

# VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

## CHAPTER 263

*An Act to amend and reenact §§ 2.1-116.03 and 2.1-116.07 of the Code of Virginia, relating to the Department of Employee Relations Counselors; state grievance procedure.*

[H 1082]

Approved April 7, 1998

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

**1. That §§ 2.1-116.03 and 2.1-116.07 of the Code of Virginia are amended and reenacted as follows:**

§ 2.1-116.03. Director to administer Department; powers and duties.

The Director shall, under the direction and control of the Governor, administer and supervise the Department and shall:

1. Establish a comprehensive program of employee relations management which includes alternative processes for resolving employment disputes;

2. Establish the grievance procedure and a statewide mediation program;

3. Promulgate rules *and set hearing officer fees* for ~~conducting~~ grievance hearings;

4. For employees who are covered by the grievance procedure, (i) provide forms necessary for the proper use of the grievance procedure, (ii) direct full compliance with the grievance procedure process, (iii) investigate allegations of retaliation as the result of use of or participation in the grievance procedure or of reporting, in good faith, an allegation of fraud, waste or abuse to the State Employee Fraud, Waste and Abuse Hotline and advise the agency head of such findings, and (iv) rule on the qualification of a grievance or the question of access to the grievance procedure;

5. Render final decisions on all matters related to procedural compliance with the grievance procedure;

6. ~~In conjunction with the Office of the Executive Secretary of the Supreme Court,~~ Establish a process to select, *on a rotating basis, hearing officers from the list maintained by the Executive Secretary of the Supreme Court;* train, and ~~evaluate individuals to serve as hearing officers and~~ assign such hearing officers to conduct grievance hearings; *and evaluate the quality of their services to determine eligibility for continued selection;*

7. Establish, in conjunction with the Department of Personnel and Training, a training program for human resources personnel on employee relations management and employment rights and responsibilities;

8. Implement a comprehensive training and instructional program for all supervisory personnel which includes the role of the grievance procedure in harmonious employee relations management. The training program shall also include methods for supervisors to instruct nonsupervisory personnel in the use of the grievance procedure. Use of the grievance procedure to resolve disputes shall be encouraged. In-house resources shall be developed to allow the Department and its personnel to conduct on-site training of this nature for units and agencies of state government throughout Virginia. The Department shall assist agencies in establishing performance criteria for such supervisory personnel;

9. Provide information upon the request of any employee concerning personnel policies, rules and regulations, and statutes applicable to the grievance procedure and counsel employees in the resolution of conflict in the workplace;

10. Establish and maintain a toll-free telephone number to facilitate access by employees to the services of the Department;

11. Collect information and statistical data in regard to the use of the grievance procedure and the effectiveness of employee relations management in the various state agencies;

12. Make recommendations to the Governor and the General Assembly to improve the grievance procedure and employee relations management;

13. Exercise such other powers and perform such other duties as may be requested by the Governor; and

14. Perform all acts and employ such personnel as may be required, necessary, or convenient to carry out the provisions of this chapter.

§ 2.1-116.07. Hearing officers; duties; decisions; costs.

A. The Director shall assign a hearing officer to conduct the grievance hearing. All hearing officers shall be selected, *on a rotating basis*, from the list of administrative hearing officers maintained by the Supreme Court of Virginia pursuant to § 9-6.14:14.1. In addition to the training requirements imposed by the Supreme Court, each hearing officer shall attend annually at least one day of training in employment law or state personnel policies and organizations. Such training shall be conducted by the Department or an organization approved by the Virginia State Bar for continuing legal education.

B. 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 an accurate verbatim recording of the evidence;
6. *For those issues qualified for a hearing, order appropriate remedies, including. Relief may include reinstatement, back pay, full reinstatement of fringe benefits and seniority rights, or any combination of these remedies; and*
7. Take other actions as necessary or specified in the grievance procedure.

C. The decision of the hearing officer shall (i) be in writing, (ii) contain findings of fact as to the material issues in a *the* case and the basis for those findings, and (iii) be final and binding if consistent with law and policy. In grievances initiated by state employees, the Director of the Department of Personnel and Training shall determine whether the decision is consistent with policy. The hearing officer's decision is effective from the date issued and shall be implemented immediately unless circumstances beyond the control of the agency delay such implementation.

D. Either party may petition the circuit court having jurisdiction in the locality in which the employee is employed for an order requiring implementation of the hearing officer's decision. The court may award attorneys' fees to either party.

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.