

Issue: Access to the Grievance Procedure; Ruling Date: August 14, 2014; Ruling No. 2015-3975; Agency: Department of Corrections; 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 Corrections  
Ruling Number 2015-3975  
August 14, 2014

On August 11, 2014, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) received a Dismissal Grievance Form A from the grievant. The Department of Corrections (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 a driver with the agency, on an hourly or "wage" basis. It appears that the grievant's employment was terminated on or about August 1, 2014. On August 11, 2014, EDR received a Dismissal Grievance Form A, alleging that the grievant had been wrongfully terminated and requesting reinstatement, in addition to other relief. Upon receiving a copy of this grievance 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

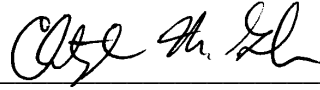
The General Assembly has provided that all non-probationary state employees may utilize the grievance process, unless exempted by law.<sup>1</sup> Pursuant to Virginia Code § 2.2-2905 (11), "employees compensated on an hourly or daily basis" are exempted from the Virginia Personnel Act (VPA). Under Va. 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 EDR will be closed and will not proceed to a hearing.

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<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."

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



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