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**ACCESS RULING**

In the matter of the Department of Conservation and Recreation  
Ruling Number 2023-5561  
May 17, 2023

On May 1, 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 his separation from employment at the Department of Conservation and Recreation (the “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 he worked in a maintenance position at a state park until April 4, 2023. On May 1, 2023, the grievant submitted a dismissal grievance to EDR, seeking reinstatement and backpay among other relief. According to the agency’s records, the grievant was a wage employee paid by the hour. The agency 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.<sup>1</sup> One such exemption listed in the grievance statutes is for employees whose positions are more generally exempt from the Virginia Personnel Act (the “Act”).<sup>2</sup> 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.<sup>3</sup> EDR is the finder of fact on questions of access.<sup>4</sup> Because the agency has presented evidence that the grievant was employed as a wage employee paid on an hourly basis, we conclude that he does not have access to the grievance procedure.<sup>5</sup> As such, the dismissal grievance filed by the grievant with EDR is unable to proceed and the file will be closed.

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

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

<sup>3</sup> *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”).

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

<sup>5</sup> 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.

EDR's access rulings are final and nonappealable.<sup>6</sup>

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<sup>6</sup> Va. Code § 2.2-1202.1(5).