



JANET L. LAWSON
DIRECTOR

COMMONWEALTH OF VIRGINIA
Department Of Human Resource Management
Office of Employment Dispute Resolution

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219
Tel: (804) 225-2131
(TTY) 711

COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2024-5640
December 19, 2023

The grievant seeks a compliance ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) concerning her grievance with the Department of Corrections (the “agency”), dated October 23, 2023. The agency administratively closed the grievance on grounds that it was not timely initiated. The grievant asks EDR to permit her grievance to proceed.

FACTS

On September 8, 2023, the grievant emailed the warden at her facility to request a meeting to discuss an incident that had occurred that day. According to the grievant, her spouse had called the facility at approximately noon attempting to reach the grievant and inform her of a “family emergency,” but the message was not relayed to her. The grievant sent a written complaint to the warden at her facility that day. It appears that the grievant then took a leave of absence from September 20 to October 20, 2023. On October 23, 2023, the grievant initiated a grievance with the agency, citing the incident of September 8 and her management’s alleged failure to address it. The agency administratively closed the grievance, on grounds that it was not timely. The grievant now appeals the agency’s administrative closure to EDR.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date she knew or should have known of the event or action that is the basis of the grievance.¹ When an employee initiates a grievance beyond the 30-calendar-day period, the grievance is not in compliance with the grievance procedure and may be administratively closed. Failure to initiate a grievance timely “will be excused only in extraordinary cases where just cause is found.”² The grievance procedure defines just cause as “[a] reason sufficiently compelling to excuse not taking a required action in the grievance process.”³

¹ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

² *Grievance Procedure Manual* § 2.2.

³ *Id.* § 9.

In this case, the Grievance Form A reflects that the event that prompted the grievant to file her grievance was the incident that occurred on September 8, 2023. It appears that the grievant had sought to address this issue with management but did not receive a response that satisfied her. Therefore, she filed a grievance, after returning from a medical leave of absence, on October 23, 2023.⁴ Accordingly, the grievance is not timely and may only be accepted for just cause.

Although EDR invited the grievant to provide any information that may show just cause for a late filing, the grievant has asserted only that she was on medical leave when the 30-calendar-day period would have expired. Under the grievance procedure, “[a]n employee’s time on extended sick or disability leave will not automatically extend the time period for filing a grievance.”⁵ Instead, the grievant has the burden to demonstrate, with some specificity, circumstances that would have reasonably presented an obstacle to timely filing. Here, the grievant has not provided information to EDR beyond a general assertion that she was on an extended leave from work between September 20 and October 20. EDR has no other information to suggest that she was not reasonably able to submit a timely Grievance Form A during this time. Because the grievance appears to be untimely and no just cause for untimely filing has been provided, the grievance will remain administratively closed.

That said, EDR notes that, even if untimely, the grievant has nevertheless put management on notice of potential violations of DHRM Policy 2.35, *Civility in the Workplace*. That policy and its associated guidance make clear that agencies must not tolerate workplace conduct that is disrespectful, demeaning, disparaging, denigrating, humiliating, dishonest, insensitive, rude, unprofessional, or unwelcome. Withholding an urgent message from a coworker’s family member could fall within the scope of prohibited conduct, as would pursuing corrective action for an improper motive such as retaliation. Because the Grievance Form A has made management aware of these allegations, the closure of this grievance on procedural grounds does not negate the agency’s affirmative obligations under Policy 2.35 to investigate credible allegations of prohibited conduct and address any policy violations sustained by such investigation. Therefore, EDR encourages the agency, to the extent it has not done so already, to address the grievant’s complaint as appropriate and take any remedial actions necessary, consistent with DHRM Policy 2.35.

EDR’s rulings on matters of compliance are final and nonappealable.⁶

Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁴ The Grievance Form A further alleges that after the grievant filed her complaint on September 8, 2023, “in response, [she] received a write-up” that was baseless and retaliatory. No further information about the alleged “write-up” or its timing has been provided. However, even if EDR considered this management action to be an independent issue fairly challenged by the grievance, it would not be timely grieved if it occurred before the grievant went out on leave as of September 20, 2023, as the grievance narrative suggests.

⁵ *Id.* § 2.2.

⁶ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).