



EMILY S. ELLIOTT  
DIRECTOR

**COMMONWEALTH OF VIRGINIA**  
*Department Of Human Resource Management*  
*Office of Employment Dispute Resolution*

James Monroe Building  
101 N. 14<sup>th</sup> Street, 12<sup>th</sup> Floor  
Richmond, Virginia 23219  
Tel: (804) 225-2151  
(TTY) 711

**ACCESS RULING**

In the matter of the Department of Taxation  
Ruling Number 2020-4999  
October 15, 2019

On October 9, 2019, the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”)<sup>1</sup> received a Dismissal Grievance Form A from the grievant. The Department of Taxation (the “agency”) challenges whether the grievant has access to the state employee grievance procedure to initiate this grievance.

The grievant was employed by the agency on an hourly or “wage” basis. She was terminated on September 30, 2019. The grievant filed a dismissal grievance directly with EDR on October 9, 2019, challenging her separation from employment. Upon receipt of a copy of the dismissal grievance, the agency has confirmed to EDR that the grievant was a wage employee and, consequently, argues that 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>2</sup> 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 does not have access to the grievance procedure.<sup>3</sup> Accordingly, this dismissal grievance will not proceed to a hearing and EDR will close its file.

---

<sup>1</sup> The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

<sup>2</sup> Va. Code § 2.2-3001(A); see *Grievance Procedure Manual* § 2.3.

<sup>3</sup> See also DHRM Policy 2.20, *Types of Employment* (stating that “[w]age employees are not eligible to use the state grievance procedure”).

EDR's access rulings are final and nonappealable.<sup>4</sup>



---

Christopher M. Grab  
Director  
Office of Employment Dispute Resolution

---

<sup>4</sup> Va. Code § 2.2-1202.1(5).