



EMILY S. ELLIOTT
DIRECTOR

COMMONWEALTH OF VIRGINIA
Department Of Human Resource Management
Office of Employment Dispute Resolution

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219

Tel: (804) 225-2131
(TTY) 711

COMPLIANCE RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2022-5300
August 26, 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 August 12, 2021 grievance with the Department of Behavioral Health and Developmental Services (the “agency”) complies with the grievance procedure.

FACTS

On or about August 12, 2021, the grievant initiated a grievance with the agency, apparently challenging the implementation of a retention bonus for employees in certain roles. The grievant claimed that staff in her department should have received the bonus and requested as relief “the same compensation” as other departments that received the bonus. The agency notified the grievant on August 16 that her grievance was being administratively closed. The grievant has now appealed to EDR for a ruling on whether the grievance may proceed.

DISCUSSION

The *Grievance Procedure Manual* provides that, with certain exceptions, “any management actions or omissions may be grieved”¹ If an agency believes that an employee’s grievance does not comply with the requirements for initiating a grievance, “[m]anagement may notify the employee, using the Grievance Form A, that the grievance will be administratively closed due to noncompliance and that the employee may seek a compliance ruling from the EDR.”²

In this case, the agency notified the grievant that her grievance was being administratively closed because it challenged a “wage action,” explaining that “[w]age actions do not qualify for a grievance hearing.” The agency is correct that, pursuant to the *Grievance Procedure Manual*, “[c]laims that relate solely to the . . . [e]stablishment or revision of wages, salaries, position classifications, or general benefits” do not qualify for a hearing.³ Whether a grievance will ultimately qualify for a hearing, however, is immaterial to whether an employee may initiate a

¹ *Grievance Procedure Manual* § 2.4.

² *Id.* § 6.2.

³ *Id.* § 4.1(c).

grievance and proceed through the management steps. The grievance procedure does not provide a basis for administratively closing a grievance solely because it does not challenge a management action or omission that will qualify for a hearing.⁴⁵ Moreover, it is not clear at this stage whether the facts giving rise to the grievance may present some additional theory – such as a misapplication or unfair application of policy, discrimination, or retaliation – that might provide grounds for qualification beyond a mere challenge to the retention bonus. In short, the agency’s administrative closure of the grievance in this case does not comply with the grievance procedure.⁶

CONCLUSION

Based on the foregoing, the grievance is re-opened and shall be permitted to proceed. The agency is directed to return the grievance to an appropriate step respondent, who must address the merits of its claims. EDR’s rulings on matters of compliance are final and nonappealable.⁷

Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁴ See *id.* §§ 2.4, 6.2.

⁵ *Id.* § 1.1.

⁶ Although the agency has not raised timeliness as an issue, the evidence before EDR suggests that the grievance was filed within 30 calendar days of the challenged management action, *i.e.*, the implementation of the retention bonus. Based on a review of the grievance record, the director at the grievant’s institution announced the retention bonus on July 15, 2021. The grievant appears to have discussed her concerns with management in late July before initiating her grievance on August 12. In addition to timeliness, we have not identified any other basis for administrative closure due to initiation noncompliance in the materials provided by the parties. See *Grievance Procedure Manual* § 2.4 (describing the requirements for initiating a grievance).

⁷ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).