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**COMPLIANCE RULING**

In the matter of the Virginia Department of Transportation  
Ruling Number 2022-5364  
February 9, 2022

The Virginia Department of Transportation (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) in relation to the grievant’s February 1, 2022 dismissal grievance.

FACTS

On January 26, 2022, the agency issued to the grievant two Written Notices of disciplinary action (a Group II Written Notice and a Group III Written Notice). The Group II Written Notice indicates that the agency terminated the grievant due to her accumulation of disciplinary action.

The grievant submitted a dismissal grievance directly to EDR on February 1, 2022. She attached to her dismissal grievance copies of the two January 26, 2022 Written Notices, as well as an August 17, 2020 Group I Written Notice and a January 22, 2019 Performance Counseling Memo, among other documents. On the grievance form, the grievant describes a number of issues with her employment; in particular, she alleges that management made false and discriminatory comments on her performance evaluation and that she was terminated for “telling the truth about the happenings in” her office. The grievant’s requested relief includes “reinstatement with the ability to work remotely.”

In response to EDR’s notification of receipt of the grievance, the agency acknowledges that the January 26, 2022 Written Notices have been timely grieved. However, the agency argues that the dismissal grievance is untimely to challenge the August 17, 2020 Group I Written Notice, the January 22, 2019 Performance Counseling Memo, and the grievant’s performance evaluation, to the extent the grievant is attempting to raise those matters in her grievance. The agency further notes that the grievant’s allegations of discrimination and retaliation appear to primarily concern “the events and circumstances underlying” the August 2020 Group I Written Notice, and thus “objects to consideration by the hearing officer of the merits of” those claims because they do not relate to the January 2022 Written Notices.

*An Equal Opportunity Employer*

## DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date they knew or should have known of the event or action that is the basis of the grievance.<sup>1</sup> When an employee initiates a grievance beyond the 30-calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed. EDR has long held that in a grievance challenging a disciplinary action, the 30-calendar-day timeframe begins on the date that management presents or delivers the Written Notice to the employee.<sup>2</sup> Further, the *Grievance Procedure Manual* states that “[a]n employee who wishes to appeal a disciplinary action must file a grievance within 30 calendar days of *receipt* of the Written Notice.”<sup>3</sup>

Here, the grievant initiated her dismissal grievance on February 1, 2022, well beyond 30 calendar days after she received the August 2020 Group I Written Notice, the January 2019 Performance Counseling Memo, and her performance evaluation, which appears to have been acknowledged on December 14, 2021. Consequently, the agency is correct that the dismissal grievance is not timely to challenge the merits of those management actions, and thus they are outside the hearing officer’s authority to award relief.

As to the agency’s position that the grievant’s allegations of discrimination and retaliation are also untimely because they are related to these untimely-challenged management actions, we respectfully disagree. Some of the facts relating to the untimely management actions described above, including the grievant’s apparent allegations of discrimination and retaliation, may be relevant to her arguments concerning the January 2022 Written Notices and accompanying termination. If the hearing officer finds that this is the case, both parties may present evidence about these matters as background information at the hearing on the January 2022 Written Notices. As such, EDR cannot find that the grievant’s claims of discrimination and retaliation are untimely. The hearing officer can further address the agency’s position as a question of relevance.

## CONCLUSION

The February 1, 2022 dismissal grievance is timely to challenge the January 26, 2022 Group II Written Notice and Group III Written Notice and accompanying termination. Because we find that the grievance is untimely to challenge the August 17, 2020 Group I Written Notice, the January 22, 2019 Performance Counseling Memo, and the grievant’s performance evaluation as discussed above, the hearing officer will not have the authority to order relief regarding those management actions.<sup>4</sup> A hearing officer will be appointed for the grievant’s qualified challenge to the January 26, 2022 Written Notices and the accompanying termination, including the surrounding issues, in a forthcoming letter.

EDR’s rulings on matters of compliance are final and nonappealable.<sup>5</sup>

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

<sup>2</sup> E.g., EDR Ruling No. 2019-4845; EDR Ruling No. 2015-4181; EDR Ruling No. 2013-3582.

<sup>3</sup> *Grievance Procedure Manual* § 2.2 n.2 (emphasis added). The Written Notice form includes similar language.

<sup>4</sup> See *Rules for Conducting Grievance Hearings* § V(C) (“Challenges to management actions or omissions that have not been qualified in the grievance assigned to the hearing officer are not before that hearing officer, and may not be resolved or remedied.”).

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

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