

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

Court of Appeals of New Mexico  
Filed 6/28/2023 11:26 AM

2 **CHELSEA BETHKE,**

3 Plaintiff-Appellant,



Mark Reynolds

4 v.

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

5 **NEW MEXICO STATE UNIVERSITY,**

6 Defendant-Appellee.

7 **APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**

8 **James T. Martin, District Court Judge**

9 Western Agriculture, Resource and Business Advocates, LLP

10 A. Blair Dunn

11 Jared R. Vander Dussen

12 Albuquerque, NM

13 for Appellant

14 Kemp Smith LLP

15 CaraLyn Banks

16 Las Cruces, NM

17 for Appellee

18 **MEMORANDUM OPINION**

19 **DUFFY, Judge.**

20 {1} Plaintiff appealed following the dismissal of her complaint under the New  
21 Mexico Human Rights Act (NMHRA). We previously issued a notice of proposed  
22 summary disposition in which we proposed to affirm. Plaintiff has filed a

1 memorandum in opposition. After due consideration, we remain unpersuaded. We  
2 therefore affirm.

3 {2} The relevant background information and principles have previously been set  
4 forth. We will avoid undue reiteration here and focus instead on the content of the  
5 memorandum in opposition.

6 {3} Plaintiff continues to assert that the district court erred in concluding that the  
7 exclusion set forth in NMSA 1978, Section 41-4A-3(D) (2021), operates as a bar to  
8 her claim. [DS 3-8; MIO 2-5] The district court’s determination was premised upon  
9 the plain language of the statutory subsection, which provides, “Individuals  
10 employed by a public body shall be prohibited from using the New Mexico Civil  
11 Rights Act to pursue a claim arising from the individual’s employment by the public  
12 body.” *Id.* Insofar as Plaintiff’s complaint clearly specifies that her claim arises from  
13 her employment with Defendant, [RP 1-4] and insofar as Defendant is indisputably  
14 a public body for purposes of the NMHRA, [CN 2-3] the district court’s  
15 determination was well founded.

16 {4} In her memorandum in opposition Plaintiff continues assert that the exclusion  
17 set forth in Subsection (D) should not apply because she is *no longer* employed with  
18 Defendant. [MIO 2-5] To that end, Plaintiff reads the term “employed” in the present  
19 tense only, contending that it “cannot simultaneously mean currently employed and  
20 previously employed[.]” [MIO 3] However, contrary to Plaintiff’s assertions, the

1 term “employed” is grammatically consistent with both current and past tense usages  
2 (i.e., an individual *is employed* or *was employed*). We therefore reject Plaintiff’s  
3 argument. *See, e.g., Flores v. Herrera*, 2015-NMCA-072, ¶¶ 15-19, 352 P.3d 695  
4 (holding that a term compatible with both present and past tenses signified  
5 applicability with respect to both past and present employment status), *rev’d on*  
6 *other grounds*, 2016-NMSC-033, 384 P.3d 1070.

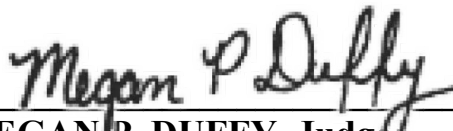
7 {5} Plaintiff further contends that the district court’s reading of the statutory  
8 exclusion creates ambiguity. [MIO 2, 3] We disagree. The plain language makes  
9 clear that the statutory exclusion applies with respect to any individual “employed”  
10 by a public body, whose claim “aris[es] from the individual’s employment by the  
11 public body.” Section 41-4A-3(D). The fact that this provision is equally applicable  
12 to the claims of individuals currently and previously so employed does not render it  
13 ambiguous.

14 {6} In the final analysis, we conclude that adoption of Plaintiff’s restrictive view  
15 of the exclusion set forth in Section 41-4A-3(D) would entail reading a limitation  
16 into the statutory language. This we decline to do. *See, e.g., Flores*, 2015-NMCA-  
17 072, ¶ 19 (declining a similar invitation to read a temporal limitation into a statutory  
18 provision). *See generally Reule Sun Corp. v. Valles*, 2010-NMSC-004, ¶ 15, 147  
19 N.M. 512, 226 P.3d 611 (“Under the plain meaning rule, when a statute’s language  
20 is clear and unambiguous, we will give effect to the language and refrain from further

1 statutory interpretation. We will not read into a statute language which is not there,  
2 especially when it makes sense as it is written.” (internal quotation marks and  
3 citation omitted)).

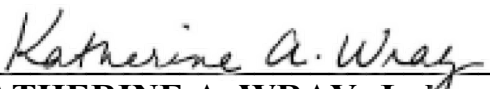
4 {7} Accordingly, for the reasons stated in our notice of proposed summary  
5 disposition and above, we affirm.

6 {8} **IT IS SO ORDERED.**

7   
8 \_\_\_\_\_  
MEGAN P. DUFFY, Judge

9 **WE CONCUR:**

10   
11 \_\_\_\_\_  
JENNIFER L. ATTREP, Chief Judge

12   
13 \_\_\_\_\_  
KATHERINE A. WRAY, Judge