

Issue: Access to the Grievance Procedure; Ruling Date: November 29, 2018; Ruling No. 2019-4817; Agency: Virginia Department of Transportation; Outcome: Access Denied.



**COMMONWEALTH of VIRGINIA**  
**Department of Human Resource Management**  
**Office of Equal Employment and Dispute Resolution**

**ACCESS RULING**

In the matter of the Virginia Department of Transportation  
Ruling Number 2019-4817  
November 29, 2018

On or about November 28, 2018, the Office of Equal Employment and Dispute Resolution (EEDR) at the Department of Human Resource Management (DHRM) received a Dismissal Grievance Form A from the grievant. The Virginia Department of Transportation (the agency) challenges the grievant's access to the grievance procedure. For the reasons set forth below, EEDR concludes that the grievant does not have access to the grievance process to initiate this grievance.

The grievant was employed as an administrative assistant with the agency on an hourly or "wage" basis. On October 29, 2018, the grievant was issued a memorandum terminating her employment with the agency. On November 28, 2018, EEDR received a Dismissal Grievance Form A, alleging that the grievant had been unfairly terminated. Upon receiving a copy of this grievance from EEDR, the agency confirmed that the grievant was a wage employee and argues that consequently, she does not have 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.<sup>1</sup> Pursuant to Virginia Code § 2.2-2905 (11), "employees compensated on an hourly or daily basis" are exempted from the Virginia Personnel Act (VPA). Under Va. Code § 2.2-3002(4), employees "in positions designated in § 2.2-2905 as exempt from the Virginia Personnel Act (§ 2.2-2900 et seq.)" do not have access to the grievance procedure. Because the grievant was employed as a wage (hourly) employee at the time she filed her grievance, she was exempt from the VPA and did not have access to the grievance procedure.<sup>2</sup> Accordingly, the dismissal grievance filed by the grievant with EEDR will be closed and will not proceed to a hearing.

EEDR's access rulings are final and nonappealable.<sup>3</sup>

A handwritten signature in black ink, appearing to read "Chris M. Grab", written over a horizontal line.

Christopher M. Grab  
Director  
Office of Equal Employment and Dispute Resolution

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

<sup>2</sup> See also Department of Human Resources Management (DHRM) Policy 2.20, stating that "[w]age employees are not eligible to use the state grievance procedure."

<sup>3</sup> Va. Code § 2.2-1202.1(5).