



JANET L. LAWSON
DIRECTOR

COMMONWEALTH OF VIRGINIA
Department Of Human Resource Management
Office of Employment Dispute Resolution

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219

Tel: (804) 225-2131
(TTY) 711

ACCESS RULING

In the matter of the Department of Corrections
Ruling Number 2024-5596
August 7, 2023

On or about July 22, 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 Corrections (the “agency”). In response, the agency has challenged the grievance on grounds that the grievant lacks access to the state employee grievance procedure.

In her grievance, the grievant appears to challenge the separation of her employment on grounds of inconsistent discipline. In response, the agency has asserted that the grievant had been classified as a part-time wage employee and, as such, 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.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 agency has presented evidence that the grievant was employed as a wage employee paid on an hourly basis, and the grievant does not appear to dispute this classification, we conclude that the employee 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 grievant has presented for EDR’s consideration documents that dispute the agency’s stated basis for terminating her employment. This ruling determines only 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 to challenge her separation.

EDR's rulings on access are final and nonappealable.⁶

Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁶ Va. Code § 2.2-1202.1(5).