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**COMPLIANCE RULING**

In the matter of the Department of Corrections  
Ruling Number 2019-4929  
May 22, 2019

The Department of Corrections (the “agency”) seeks a compliance ruling from the Office of Employment Dispute Resolution (“EDR”)<sup>1</sup> at the Department of Human Resource Management on whether the grievant timely initiated his dismissal grievance. 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 28, 2019, the agency issued to the grievant a Group III Written Notice and a Group II Written Notice for incidents occurring on February 18, 2019. The grievant’s employment was terminated as a result. On May 2, 2019, the grievant submitted his dismissal grievance by email to EDR, listing March 28, 2019 as the date of dismissal. The grievance alleges that the grievant was dismissed based on unfair application of multiple agency policies, at least partially motivated by race discrimination. Although the grievance form itself is neither signed nor dated, the grievant detailed his allegations in a signed letter attachment dated April 25, 2019. Although the grievant states he had sent the grievance on that date (April 25) by U.S. mail, he has not provided either the agency or EDR with any verification of a mailing date earlier than May 2, 2019.

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he knew or should have known of the event or action that is the basis of the grievance.<sup>2</sup> In addition, an employee timely raises a claim of hostile work environment, bullying, retaliation, or other similar ongoing workplace conduct if some agency action alleged to be part of the hostile work environment occurred within the 30 calendar days preceding the initiation of the grievance.<sup>3</sup> When an employee initiates a grievance beyond the

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

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

30-calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed. Because a grievant bears the burden to prove the date on which he initiated the grievance, “employees are strongly encouraged to document the initiation date, for instance, by using certified mail” or other evidence of postmarking or electronic mailing.<sup>4</sup> EDR has long held that it is incumbent upon each employee to become aware of his responsibilities under the grievance procedure.<sup>5</sup>

The grievant received notice of his employment termination on March 28, 2019. Therefore, he was required to initiate his dismissal grievance no later than April 29, 2019 – the next business day after the end of the 30-calendar-day period following notice of his dismissal. However, the grievant has not offered evidence to demonstrate that he initiated his grievance earlier than May 2, 2019. While the grievance alleges racially discriminatory attitudes of other agency employees, the grievant does not identify any discriminatory, retaliatory, or other harassing conduct occurring within the 30 days preceding May 2, 2019. Finally, he has not presented evidence of just cause for the late filing.

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. Nevertheless, to the extent it has not already done so, the agency should note the grievant’s allegations of unfair and/or racially discriminatory conduct and investigate as appropriate.<sup>6</sup>

EDR’s qualification rulings are final and nonappealable.<sup>7</sup>



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<sup>4</sup> *Grievance Procedure Manual* § 2.2. “[F]or purposes of establishing when a mailed grievance was initiated, the postmark date is considered the initiation date.” *Id.*

<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> There may be other complaint processes available to the grievant to raise his discrimination claim such as, for example, a formal complaint of discrimination filed with DHRM’s Office of Equity, Diversity, and Inclusion.

<sup>7</sup> *See* Va. Code § 2.2-1202.1(5).