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COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2021-5166
October 6, 2020

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether her September 18, 2020 grievance with the Department of Corrections (the “agency”) was properly initiated.

FACTS

On or about September 18, 2020, the grievant submitted a grievance to request a classification review of her position. She argues that her position is not appropriately classified based on the duties she actually performs, which she asserts has been the case for many years. The agency administratively closed the grievance due to alleged initiation noncompliance. The agency asserts that the grievance was not timely initiated and duplicates a prior grievance filed in 2014. The grievant now appeals that determination 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 without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed. However, a claim of workplace conduct that is ongoing is raised timely if some agency action alleged to be part of the ongoing conduct occurred within the 30 calendar days preceding the initiation of the grievance.²

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

² *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* Graham v. Gonzales, No. 03-1951, 2005 U.S. Dist. LEXIS 36014, at *23-25 (D.D.C. Sept. 30, 2005) (applying *Morgan* to claim of retaliatory hostile work environment/harassment); Shorter v. Memphis Light, Gas & Water Co., 252 F. Supp. 2d 611, 629 n.4 (W.D. Tenn. 2003); *see, e.g.*, EDR Ruling No. 2015-4118; EDR Ruling No. 2014-3695 (“[T]he time period(s) listed in the box for ‘date grievance occurred’ on the Grievance Form A is not the sole determining factor of what issues are challenged in a grievance.”)

Under the facts of this case, the grievant's argument that her position is not appropriately classified does not involve a particular discrete act from which the 30-day clock would begin. Rather, each day the grievant remains in an arguably misclassified position, the clock begins again because it is an ongoing matter apparently yet to be addressed. While the agency asserts that the grievant's position was the subject of a compensation review approximately six months ago, the grievant's argument is not about being compensated appropriately in her currently assigned role title, but that she should be classified in a different role title and compensated accordingly. Thus, the fact that six months have passed since the compensation review has no bearing on the question of the timely initiation of this grievance.³ Based on the foregoing, EDR considers the grievance timely, and it must be permitted to proceed.

The grievance procedure provides that a grievance cannot "challeng[e] the same management action or omission challenged by another grievance."⁴ The agency indicates that the grievant filed a grievance in 2014 about her classification. Assuming that to be the case, sufficient time has passed such that it cannot be said that nothing about the grievant's position has changed in six years. Accordingly, it is not inconsistent with the grievance procedure to initiate a new grievance at this time to address this allegedly ongoing issue. EDR does not find that the grievance fails to comply with the initiation requirements of the grievance procedure.

CONCLUSION

For the reasons set forth above, EDR concludes that the grievance was timely initiated and must be allowed to proceed. This ruling does not address the merits of the claims presented in the grievance and only decides that the grievance was timely filed and meets the initiation requirements of the grievance procedure. The agency is directed to return the grievance form and any attachments submitted by the grievant to the appropriate first-step respondent for a substantive response. The first-step respondent must respond to the grievance within five workdays of receipt.

EDR's rulings on matters of compliance are final and nonappealable.⁵

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³ The grievance would be untimely to challenge the results of the compensation study, however.

⁴ *Grievance Procedure Manual* § 2.4.

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