

Issue: Access to the Grievance Procedure; Ruling Date: March 8, 2019; Ruling No. 2019-4881; Agency: Virginia Employment Commission; 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 Employment Commission
Ruling Number 2019-4881
March 8, 2019

On March 1, 2019, 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 Employment Commission (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.

FACTS

The grievant was employed by the agency on an hourly or “wage” basis. She was terminated for unsatisfactory performance on February 22, 2019. The grievant subsequently filed a dismissal grievance directly with EEDR on March 1, 2019, challenging her separation from employment. Upon receipt of a copy of the dismissal grievance, the agency has confirmed to EEDR that the grievant was a wage employee and, consequently, argues that she does not have access to the grievance procedure.

DISCUSSION

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, she was thus exempt from the VPA and did not have access to the grievance procedure.² Accordingly, this dismissal grievance will not proceed to a hearing and EEDR will close its file. EEDR’s access rulings are final and nonappealable.³

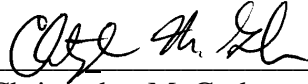
In addition, the Governor’s Executive Order Number 1 prohibits discrimination on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity or

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).

expression, age, political affiliation, or against otherwise qualified persons with disabilities. DHRM's Office of Equity, Diversity and Inclusion ("OEDI") handles complaints of discrimination and alleged violations of the Executive Order, including situations where an employee believes their termination was motivated by unlawful discrimination. The grievant should contact OEDI at (804) 225-2136 or 1-800-533-1414 if she has any questions about filing such a complaint of discrimination.



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