

Issue: Qualification – Benefits/Leave (Holiday); Ruling Date: May 8, 2017; Ruling No. 2017-4536; Agency: Virginia Community College System; Outcome: Not Qualified.



**COMMONWEALTH of VIRGINIA**  
**Department of Human Resource Management**  
**Office of Employment Dispute Resolution<sup>1</sup>**

**QUALIFICATION RULING**

In the matter of the Virginia Community College System  
Ruling Number 2017-4536  
May 8, 2017

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) of the Department of Human Resource Management (“DHRM”) on whether his March 27, 2017 grievance with the Virginia Community College System (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance is not qualified for a hearing.

FACTS

The grievant was employed by the agency as a Program Manager. After providing notice to the agency that he intended to resign from his position, the grievant inquired as to whether he would “be compensated for being required to work” on three state holidays that are observed in January 2017. He does not argue that he received no compensation for those days. The grievant instead appears to assert that he should receive additional compensation because those days were designated as state holidays. The agency informed the grievant that he would not receive additional compensation for working on those days because it uses an alternate holiday schedule, such that that the three holidays in question will be observed by the agency in December 2017. The grievant filed a grievance on March 27, 2017, alleging an “unfair application or misapplication of state policies . . . by requiring an employee to work on a designated state holiday and deferring compensation until the final month of the calendar year.” After proceeding through the management resolution steps, the grievance was not qualified for a hearing by the agency head. The grievant now appeals that decision to EDR.

DISCUSSION

Although state employees with access to the grievance procedure may generally grieve anything related to their employment, only certain grievances qualify for a hearing.<sup>2</sup> Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>3</sup> Claims relating solely to the

---

<sup>1</sup> Effective January 1, 2017, the Office of Employment Dispute Resolution merged with another office area within the Department of Human Resource Management, the Office of Equal Employment Services. Because full updates have not yet been made to the *Grievance Procedure Manual*, this office will be referred to as “EDR” in this ruling to alleviate any confusion. EDR’s role with regard to the grievance procedure remains the same post-merger.

<sup>2</sup> See *Grievance Procedure Manual* §§ 4.1 (a), (b).

<sup>3</sup> See Va. Code § 2.2-3004(B).

establishment and revision of salaries, wages, and general benefits generally do not qualify for a hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced management's decision, or whether state or agency policy may have been misapplied or unfairly applied.<sup>4</sup> The grievant has not alleged discrimination, retaliation, or discipline. Therefore, the grievant's claims could only qualify for hearing based upon a theory that the agency has misapplied or unfairly applied policy.

For an allegation of misapplication of policy or unfair application of policy to qualify for a hearing, there must be facts that raise a sufficient question as to whether management violated a mandatory policy provision, or whether the challenged action, in its totality, was so unfair as to amount to a disregard of the intent of the applicable policy. Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."<sup>5</sup> Thus, typically, a threshold question is whether the grievant has suffered an adverse employment action. An adverse employment action is defined as a "tangible employment action constitut[ing] a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits."<sup>6</sup> Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.<sup>7</sup> For purposes of this ruling only, EDR will assume that the grievant has alleged an adverse employment action because he has raised issues with his compensation in relation to the agency's observation of state holidays.

In the grievance, the grievant broadly disputes the agency's practice of observing certain holidays on an alternate schedule. He alleges that the alternate holiday schedule "does not define when an employee would be eligible for compensation for working the actual holiday(s)" and questions whether the agency is required to operate on certain holidays such that an alternate holiday schedule is justified. In addition, the grievant argues that he did not receive notice of the alternate holiday schedule, either when he was initially hired by the agency or during the course of his employment.

DHRM Policy 4.25, *Holidays*, lists "12 designated paid holidays" defined in the Code of Virginia that are observed by executive branch agencies.<sup>8</sup> The policy further provides that "[a]gencies required to remain open during holidays may establish alternate schedules that must provide the same number of holidays . . . ."<sup>9</sup> In 2017, the agency has operated or will operate on five designated paid holidays. It has adopted an alternate holiday schedule for the year, under which those five holidays will be observed in November and December. In other words, the three holidays for which the grievant requested holiday pay were not observed on the dates they occurred; they will be instead observed by the agency in November and December. The agency

---

<sup>4</sup> *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

<sup>5</sup> *See Grievance Procedure Manual* § 4.1(b).

<sup>6</sup> *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

<sup>7</sup> *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

<sup>8</sup> DHRM Policy 4.25, *Holidays*; *see* Va. Code § 2.2-3300.

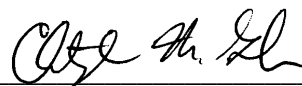
<sup>9</sup> DHRM Policy 4.25, *Holidays*.

provided a memorandum to all staff in the grievant's work unit explaining the alternate holiday schedule for 2017, which specifically stated that "[e]mployees who resign or transfer before" the holidays are observed "will not be paid for any of the holidays that have been worked."<sup>10</sup>

Based on EDR's review of the information provided by the parties, both the agency's general practice and its specific actions in this case appear to be consistent with the provisions of DHRM Policy 4.25, *Holidays*. In March 2017, the grievant notified the agency of his intent to resign in April 2017. Because the grievant will not be employed by the agency in November and December 2017, he is not eligible to receive additional compensation for the holidays in January on which he worked, because they will not be observed by the agency until November and December 2017. The grievant has not presented any specific information to suggest that the agency lacks a business need for establishing an alternate holiday schedule, that the agency's alternate holiday schedule is contrary to the provisions of DHRM Policy 4.25, *Holidays*, or that other employees have been treated differently than the grievant with respect to the alternate holiday schedule.

Agency management has significant discretion in the administration of its policies and standard facility operating procedures.<sup>11</sup> Indeed, state policy clearly grants management the discretionary right to create an alternate holiday schedule when necessary to agency operations. EDR cannot second-guess management's decisions regarding the administration of such procedures absent evidence that the agency's actions are plainly inconsistent with other similar decisions within the agency or otherwise arbitrary or capricious.<sup>12</sup> In this case, the grievant has not presented evidence to show that the agency's action was either inconsistent with other decisions or was otherwise arbitrary or capricious. For these reasons, EDR conclude that the grievant has not raised a question as to whether the agency violated a mandatory policy provision, or that it misapplied or unfairly applied policy by implementing an alternate holiday schedule. Accordingly, the grievance does not qualify for a hearing on this basis.

EDR's qualification rulings are final and nonappealable.<sup>13</sup>



Christopher M. Grab  
Director  
Office of Employment Dispute Resolution

---

<sup>10</sup> Though it has no direct impact on EDR's analysis of the specific issues in this case, the agency has noted that the grievant was hired by the agency in March 2016, after the three state holidays in question had been officially observed that year, but was compensated when those holidays were observed by the agency pursuant to its alternate holiday schedule in December 2016. In other words, it appears the agency has consistently compensated employees for those holidays when they are observed under the alternate holiday schedule in the past.

<sup>11</sup> See, e.g., EDR Ruling No. 2011-2903.

<sup>12</sup> See, e.g., EDR Ruling No. 2009-2090.

<sup>13</sup> Va. Code § 2.2-1202.1(5).