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COMPLIANCE RULING

In the matter of the University of Virginia
Ruling Number 2020-5013
November 15, 2019

The University of Virginia (the “University” or the “agency”) has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management¹ on whether the grievant’s October 31, 2019 dismissal grievance was timely initiated. For the reasons set forth below, this grievance is timely and may proceed as described in this ruling.

FACTS

University management held a due process meeting by phone with the grievant on September 19, 2019, advising her that it was considering issuing disciplinary action for specified misconduct. On September 30, the grievant’s supervisor notified her by phone that she was being issued a Group III Written Notice with termination; the grievant also received an electronic copy of the Written Notice on that date. The Written Notice form states that the grievant’s termination was effective as of October 2.² The grievant initiated a dismissal grievance challenging her termination directly with EDR on October 31.³ In response to EDR’s notification of receipt of the grievance, the University asserts that the grievant knew or should have known of her termination on September 30 and, as such, the grievance was not timely initiated.

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.⁴ Because dismissal grievances are initiated directly with EDR,⁵ an

¹ 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.

² The University offered the grievant the opportunity to resign in lieu of termination between September 30 and October 2, which she declined.

³ Although the grievance form is dated October 30, 2019, it was sent to EDR by email on October 31, 2019.

⁴ *Grievance Procedure Manual* § 2.4.

⁵ *Id.* § 2.5.

agency is essentially unable to follow this process as outlined. The University has therefore requested a ruling from this Office regarding the issue of alleged initiation noncompliance.

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.⁶ 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.⁷ 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.”⁸

In this case, the event that forms the basis of the grievance is the grievant’s termination via the issuance of a Group III Written Notice, dated September 30, 2019. The information provided by the University indicates that the grievant was notified about her termination, and received a copy of the Written Notice, on September 30. However, the effective date of her termination was several days later—on October 2. While an employee’s receipt of a Written Notice ordinarily marks the beginning of the 30 calendar days in which the disciplinary action may be challenged through a grievance, this case presents a unique procedural issue because the University elected to make the grievant’s termination effective several days *after* her receipt of the Written Notice.

EDR has considered the University’s arguments and finds that this question is best analogized to its practice for grievances challenging a layoff. In layoff grievances, EDR has long held that the final event forming the basis of such a grievance is the actual effective date of layoff, not a grievant’s receipt of a Notice of Layoff or Placement indicating that such an action will likely occur in the future.⁹ EDR considers the effective date of layoff as the final date that the 30-day filing clock begins to run because circumstances can change from the time an employee receives a Notice of Layoff or Placement to the time they are actually laid off. A grievant may initiate a grievance at any point prior to the final effective date of layoff, but EDR also permits such a grievance to be filed within 30 calendar days of a grievant’s actual separation by layoff.

Applying this reasoning to the facts in the present case, EDR concludes that a grievance challenging a termination via Written Notice will be timely if it is initiated within 30 calendar days of the grievant’s receipt of the Written Notice *or* the effective date of the grievant’s termination, whichever is later. However unlikely, it is possible that an agency’s decision to terminate an employee might change between the issuance of a Written Notice and the effective date of termination. Moreover, the core management action at issue in such a case—the employee’s termination—is, if timely grieved, inseparable from a challenge to the Written Notice imposing that penalty. Accordingly, the grievant’s October 31, 2019 grievance is timely to challenge the

⁶ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

⁷ *E.g.*, EDR Ruling No. 2015-4181; EDR Ruling No. 2013-3582; EDR Ruling No. 2005-986.

⁸ *Grievance Procedure Manual* § 2.2 n.2 (emphasis added). Similar language is also listed on the Written Notice form itself.

⁹ *See, e.g.*, EDR Ruling No. 2014-3738; EDR Ruling No. 2013-3627; EDR Ruling No. 2011-2707.

Group III Written Notice and the grievant's termination because it was filed within 30 calendar days of the date on which the grievant was actually terminated: October 2, 2019.

CONCLUSION

Based on the discussion above, EDR finds that the grievant's October 31, 2019 grievance was timely initiated and must be allowed to proceed. The University is directed to submit a Form B to EDR **within five workdays of the date of this ruling**. EDR's rulings on matters of compliance are final and nonappealable.¹⁰



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¹⁰ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).