted)).

{7} Accordingly, for the reasons stated in our notice of proposed summary disposition and above, we affirm.

**{8} IT IS SO ORDERED.**

**MEGAN P. DUFFY, Judge**

**WE CONCUR:**

**JENNIFER L. ATTREP, Chief Judge**

**KATHERINE A. WRAY, Judge**