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ACCESS RULING

In the matter of the Department of Social Services
Ruling Number 2023-5575
June 29, 2023

On or about June 16, 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 the Department of Social Services (the “agency”).¹ 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 has served multiple positions within the agency, but most recently she was in a P-14 (wage) position. She claims that on May 30, 2023, she received a meeting request with her supervisor, at which she was informed that she was being terminated. In the grievance, the grievant states that she requested a transfer to another position that would meet her ADA accommodations, but claims that her supervisor never responded to this request. On or about June 16, 2023, the grievant submitted a dismissal grievance to EDR, seeking reinstatement with the agency “in a position that can meet the ADA accommodation requested by [her] physician.” In addition to the facts included in the grievance, the agency’s records indicate that the grievant was a wage employee. The agency asserts that, as a wage employee, the grievant does not have access 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.² One such exemption listed in the grievance statutes is for employees whose positions are more generally exempt from the Virginia Personnel Act (the “Act”).³ 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.⁴ EDR is the finder of fact on questions of access.⁵ Because the grievant stated in her grievance that

¹ It appears that while the grievant submitted a standard Grievance Form A, because her grievance was for her termination, both the agency and EDR have interpreted the grievance to be a dismissal grievance.

² Va. Code § 2.2-3001(A); *see Grievance Procedure Manual* § 2.3.

³ Va. Code § 2.2-3002; *see id.* §§ 2.2-2900 through 2905 (Virginia Personnel Act).

⁴ *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”).

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

she is a P-14 (wage) employee, and the agency has also presented evidence that the grievant was employed as a wage employee paid on an hourly basis, we conclude that the employee does not have access to the grievance procedure.⁶ As such, the dismissal grievance filed by the grievant with EDR is unable to proceed and the file will be closed.

EDR's rulings on access are final and nonappealable.⁷

Christopher M. Grab
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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).