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**COMPLIANCE RULING**

In the matter of Longwood University  
Ruling Number 2022-5288  
July 16, 2021

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether her June 24, 2021 grievance with Longwood University (the “agency” or the “university”) was timely initiated. For the reasons discussed below, the grievance is timely and must be allowed to proceed.

FACTS

On or about May 10, 2021, the grievant received a Notice of Layoff or Placement form notifying her that her position was scheduled to be abolished. The form additionally stated that there were no placement opportunities available and, thus, the grievant would be placed on leave without pay-layoff status effective May 25. The grievant ultimately entered leave without pay-layoff status on May 25 as indicated on the form.

The grievant initiated a grievance challenging her layoff on June 24, 2021.<sup>1</sup> The university notified the grievant in a letter dated June 29 that her grievance had been administratively closed due to noncompliance.<sup>2</sup> Specifically, the university explained that the grievance was not timely filed because the grievant received her Notice of Layoff or Placement on May 10, but did not file her grievance until June 24, more than 30 calendar days afterwards. 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 they knew or should have known of the event or action that is the

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<sup>1</sup> The Grievance Form A is dated June 21, 2021; the university appears to state that the grievance was initiated on that date. In her request for a ruling from EDR, however, the grievant states that she filed the grievance on June 24, 2021. Whether the grievance was initiated on June 21 or June 24 does not impact the outcome of this ruling. Nonetheless, we will consider the grievance to have been filed with the university on the later of the two dates, June, 24 based on the grievant’s representation.

<sup>2</sup> The grievant states that she received the university’s notice of administrative closure on July 1, 2021.

basis of the grievance.<sup>3</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.

Here, the event that forms the basis of the grievance is the grievant's layoff.<sup>4</sup> According to the university, the grievant was notified that she would be laid off on May 10, 2021, the day she received the Notice of Layoff or Placement, and thus she should have initiated her grievance within 30 calendar days of that date, *i.e.* no later than June 9. We understand the university's reasoning that the grievant "knew or should have known" of her impending layoff on May 10 for purposes of initiating a grievance.<sup>5</sup> However, 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 is scheduled to occur in the future.<sup>6</sup> In challenges to layoffs, EDR considers the effective date of layoff as the final date the 30-day filing clock begins to run because circumstances can change from the time the employee receives their Notice of Layoff or Placement to the time that they are actually laid off. A grievant may initiate a grievance at any point prior to the final effective date of layoff, but EDR permits such a grievance to be filed within 30 calendar days of a grievant's actual separation by layoff.

Therefore, although the grievant received notice that her position would be abolished on May 10, 2021, she was not required to initiate a grievance challenging her layoff until that process was complete. Provided that a grievant separated by the layoff process has initiated a grievance within 30 calendar days of the effective date of layoff, the grievance will be considered timely to challenge the layoff and all related issues. In this case, the 30-day time period in which the grievant could initiate a grievance challenging the university's decision to abolish her position did not begin until her layoff became effective on May 25, 2021. Accordingly, she was required to initiate a grievance no later than June 24. Because the grievant initiated her grievance on June 24 (the final day of the 30-calendar-day period), it was timely initiated.

### CONCLUSION

For the reasons set forth above, we conclude that the grievance was timely initiated and is allowed to proceed. This ruling does not address the merits of the grievance and only decides that it was timely filed. The grievance must be returned to the appropriate step-respondent to be addressed at that level and proceed through the grievance process.<sup>7</sup>

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<sup>3</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4.

<sup>4</sup> In its notice of administrative closure, the university also refers to "additional acts being grieved" that occurred before May 10, 2021, the date on which the grievant received notice of her impending layoff, as untimely. The allegations of discrimination, harassment, and other improper conduct described in the grievance appear to be alternative theories as to why the grievant believes that her layoff was improper. To the extent management actions predating the grievant's receipt of the Notice of Layoff or Placement on May 10 are relevant to her claims regarding the university's motivation for the layoff, she may present information about those actions as background evidence in support of her challenge to the layoff.

<sup>5</sup> *Grievance Procedure Manual* § 2.2.

<sup>6</sup> *See, e.g.*, EDR Ruling No. 2014-3738; EDR Ruling No. 2013-3627; EDR Ruling No. 2011-2707; EDR Ruling No. 2010-2623.

<sup>7</sup> Although this grievance appears to have been initiated using the regular grievance process, EDR recommends that the parties consider using the expedited grievance process available in this type of case. *See Grievance Procedure Manual* § 3.4.

EDR's rulings on matters of compliance are final and nonappealable.<sup>8</sup>

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<sup>8</sup> See Va. Code §§ 2.2-1001(5); 2.2-3003(G).