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ACCESS RULING

In the matter of the Department of Motor Vehicles
Ruling Number 2024-5607
August 30, 2023

On August 18, 2023, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) received a Grievance Form A in which the grievant appeared to challenge her separation from employment with the Department of Motor Vehicles (the “agency”). In response, the agency has asserted that the grievant was a wage employee and, thus, lacks access to the 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

In this case, the agency has presented sufficient evidence that the grievant was employed as a wage employee paid on an hourly basis. Therefore, 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.

EDR’s access rulings are final and nonappealable.⁶

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 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.

⁶ Va. Code § 2.2-1202.1(5).

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