

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 674

An Act to amend and reenact §§ 2.2-3000, 2.2-3003, and 2.2-3005 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 30 of Title 2.2 a section numbered 2.2-3005.1, relating to the state grievance procedure.

[S 201]

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3000, 2.2-3003, and 2.2-3005 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 30 of Title 2.2 a section numbered 2.2-3005.1 as follows:

§ 2.2-3000. Policy of the Commonwealth; responsibilities of state agencies under this chapter.

A. It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints. To that end, employees shall be able to discuss freely, and without retaliation, their concerns with their immediate supervisors and management. To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes that may arise between state agencies and those employees who have access to the procedure under § 2.2-3001.

B. To fully achieve the objectives of this chapter and to create uniformity, each agency in the executive branch of state government shall:

1. Require supervisory personnel to be trained in the grievance procedure, personnel policies, and conflict resolution;

2. Familiarize employees with their grievance rights and promote the services of the Department of Employment Dispute Resolution;

3. Cooperate with investigations conducted pursuant to the authority granted by clause (iii) of subdivision 4 of § 2.2-1001;

4. Participate in the mediation program; ~~and~~

5. Evaluate supervisors on the effectiveness of employee relations management, including, but not limited to, their handling of grievances; *and*

6. *Recognize the right of employees to fully participate in the grievance process without retaliation.*

C. The Department of Employment Dispute Resolution shall monitor agencies' activities under this section.

§ 2.2-3003. Grievance procedure generally.

A. As part of the Commonwealth's program of employee relations management, the Department of Employment Dispute Resolution shall develop a grievance procedure that includes not more than three successively higher grievance resolution steps and a formal hearing as provided in this chapter.

B. Prior to initiating a written grievance, the employee shall be encouraged to pursue an informal complaint with his immediate supervisor. The supervisor shall have authority to resolve the complaint if it involves actions within his control.

C. An employee may pursue a formal written grievance through the grievance resolution steps if the complaint has been presented to management within 30 calendar days of the employee's knowledge of the event that gave rise to the complaint. Employees' rights to pursue grievances shall not be used to harass or otherwise impede the efficient operations of government.

D. Upon receipt of a timely written complaint, management shall review the grievance and respond to the merits thereof. Each level of management review shall have the authority to provide the employee with a remedy, subject to the agency head's approval. At least one face-to-face meeting between the employee and management shall be required. The persons who may be present at this meeting are the employee, the appropriate manager, an individual selected by the employee, and an individual selected by the manager. Witnesses may be called by either party.

E. Absent just cause, all documents, as defined in the Rules of the Supreme Court of Virginia, relating to the actions grieved shall be made available, upon request from a party to the grievance, by the opposing party, *in a timely fashion. Upon such request a party shall have a duty to search its records to ensure that all such relevant documents are provided.* Documents pertaining to nonparties that are relevant to the grievance shall be produced in such a manner as to preserve the privacy of the individuals not personally involved in the grievance. A party shall not be required to create a document if the document does not exist.

F. All time limitations prescribed in the grievance procedure, including, but not limited to, submission of an initial complaint and employee appeal of management decisions, shall be reasonable, specific, and equally applicable to the agency and the employee. Expedited grievance procedures shall

be established for terminations, demotions, suspensions, and lost wages or salaries.

G. Within five workdays of the receipt of a written notice of noncompliance, failure of the employee or the agency to comply with a substantial procedural requirement of the grievance procedure without just cause may result in a decision against the noncomplying party on any qualified issue. Written notice of noncompliance by the agency shall be made to the agency head. The Director of the Department of Employment Dispute Resolution shall render all decisions related to procedural compliance, and such decisions shall contain the reasons for such decision and shall be final.

H. Grievances qualified pursuant to § 2.2-3004 that have not been resolved through the grievance resolution steps shall advance to a hearing that shall be the final step in the grievance procedure.

§ 2.2-3005. Hearing officers; duties.

A. Nothing in this chapter shall create, nor shall be construed to create, a property interest in selection or assignment to serve as a hearing officer for grievance hearings.

B. The Director of the Department of Employment Dispute Resolution shall assign a hearing officer to conduct the grievance hearing. All hearing officers shall be selected, on a rotating basis, (i) from the list of administrative hearing officers maintained by the Supreme Court of Virginia pursuant to § 2.2-4024 or (ii) from attorneys hired as classified employees by the Department through a competitive selection process. *Hearing officer fees shall be reasonable, in accordance with compensation guidelines developed by the Department of Employment Dispute Resolution.* In addition to the training requirements imposed by the Supreme Court, each hearing officer shall meet the criteria established by the Director pursuant to subdivision 6 of § 2.2-1001 and attend annually at least one day of training in employment law or state personnel policies and organizations. The training shall be conducted by the Department of Employment Dispute Resolution or an organization approved by the Virginia State Bar for continuing legal education.

C. Hearing officers shall have the following powers and duties:

1. Hold conferences for the settlement or simplification of issues;
2. Dispose of procedural requests;
3. Issue orders requiring testimony or the production of evidence;
4. Administer oaths and affirmations;

5. Receive probative evidence; exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs, rebuttals, or cross-examinations; rule upon offers of proof; and oversee a verbatim recording of the evidence;

6. ~~For those issues qualified for a hearing, order appropriate remedies. Relief may include reinstatement, back pay, full reinstatement of fringe benefits and seniority rights, or any combination of these remedies. Receive and consider evidence in mitigation or aggravation of any offense charged by an agency in accordance with rules established by the Department of Employment Dispute Resolution pursuant to § 2.2-1001; and~~

7. Take other actions as necessary or specified in the grievance procedure.

~~D. The decision of the hearing officer shall (i) be in writing, (ii) contain findings of fact as to the material issues in the case and the basis for those findings, and (iii) be final and binding if consistent with law and policy.~~

~~E. Except for the employee's counsel or advocate fees, the agency from which the grievance arises shall bear the costs for the hearing officer and other associated hearing expenses.~~

§ 2.2-3005.1. *Scope of hearing officer's decision; agency cooperation; cost of hearing; decision of hearing officer.*

A. *For those issues qualified for a hearing, the hearing officer may order appropriate remedies. Relief may include (i) reinstatement, (ii) back pay, (iii) full reinstatement of fringe benefits and seniority rights, (iv) mitigation or reduction of the agency disciplinary action, or (v) any combination of these remedies. In grievances challenging discharge, if the hearing officer finds that the employee has substantially prevailed on the merits of the grievance, the employee shall be entitled to recover reasonable attorneys' fees, unless special circumstances would make an award unjust. All awards of relief, including attorneys' fees, by a hearing officer must be in accordance with rules established by the Department of Employment Dispute Resolution.*

B. *The agency from which the grievance arises shall bear the costs for the hearing officer and other associated hearing expenses including the grievant's attorneys' fees that the hearing officer may award.*

C. *The decision of the hearing officer shall (i) be in writing, (ii) contain findings of fact as to the material issues in the case and the basis for those findings, including any award of reasonable attorneys' fees pursuant to this section, and (iii) be final and binding if consistent with law and policy.*

D. *The provisions of this section relating to the award of attorneys' fees shall not apply to any local government or agency thereof that is otherwise subject to the grievance procedure set forth in this chapter.*