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**COMPLIANCE RULING**

In the matter of the Department of Corrections  
Ruling Number 2020-5071  
March 19, 2020

The Department of Corrections (the “agency”) has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”)<sup>1</sup> on whether the grievant’s dismissal grievance dated February 6, 2020 was timely initiated.

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>2</sup> Because dismissal grievances are initiated directly with EDR,<sup>3</sup> an agency is essentially unable to follow this process as outlined. The agency 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.<sup>4</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>5</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>6</sup>

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<sup>1</sup> 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.

<sup>2</sup> *Grievance Procedure Manual* § 2.4.

<sup>3</sup> *Id.* § 2.5.

<sup>4</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

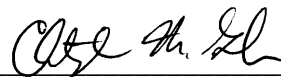
<sup>5</sup> E.g., EDR Ruling No. 2015-4181; EDR Ruling No. 2013-3582; EDR Ruling No. 2005-986.

<sup>6</sup> *Grievance Procedure Manual* § 2.2 n.2 (emphasis added). Similar language is also listed on the Written Notice form itself.

In this case, the event that forms the basis of the grievance is the agency's issuance of a Group III Written Notice with termination on February 6, 2020. Because the grievant received the Written Notice on February 6, he should have initiated the grievance within 30 days, *i.e.*, no later than March 9.<sup>7</sup> The grievant claims he sent a dismissal grievance to EDR by email on February 6, the same day he received the Written Notice. EDR did not receive the grievant's emailed grievance submission. Upon learning that EDR had not received his original February 6 grievance, he emailed a copy of the dismissal grievance to EDR on March 16. The grievant has also provided EDR with a copy of an email message addressed to "edr@dhrm," dated February 6, 2020, with the dismissal grievance attached.

The grievance procedure provides that "[t]he employee bears the burden of establishing the date that the grievance was initiated. Thus, employees are strongly encouraged to document the initiation date, for instance, by using certified mail or requesting a date-stamped photocopy of the Grievance Form A."<sup>8</sup> For dismissal grievances that are emailed to EDR, the date the message is sent will typically be considered the date of initiation.<sup>9</sup> However, the grievant's February 6, 2020 email with the dismissal grievance attached was incorrectly addressed to "edr@dhrm," an apparently incomplete email address. As noted on the dismissal grievance form, an emailed dismissal grievance should be sent to "edr@dhrm.virginia.gov." As a result, EDR cannot conclude that the grievance was initiated on February 6 because it was not correctly addressed.<sup>10</sup> EDR finds instead that the grievance was initiated on March 16, more than 30 calendar days after the grievant received the Written Notice on February 6, and thus it is untimely. In addition, the grievant has not presented any evidence of just cause for his late filing.

Accordingly, EDR concludes that the grievance was not timely initiated and that there was no just cause for the delay. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. EDR's rulings on matters of compliance are final and nonappealable.<sup>11</sup>



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<sup>7</sup> The 30th calendar day from February 6, 2020 was Saturday, March 7. Section 2.2 of the *Grievance Procedure Manual* provides that, when the 30th calendar day "falls on a Saturday, Sunday, or legal holiday or on any day or part of a day on which the state office where the grievance is to be filed is closed during normal business hours, the grievance may be filed on the next business day that is not a Saturday, Sunday, legal holiday, or day on which the state office is closed." In this case, therefore, the filing deadline was extended to Monday, March 9, 2020.

<sup>8</sup> *Grievance Procedure Manual* § 2.2.

<sup>9</sup> This is consistent with EDR's approach for grievances initiated by mail. *Grievance Procedure Manual* § 2.2 (stating that, "for purposes of establishing when a mailed grievance was initiated, the postmark date is considered the initiation date").

<sup>10</sup> In general, EDR will also presume that the intended recipient has received email correspondence if the message is properly addressed. *Cf.*, *e.g.*, *Washington v. Anderson*, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988) (holding that the mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee).

<sup>11</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).