

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: December 19, 2012; Ruling No. 2013-3500; Agency: Virginia Department of Transportation; Outcome: Grievant in Compliance.



*COMMONWEALTH of VIRGINIA*  
*Department of Human Resource Management*  
*Office of Employment Dispute Resolution*

**COMPLIANCE RULING**

In the matter of Virginia Department of Transportation  
Ruling Number 2013-3500  
December 19, 2012

The grievant has requested a ruling on whether his November 7, 2012 grievance with the Virginia Department of Transportation (the agency) is in compliance with the grievance procedure. The agency asserts that the grievant did not initiate the grievance timely. For the reasons set forth below, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management determines that the grievance is timely and shall be permitted to proceed.

FACTS

In the grievant's November 7, 2012 grievance, he appears to challenge ongoing issues in the workplace allegedly involving discrimination, intimidation, and/or harassment by certain agency employees. Although the grievant cites to other facts on dates prior, he points to a meeting on March 8, 2012 at which he was allegedly chastised publicly by one of the agency employees. The grievance attachments include other statements and documents regarding other events related to this alleged ongoing treatment and work environment, including occurrences in October 2012. Indeed, the grievant has challenged language included in his performance evaluation, which he states he received on or about October 18, 2012. Because the grievant listed March 8, 2012 as the date the grievance occurred, the agency has stated the grievance was not initiated timely. The grievant now appeals that determination.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he or she knew or should have known of the event or action that is the basis of the grievance.<sup>1</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.

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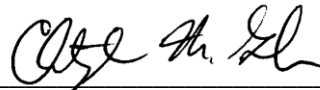
<sup>1</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.2.

The agency asserts that the grievant failed to initiate the grievance timely because the grievant listed March 8, 2012 as the date the grievance occurred on his Grievance Form A. Undoubtedly, the grievance was initiated more than 30 calendar days after March 8, 2012. However, a review of the grievance indicates that the grievant is challenging an ongoing series of conduct and treatment in the workplace beginning at least on or around that time and extending to the present.<sup>2</sup>

A claim of harassment or intimidation or other workplace conduct that is ongoing, such as that alleged here, is raised in a timely manner if some agency action alleged to be part of the harassing or intimidating conduct occurred within the 30 calendar days preceding the initiation of the grievance.<sup>3</sup> The grievant cites to his performance evaluation, which was received on October 18, 2012, within 30 calendar days of his initiation of this grievance. Therefore, the grievant's allegations are timely to raise his claims of discrimination, intimidation, and/or harassment. Based on the foregoing, the November 7, 2012 grievance was timely initiated.

### CONCLUSION

For the reasons discussed above, EDR has determined that the grievance initiated on November 7, 2012 is compliant with Section 2.2 of the *Grievance Procedure Manual* and must be permitted to proceed. The grievance must be returned to the first step-respondent, who must respond to the grievance within five workdays of receipt of this ruling. EDR's rulings on matters of compliance are final and nonappealable.<sup>4</sup>



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<sup>2</sup> Many of the workplace issues alleged by the grievant occurred more than 30 days prior to the initiation of the grievance. As such, the grievance is untimely to challenge and receive relief regarding those specific acts. However, the allegations can still be considered as background evidence for the grievant's timely claim of discrimination/intimidation/harassment. *See, e.g.*, EDR Ruling No. 2008-1984; EDR Ruling No. 2003-098 & 2003-112.

<sup>3</sup> *See Nat'l R.R. Pass. Corp. v. Morgan*, 536 U.S. 101, 115-18 (2002) (holding 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) (same).

<sup>4</sup> Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).