



EMILY S. ELLIOTT  
DIRECTOR

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

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

**COMPLIANCE RULING**

In the matter of the Department of Juvenile Justice  
Ruling Number 2019-4904  
April 18, 2019

The grievant seeks a compliance ruling from the Office of Employment Dispute Resolution (“EDR”)<sup>1</sup> at the Department of Human Resource Management on whether his March 29, 2019 grievance with the Department of Juvenile Justice (“the agency”) was timely initiated. The agency asserts that the grievant did not initiate his grievance within the 30 calendar-day time period required by the grievance procedure. For the reasons set forth below, this grievance is untimely and will be administratively closed.

On March 29, 2019,<sup>2</sup> the grievant submitted his grievance alleging that he has been subjected to “[h]ostile work environment, bullying, intimidation, harassment and possible retaliation.” The grievant states that, on January 9, 2019, he was instructed to move his vehicle from where it was parked at his work location. The grievant allegedly parked in a space reserved for state vehicles even though he does not drive a state vehicle. During a discussion that day, the grievant states he informed the Operations Manager that he had been instructed to use the particular parking lot as overflow for handicapped parking (the grievant has a handicapped parking tag). The grievant alleges that the Operations Manager said, “[Y]ou are the most unhandicapped person on this campus.” The grievant attempted to move his vehicle as instructed, but discovered that he was blocked in the parking space by a state van. The grievant states he was later told that the Operations Manager instructed another employee to park the state van in that manner, blocking in the grievant’s personal vehicle.

The grievance procedure provides that an employee must initiate a written grievance within thirty calendar days of the date he knew or should have known of the event or action that is the basis of the grievance.<sup>3</sup> In addition, a claim of hostile work environment, bullying, retaliation, or other similar workplace conduct that is ongoing is raised in a timely manner if

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<sup>1</sup> The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

<sup>2</sup> The grievant signed and dated the grievance on January 14, 2019. However, it appears that the grievance was not submitted until March 29, 2019.

<sup>3</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

some agency action alleged to be part of the hostile work environment occurred within the thirty calendar days preceding the initiation of the grievance.<sup>4</sup> When an employee initiates a grievance beyond the thirty calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed.

The only incident cited in the grievance occurred on January 9, 2019. When asked if there have been any other events involving the Operations Manager since that time, the grievant indicated there had been none. Therefore, the grievant should have initiated his grievance within 30 calendar days of January 9, 2019, i.e., no later than February 8, 2019. The grievant did not initiate the grievance until March 29, 2019, which would appear to make his filing untimely, absent considerations of just cause.

Here, the grievant presents no reason that would constitute just cause for his untimely filing. For example, the grievant states that an agency manager told him he had 90 days to submit a grievance. However, he also states that another person told him to submit the grievance “as quick as possible.” EDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.<sup>5</sup> A grievant’s lack of knowledge about the grievance procedure and its requirements does not constitute just cause for failure to act in a timely manner. The evidence here is insufficient for EDR to find that the agency, or one of its representatives, provided inaccurate information to the grievant such that his delayed filing should be excused. The grievant has also provided some indication that he was dealing with the death and funeral arrangements for a close friend at the time. While EDR is sympathetic to the grievant’s situation, these events do not demonstrate that the grievant was prevented from filing the grievance within the 30 calendar-day timeframe. Thus, we find that the grievant has failed to demonstrate just cause for his delay.

For these reasons, EDR concludes that the grievance was not timely initiated and that there was no just cause for the delay. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. However, to the extent it has not already done so, the agency should make note of the events that are listed in this grievance and look into them as appropriate. If true, the conduct by the Operations Manager as alleged by the grievant demonstrates behavior that could be inconsistent with the *Standards of Conduct* policy<sup>6</sup> and, potentially, the *Civility in the Workplace* policy.<sup>7</sup> It is not clear what the justification could have been for blocking an employee’s personal vehicle for the entirety of a workday. Further, the comment allegedly made by the Operations Manager to the grievant about his disability status is concerning if it was indeed made. Pursuant to the terms of the *Civility in the Workplace* policy, the agency is to establish an internal complaint procedure and assign responsibilities for the investigation and communication of findings.<sup>8</sup> Accordingly, it is

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<sup>4</sup> See Nat’l R.R. Pass. Corp. v. Morgan, 536 U.S. 101, 115-18 (2002) (holding the same in a Title VII hostile work environment harassment case); see also Guessous v. Fairview Prop. Invs., LLC, 828 F.3d 208, 221-24 (4th Cir. 2016).

<sup>5</sup> See, e.g., EDR Ruling Nos. 2006-1349, 2006-1350; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

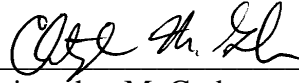
<sup>6</sup> DHRM Policy 1.60, *Standards of Conduct*.

<sup>7</sup> DHRM Policy 2.35, *Civility in the Workplace*.

<sup>8</sup> *Id.*

recommended that the agency investigate the grievant's allegations and take any appropriate action.<sup>9</sup>

EDR's rulings on matters of compliance are final and nonappealable.<sup>10</sup>



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Christopher M. Grab  
Director  
Office of Employment Dispute Resolution

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<sup>9</sup> The grievant indicates that he has already attempted to raise an issue with the facility's human resources office under the *Civility in the Workplace* policy, but has not received a response.

<sup>10</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).