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QUALIFICATION RULING

In the matter of the Department of Corrections
Ruling Number 2025-5882
June 3, 2025

The grievant seeks a ruling from the Office of Employment Dispute Resolution ("EDR") at the Department of Human Resource Management as to whether her February 13, 2025 grievance with the Department of Corrections (the "agency") qualifies for a hearing. For the reasons set forth below, EDR finds that the grievance is not qualified for a hearing.

FACTS

The grievant is a long-time employee at a Probation and Parole district and has been employed as a Facility Chief since 2005. Since March 2020, the grievant teleworked one day per week along with her team. She states that her team thrived during this time, retaining productivity, cohesion, and morale. On December 20, 2024, the grievant was notified by the Regional Administrator that, beginning in 2025, new telework expectations would continue to allow her and her team to telework one day per week. The Regional Administrator sent another email on February 12, 2025, stating that unit heads, such as the grievant, are no longer approved to routinely telework absent special circumstances, effective February 18. In a February 13 memo, the Agency Director sent another update to all unit heads, reaffirming that "Unit Heads are expected to work in person and are not eligible for telework."

Following the update from the Director, the grievant filed a grievance contesting the recently issued telework expectations in that she would not be able to continue teleworking one day per week. She asserts that no reason was given for this change other than the agency stating that unit heads are suddenly no longer eligible, which she argues contradicts DHRM's telework policy for eliminating an entire group from eligibility, as well as the Governor's previously administered telework policy of allowing one day per week. She further argues that she is available "24/7" whether working in office or teleworking and that she can get more done on her telework day than her office days. She adds that being able to telework one day a week has made up for her difficult schedule, which often requires her to work nights and mornings, and saves some personal time and finances for a commute to work. Finally, the grievant has also provided documentation detailing the workload of her and her team, and how such documentation shows the productivity achieved by her team despite teleworking.

As relief, the grievant requests that all unit heads be eligible to telework one day per week. The grievance has proceeded through the management resolution steps without any relief being granted. The agency head declined to qualify the grievance for a hearing, and the grievant appealed that determination to EDR.

DISCUSSION

Although state employees with access to the grievance procedure may generally grieve anything related to their employment, only certain grievances qualify for a hearing.[1] Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.[2] Thus, claims relating to issues such as the means, methods, and personnel by which work activities are to be carried out generally do not qualify for a hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced management's decision, or whether state policy may have been misapplied or unfairly applied.[3] For an allegation of misapplication of policy or unfair application of policy to qualify for a hearing, the available facts must raise a sufficient question as to whether management violated a mandatory policy provision, or whether the challenged action in its totality was so unfair as to amount to a disregard of the applicable policy's intent.

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."[4] Thus, typically, the threshold question is whether the grievant has suffered an adverse employment action that could be remedied by a hearing officer. An adverse employment action involves an act or omission by the employer that results in "harm" or "injury" to an "identifiable term or condition of employment."[5] We do not reach the question of whether the denial of telework is an adverse employment action as the matter can be resolved on other grounds.

The grievant contends that the agency improperly or unfairly applied policy by stating that all unit heads are no longer approved for any days of telework. She argues that she is capable of carrying out her work activities on her one telework day, and that the agency's decision to remove telework eligibility from all unit heads goes against the Governor's Office's previously existing telework policy, as well as DHRM's state telework policy. She also argues that her one-day telework allowance has helped counter certain difficult job requirements and logistics.

Conversely, the agency has generally asserted that, regardless of job performance or other factors, all unit heads are expected to work in person each day of the week. Specifically, the Regional Administrator explained that "[i]t is expected that unit heads continue to be engaged and available for employees," though she noted that telework in special circumstances could be discussed and approved. The Agency Director added in his own correspondence that "[d]ue to the

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[1] *See Grievance Procedure Manual* § 4.1.
[2] Va. Code § 2.2-3004(B).
[3] *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).
[4] *See Grievance Procedure Manual* § 4.1(b); *see* Va. Code § 2.2-3004(A).
[5] *See* Muldrow v. City of St. Louis, 144 S. Ct. 967, 974 (2024) (addressing a required element of a Title VII discrimination claim); *see, e.g.*, Burlington Indus. v. Ellerth, 524 U.S. 742, 761 (1998) (defining adverse employment actions under Title VII to include "tangible" acts "such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits").

leadership responsibilities and on-site operational needs of their role, Unit Heads are expected to work in person and are not eligible for telework."

The grievant's position has some merit in that the agency has not provided much in-depth explanation showing exactly what aspects of the unit head positions are required to be done in person. Her argument that she had been permitted to telework one day per week for almost five years while adequately performing her duties also has merit. Nevertheless, the agency determined that employees at the grievant's management level (unit heads) are no longer eligible for telework. While the grievant asserts that this determination is inconsistent with DHRM's state telework policy, EDR cannot agree.

The state telework policy provides:

> *Eligible positions are determined by the type of work and job requirements of the position, as defined by heads of agencies. Determinations for telework eligibility will be focused on the job requirements and the ability of the individual employee to perform assigned work duties and continue team collaboration.*[6]

The agency determined that the work of unit heads involve engagement, availability, leadership responsibilities, and on-site operational needs; hence, the agency determined all of these positions to be ineligible. While the grievant points out that she and her team members have been able to adequately carry out their work assignments despite her one remote day a week, and the evidence provided by the grievant supports the notion that she is a competent and hard-working employee, it appears that the agency has nevertheless concluded that all unit heads are ineligible for telework. While the state telework policy would allow the agency the flexibility to make exceptions when warranted based on the type of work and job requirements of an individual position, there is nothing in the policy that requires such a result. Similarly, EDR cannot find a mandatory policy provision violated by the agency in this instance.

As stated above, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.[7] Although the grievant disagrees with the agency's assessment, EDR finds that her grievance does not raise a sufficient question as to whether the agency misapplied and/or unfairly applied policy. Accordingly, the grievance does not qualify for hearing on this basis.

EDR's qualification rulings are final and nonappealable.[8]

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[6] DHRM Policy 1.61, *Teleworking*, at 1.
[7] Va. Code § 2.2-3004(B).
[8] Va. Code § 2.2-1202.1(5).