



JANET L. LAWSON  
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) 225-2131  
(TTY) 711

**ACCESS RULING**

In the matter of the Department of Behavioral Health and Developmental Services  
Ruling Number 2025-5743  
August 5, 2024

On or about July 25, 2024, 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 at the Department of Behavioral Health and Developmental Services (the “agency”). In response, the agency has challenged the grievance on grounds that the grievant lacks access to the state employee grievance procedure.

In his grievance, the grievant appears to challenge the separation of his employment with the agency. He asserts that he was hired as a wage employee on September 18, 2023, and then hired as a full-time agency employee on December 10, 2023. In response to the grievance, the agency has asserted that the grievant lacks access to the grievance procedure because he was in his probationary period.

DHRM Policy 1.45, *Probationary Period*, states that employees “who begin either original employment or re-employment in classified positions must serve 12-month probationary periods effective from the dates of their employment.”<sup>1</sup> The General Assembly has further provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.<sup>2</sup> One such exemption listed in the grievance statutes is for employees whose positions are more generally exempt from the Virginia Personnel Act (the “Act”).<sup>3</sup> Pursuant to section 2.2-2905 of the Code of Virginia, “employees compensated on an hourly or daily basis” are exempt from the Act and, therefore, from the grievance process.<sup>4</sup> Because there appears to be no dispute that the grievant was in his probationary period since December 10, 2023, and was a wage employee before

---

<sup>1</sup> DHRM Policy 1.45, *Probationary Period*, at 1.

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

<sup>3</sup> Va. Code § 2.2-3002; *see id.* §§ 2.2-2900 through 2905 (Virginia Personnel Act).

<sup>4</sup> *Id.* § 2.2-2905(11); *Grievance Procedure Manual* § 2.3 (stating that wage employees do not have access to the grievance procedure); *see also* DHRM Policy 2.20, *Types of Employment* (stating that “[w]age employees are not eligible to use the state grievance procedure”).

that, we conclude that the employee does not have access to the grievance procedure.<sup>5</sup> As such, the dismissal grievance filed with EDR is unable to proceed and the file will be closed.

EDR's rulings on access are final and nonappealable.<sup>6</sup>

*Christopher M. Grab*  
Director  
Office of Employment Dispute Resolution

---

<sup>5</sup> This ruling determines only that the grievant lacks access to the state employee grievance procedure. It does not address, and has no bearing on, whether other legal or equitable remedies may be available to the grievant in another forum to challenge his separation.

<sup>6</sup> Va. Code § 2.2-1202.1(5).