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ACCESS RULING

In the matter of the Virginia Department of Corrections
Ruling Number 2022-5365
February 9, 2022

On February 4, 2022, 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. The Virginia Department of Corrections (the “agency”) challenges whether the grievant has access to the state employee grievance procedure to initiate this grievance.

The available evidence indicates that the grievant was employed by the agency on an hourly or “wage” basis. He was terminated on or about January 5, 2022. The grievant filed a dismissal grievance directly with EDR on February 4, 2022, challenging his termination. Upon receipt of a copy of the dismissal grievance, the agency states that the grievant 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.¹ Pursuant to Section 2.2-2905(11) of the Code of Virginia, “employees compensated on an hourly or daily basis” are exempted from the Virginia Personnel Act (“VPA”). Under Section 2.2-3002(4) of the Code, employees “in positions designated in [Section] 2.2-2905 as exempt from the [VPA]” do not have access to the grievance procedure. Because the grievant was employed as a wage (hourly) employee, he was thus exempt from the VPA and does not have access to the grievance procedure.² Accordingly, this dismissal grievance will not proceed to a hearing and EDR will close its file.

EDR’s access rulings are final and nonappealable.³

Christopher M. Grab
Director
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¹ Va. Code § 2.2-3001(A); see *Grievance Procedure Manual* § 2.3.

² See also DHRM Policy 2.20, *Types of Employment* (stating that “[w]age employees are not eligible to use the state grievance procedure”).

³ Va. Code § 2.2-1202.1(5).