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**COMPLIANCE RULING**

In the matter of the Department of State Police  
Ruling Number 2021-5147  
September 4, 2020

The Department of State Police (the “agency”) seeks a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management concerning the grievant’s August 14, 2020 dismissal grievance. The agency asserts that the grievant did not initiate her grievance within the 30-calendar-day time period required by the grievance procedure. For the reasons discussed below, the dismissal grievance is timely and must proceed as outlined in this ruling.

FACTS

Prior to the events of this case, the grievant appears to have engaged in discussions with agency management regarding her use of leave and reasonable accommodation for a disability. After exhausting all of her paid and unpaid leave,<sup>1</sup> the grievant returned to work on July 7 and 8, but went home on July 8 upon experiencing symptoms of her medical condition.<sup>2</sup> Later in the day on July 8, the grievant sent an email to the agency asking to “explore any other options” that were available to her. On July 10, the agency denied the grievant’s request for additional unpaid leave, stating that she was expected to report for work on July 13.<sup>3</sup> The grievant did not report to work on July 13 or 14. The agency contacted the grievant by telephone on July 14 and informed her that she was being removed from her position as of that date because she had “abandoned [her] employment with the agency.” The agency also mailed a letter, dated July 14 and containing that same information, to the grievant.<sup>4</sup> On the following day, July 15, the agency sent a copy of the July 14 letter to her by email. The grievant claims that she received the agency’s letter by mail on July 23.

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<sup>1</sup> Based on the information presented to EDR, the grievant appears to have exhausted the available unpaid leave under the Family and Medical Leave Act, along with her paid annual and sick leave, among other types of leave.

<sup>2</sup> The grievant’s absences on July 7 and 8 appear to have been unpaid.

<sup>3</sup> This information was provided to the grievant in a letter; it is unclear how the letter was delivered to her, when she received it, or if the agency provided some other notice that she was expected to return to work on July 13.

<sup>4</sup> The agency asserts that the letter was read to the grievant over the phone on July 14. It is unclear when the agency mailed the letter to her.

On August 14, 2020, the grievant initiated a grievance directly with EDR, using a Grievance Form A – Dismissal Grievance, to challenge her separation from employment. In response, the agency asserts that the grievance is untimely because the grievant “knew of her termination” on July 14 and did not file the grievance with 30 calendar days of that date.

### DISCUSSION

Ordinarily, if a Grievance Form A does not comply with the requirements for initiating a grievance, the agency may notify the employee, using the Grievance Form A, that the grievance will be administratively closed.<sup>5</sup> Because dismissal grievances are initiated directly with EDR,<sup>6</sup> an agency is essentially unable to follow this process as outlined. Accordingly, the agency has requested a ruling from EDR on the issue of alleged noncompliance.

#### *Timeliness*

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>7</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.

In this case, the grievant was notified by telephone on July 14, 2020, that she was being removed from her position. On July 15, the agency emailed her a letter, dated July 14, with that same information. The grievant alleges that she received a mailed copy of the letter on July 23. Although we agree with the agency that the grievant received actual notice of her separation on July 14, she did not have sufficient notice of the basis for her removal to reasonably initiate a grievance challenging the underlying substance of the agency’s decision before she was given notice of her removal in writing. This is consistent with EDR’s longstanding practice in grievances challenging a disciplinary action of calculating the 30-calendar-day timeframe beginning on the date that management presents or delivers the Written Notice to the employee.<sup>8</sup> The grievant received written notification of her removal by email on July 15. As a result, the grievant should have initiated her grievance within 30 calendar days of that date, *i.e.*, no later than August 14. Her grievance initiated on August 14 is therefore timely and must be allowed to proceed as described below.

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<sup>5</sup> *Grievance Procedure Manual* § 2.4.

<sup>6</sup> *Id.* § 2.5.

<sup>7</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.2.

<sup>8</sup> *E.g.*, EDR Ruling No. 2019-4845; EDR Ruling No. 2019-4844; EDR Ruling No. 2017-4469; EDR Ruling No. 2015-4181. Significantly, 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.” *Grievance Procedure Manual* § 2.2 n.2 (emphasis added).

*Procedural Guidance*

Though the parties have not raised this issue, the *Grievance Procedure Manual* defines “dismissals” as terminations due to formal discipline or unsatisfactory job performance.<sup>9</sup> In this instance, the grievant was removed due to the agency’s determination that she was unable to meet the working conditions of her employment<sup>10</sup>; she was not terminated pursuant to a Written Notice or for unsatisfactory job performance. We therefore find that the grievant’s separation from employment does not constitute a “dismissal” as defined by the *Grievance Procedure Manual*, and accordingly, this grievance is not eligible for the dismissal grievance process. The grievant may, however, challenge her separation through the expedited grievance process.<sup>11</sup>

EDR has therefore forwarded the original grievance paperwork to the agency to be addressed through the expedited process. The agency is directed to contact the grievant to schedule the single management step meeting **within five workdays of receipt of the grievance paperwork**.<sup>12</sup> It is permissible under the grievance procedure to hold such a meeting by electronic means (such as audio or video teleconference) during the public health emergency.

EDR’s rulings on compliance are final and nonappealable.<sup>13</sup>

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<sup>9</sup> Va. Code § 2.2-3003(A); *Grievance Procedure Manual* § 2.5.

<sup>10</sup> See DHRM Policy 1.60, *Standards of Conduct*, § H.

<sup>11</sup> *Grievance Procedure Manual* § 3.4 (stating that the expedited process may be used in cases involving “a separation not considered a “dismissal” . . . , demotion, suspension without pay, or any other action that results in an actual loss of wages”).

<sup>12</sup> *Id.* § 3.4. As the originally used dismissal grievance form does not provide space for the single management step response and qualification decision, the parties should use a blank second page of the expedited grievance form to complete the remaining steps of this grievance as they occur.

<sup>13</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).