

Issue: Qualification – Benefits/Leave (compensatory leave); Ruling Date: January 8, 2018; Ruling No. 2018-4659; Agency: Department of Corrections; Outcome: Not Qualified.



**COMMONWEALTH of VIRGINIA**  
**Department of Human Resource Management**  
**Office of Equal Employment and Dispute Resolution**

**QUALIFICATION RULING**

In the matter of the Department of Corrections  
Ruling Number 2018-4659  
January 8, 2018

The grievant has requested a ruling from the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management (“DHRM”) on whether his July 20, 2017 grievance with the Department of Corrections (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant is employed as a lieutenant at one of the agency’s facilities. On or about July 17, 2017, the grievant became aware that 19.7 hours of his accrued compensatory leave had expired earlier in the year. The grievant initiated a grievance on July 20, 2017, alleging that the agency failed to notify him in advance that the compensatory leave would expire and also had not allowed him to schedule time off that would have consumed the leave before it expired. After proceeding through the management steps, the grievance was not qualified for a hearing by the agency head. The grievant now appeals that determination to EEDR.

DISCUSSION

Although state employees with access to the grievance procedure may generally grieve anything related to their employment, only certain grievances qualify for a hearing.<sup>1</sup> Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>2</sup> Claims relating solely to the establishment and revision of salaries, wages, and general benefits generally do not qualify for a hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced management’s decision, or whether state or agency policy may have been misapplied or unfairly applied.<sup>3</sup> The grievant has not alleged discrimination, retaliation, or discipline. Therefore, the grievant’s claims could only qualify for hearing based upon a theory that the agency has misapplied or unfairly applied policy.

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<sup>1</sup> See *Grievance Procedure Manual* §§ 4.1 (a), (b).

<sup>2</sup> See Va. Code § 2.2-3004(B).

<sup>3</sup> *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

For an allegation of misapplication of policy or unfair application of policy to qualify for a hearing, there must be facts that raise a sufficient question as to whether management violated a mandatory policy provision, or whether the challenged action, in its totality, was so unfair as to amount to a disregard of the intent of the applicable policy. Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”<sup>4</sup> Thus, typically, a threshold question is whether the grievant has suffered an adverse employment action. An adverse employment action is defined as a “tangible employment action constitut[ing] a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.”<sup>5</sup> Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.<sup>6</sup> For purposes of this ruling only, it will be assumed that the grievant has alleged an adverse employment action because he asserts issues with his use and retention of leave.

In this case, the grievant alleges that the agency improperly allowed a portion of his compensatory leave to expire without his having the opportunity to use the leave. In support of his position, the grievant asserts that he requested several days off before the compensatory leave expired, but that his request was not approved by agency management. While the grievant’s frustration at having lost a portion of his compensatory leave is understandable, he has not identified, and EEDR has not found, a mandatory policy provision that the agency has misapplied or unfairly applied. On the contrary, the agency’s policy expressly states that compensatory leave expires twelve months after it accrues, and that “[e]ach employee is accountable for knowing their correct leave balance . . . .”<sup>7</sup> In addition, the agency has provided information to EEDR that employees are notified of their compensatory leave balances at the end of each 28-day work cycle, which would reflect both any leave accrued during the cycle and leave carried over to the next cycle. The agency’s policy further provides that, “[a]s far as practicable, compensatory leave shall be granted at the times requested by the employee,” but management “should consider the needs of the unit prior to granting using of compensatory leave” and has the discretion to deny such requests when necessary.<sup>8</sup>

EEDR cannot second-guess management’s decisions regarding the administration of its standard facility operating procedures, absent evidence that the agency’s actions are plainly inconsistent with other similar decisions within the agency or otherwise arbitrary or capricious.<sup>9</sup> While it may be a better practice for agency management to notify employees of expiring compensatory leave in advance and allow them to use any such leave when possible, policy states that employees are ultimately responsible for knowing their own leave balances, and employees receive a report with that information at the end of each 28-day work cycle.

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<sup>4</sup> See *Grievance Procedure Manual* § 4.1(b).

<sup>5</sup> *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

<sup>6</sup> *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

<sup>7</sup> Department of Corrections Operating Procedure 110.1, *Hours of Work and Leaves of Absence*, §§ IV(H)(4), IV(U)(4)(a).

<sup>8</sup> *Id.* § IV(H)(3); see DHRM Policy 3.10, *Compensatory Leave* (stating that “[w]hen practicable, and for as long as the agency’s operations are not affected adversely, an agency should attempt to approve an employee’s request to use compensatory leave.”)

<sup>9</sup> See, e.g., EDR Ruling No. 2009-2090.

Furthermore, it is within the agency's discretion to deny an employee's request to use compensatory leave. Here, the grievant has presented nothing to show that the agency violated a mandatory policy provision or that its actions were either inconsistent with other decisions or otherwise arbitrary or capricious. Accordingly, the grievance does not qualify for a hearing on this basis.

EEDR's qualification rulings are final and nonappealable.<sup>10</sup>



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Christopher M. Grab  
Director  
Office of Equal Employment and Dispute Resolution

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<sup>10</sup> Va. Code § 2.2-1202.1(5).