

Issue: Access to the Grievance Procedure; Ruling Date: August 8, 2014; Ruling No. 2015-3970; Agency: Department of Agriculture and Consumer Services; Outcome: Access Denied.



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

ACCESS RULING

In the matter of the Department of Agriculture and Consumer Services
Ruling Number 2015-3970
August 8, 2014

On August 6, 2014, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) received a Grievance Form A and a Dismissal Grievance Form A from the grievant. The Department of Agriculture and Consumer Services (the agency) challenges the grievant's access to the grievance procedure. For the reasons set forth below, EDR concludes that the grievant does not have access to the grievance process to initiate this grievance.

FACTS

The grievant was employed as an Administrative Specialist III with the agency, on an hourly or "wage" basis. It appears that the grievant's employment was terminated on or about July 23, 2014. On August 6, 2014, EDR received two grievances initiated by the grievant, both requesting, among other relief, "[r]eturn to Fulltime employment including benefits." Upon receiving a copy of these documents from EDR, the agency confirmed that the grievant was a wage employee and argues that consequently, she does not have access to the grievance procedure.

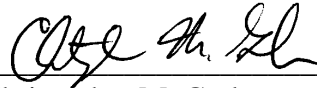
DISCUSSION

The General Assembly has provided that all non-probationary state employees may utilize the grievance process, unless exempted by law.¹ Pursuant to 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.² Accordingly, both grievances filed by the grievant with EDR will be closed and will not proceed to a hearing.

¹ Va. Code § 2.2-3001(A) and *Grievance Procedure Manual* § 2.3.

² 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."

EDR's rulings on access are final and nonappealable.³



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Office of Employment Dispute Resolution

³ Va. Code § 2.2-1202.1(5).