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COMPLIANCE RULING

In the matter of the Department of Social Services
Ruling Number 2021-5258
May 11, 2021

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether her April 26, 2021 grievance with the Department of Social Services (the “agency”) was properly initiated.

FACTS

On or about April 26, 2021, the grievant submitted a grievance to challenge a denial of outside employment. The agency indicates that a memo was provided on February 22, 2021 to the grievant denying her outside employment request. Because the grievance was initiated more than 30 calendar days from the date of the memo, the agency administratively closed the grievance due to alleged initiation noncompliance. 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.² 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.³

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

² *Grievance Procedure Manual* § 2.2.

³ 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 determination as to when the 30-day clock begins is susceptible to different interpretations. For example, the agency appears to have provided the grievant a memo more than 30 calendar days prior to the initiation of the grievance that denied the outside employment request. If we interpret the grieved action as limited to the memo, the agency's position that the grievance was not timely is understandable. However, the agency's denial memo effectively extends to each day that the grievant wants to hold outside employment but is unable to do so because of her employer's restrictions. Accordingly, another reasonable way to interpret the situation is that the agency's denial is ongoing and, therefore, able to be grieved notwithstanding the fact that the agency initially denied her request in February 2021. Viewing the case from this perspective, each day the grievant remains prevented from outside employment, the clock begins again because it is an ongoing matter yet to be addressed through the grievance procedure.⁴ Based on the foregoing, EDR considers the grievance timely, and it must be permitted to proceed.

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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⁴ EDR does not interpret such ongoing matters as enabling an employee to file repeated grievances about the same ongoing matter until resolved to the employee's satisfaction. The grievance procedure does not permit employees to challenge the same management action challenged by another grievance or to use the grievance procedure to "harass or otherwise impede the efficient operations of government." *Grievance Procedure Manual* § 2.4. These concerns do not arise in this case, however, as this appears to be the first time the grievant has attempted to address her request for outside employment through the grievance procedure.

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