

# VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

## CHAPTER 393

*An Act to amend and reenact §§ 2.1-116.07:1, 2.1-116.08 and 17.1-405 of the Code of Virginia, relating to the Department of Employment Dispute Resolution; review of hearing decisions.*

[S 962]

Approved March 20, 2001

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.1-116.07:1, 2.1-116.08 and 17.1-405 of the Code of Virginia are amended and reenacted as follows:**

§ 2.1-116.07:1. Review of hearing decisions; costs.

A. In grievances initiated by state employees, the Director of the Department of Human Resource Management shall determine within sixty days of the decision whether the decision is consistent with policy. ~~In grievances arising out of the Department of Mental Health, Mental Retardation and Substance Abuse Services that challenge allegations of patient abuse, the Director of the Department of Employment Dispute Resolution shall determine within sixty days of the decision whether the decision is consistent with law.~~ The hearing officer's decision shall be effective from the date issued and shall be implemented immediately unless circumstances beyond the control of the agency delay such implementation.

B. Within thirty days of a final decision, a party may appeal on the grounds that the determination is contradictory to law by filing a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose. The agency shall request and receive prior approval of the Director before filing a notice of appeal. After a notice of appeal has been filed by either party, the agency shall then transmit a copy of the grievance record to the clerk of the court. The court, on motion of a party, shall issue a writ of certiorari requiring transmission of the record on or before a certain date. Within thirty days of receipt of the grievance record, the court, sitting without a jury, shall hear the appeal on the record. The court may affirm the decision or may reverse or modify the decision. The decision of the court shall be rendered no later than the fifteenth day from the date of the conclusion of the hearing. The circuit court hearing shall be at no cost to the Commonwealth or the grievant.

C. Either party may petition the circuit court having jurisdiction in the locality in which the grievance arose for an order requiring implementation of the final decision or recommendation of a hearing officer.

D. The court shall award reasonable attorneys' fees and costs to the employee if the employee substantially prevails on the merits of a case brought under subsection B or C.

§ 2.1-116.08. Certain employees of the Departments of Corrections and Juvenile Justice.

A. Employees of the Departments of Corrections and Juvenile Justice who work in institutions or juvenile correctional centers or have client, inmate, or resident contact and who are terminated on the grounds of client, inmate, or resident abuse, criminal conviction, or as a result of being placed on probation under the provisions of § 18.2-251, may appeal their termination only through the grievance resolution steps.

B. If no resolution is reached by the conclusion of the last grievance step, the employee may advance the grievance to the circuit court of the jurisdiction in which the grievance occurred for a de novo hearing on the merits. In its discretion, the court may refer the matter to a commissioner in chancery to take such evidence as may be proper and to make a report to the court. Both the grievant and the respondent may call upon appropriate witnesses and be represented by legal counsel or other representatives before the court or the commissioner in chancery. Such representatives may examine, cross-examine, question and present evidence on behalf of the grievant or respondent before the court or commissioner in chancery without being in violation of the provisions of § 54.1-3904.

C. A termination shall be upheld unless shown to have been unwarranted by the facts or contrary to law or policy. ~~The decision of the court shall be final and binding.~~

§ 17.1-405. Appellate jurisdiction - Administrative agency, Virginia Workers' Compensation Commission, and domestic relations appeals.

Any aggrieved party may appeal to the Court of Appeals from:

1. Any final decision of a circuit court on appeal from (i) a decision of an administrative agency, or
- (ii) a grievance hearing decision issued pursuant to § 2.1-116.07;
2. Any final decision of the Virginia Workers' Compensation Commission;
3. Any final judgment, order, or decree of a circuit court involving:
  - a. Affirmance or annulment of a marriage;
  - b. Divorce;
  - c. Custody;

- d. Spousal or child support;
  - e. The control or disposition of a child;
  - f. Any other domestic relations matter arising under Title 16.1 or Title 20; ~~or~~
  - g. Adoption under Chapter 10.2 (§ 63.1-219.7 et seq.) of Title 63.1; *or*
  - h. A final grievance hearing decision issued pursuant to subsection B of § 2.1-116.08.*
4. Any interlocutory decree or order entered in any of the cases listed in this section (i) granting, dissolving, or denying an injunction or (ii) adjudicating the principles of a cause.