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ACCESS RULING

In the matter of Old Dominion University
Ruling Number 2023-5554
May 17, 2023

On April 26, 2023, 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 at Old Dominion University (the “university” or “agency”). In response, the agency has challenged the grievance on grounds that the grievant lacks access to the state employee grievance procedure.

The grievant alleges that she worked for the university as a bus driver until March 2, 2023, her last day of work. Following that day, she was told she would be “taken off the schedule.” On April 25, 2023, the grievant mailed a Grievance Form A to EDR noting “wrongful termination” as one of the issues grieved. According to the university’s records, the grievant was an “hourly (wage)” employee, and her employment with the university had been terminated as of March 30, 2023. The university asserts that, as a wage employee, the grievant does not have access to the state employee grievance procedure.

The General Assembly has provided that all non-probationary state employees may utilize the grievance process, unless exempted by law.¹ One such exemption listed in the grievance statutes is for employees whose positions are more generally exempt from the Virginia Personnel Act (the “Act”).² Pursuant to section 2.2-2905 of the Code of Virginia, “employees compensated on an hourly or daily basis” are exempt from the Act and, therefore, from the grievance process.³ EDR is the finder of fact on questions of access.⁴ Because the university has presented evidence that the grievant was employed as a wage employee paid on an hourly basis, we conclude that she does not have access to the grievance procedure.⁵ As such, the dismissal grievance filed by the grievant with EDR is unable to proceed and the file will be closed.

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

² Va. Code § 2.2-3002; *see id.* §§ 2.2-2900 through 2905 (Virginia Personnel Act).

³ *Id.* § 2.2-2905(11); *Grievance Procedure Manual* § 2.3 (stating that wage employees do not have access to the grievance procedure); *see also* DHRM Policy 2.20, *Types of Employment* (stating that “[w]age employees are not eligible to use the state grievance procedure”).

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

⁵ The university also contends that the grievance was not timely initiated. EDR observes that the grievance is clearly challenging the grievant’s termination of employment, and the evidence is conflicting regarding the actual date of

EDR's access rulings are final and nonappealable.⁶

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termination. However, we ultimately need not reach the issue of timeliness because the grievant would not have access to the grievance procedure in any event. Moreover, 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.

⁶ Va. Code § 2.2-1202.1(5).