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COMPLIANCE RULING

In the matter of the University of Virginia
Ruling Number 2025-5897
May 29, 2025

The grievant seeks a compliance ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) concerning her grievance with the University of Virginia (the “university” or “agency”). The university administratively closed the grievance on grounds that it was not timely initiated. The grievant asks EDR to permit her grievance to proceed.

FACTS

On or about May 12, 2025, the grievant submitted a grievance to the university regarding issues with her compensation, indicating on the Grievance Form A that the last contact she received from human resources regarding the issue occurred on April 18, 2025.¹ The grievant asserts that her issues of compensation are a form of retaliation for filing a grievance on November 24, 2023, as well as a form of age and disability discrimination. She also asserts in her grievance that there is a lack of communication, clear expectations, trust, and respect by the university. As one example of the alleged retaliation and/or discrimination, the grievant notes that she consistently received “Exceeds Expectations/Highly Effective” ratings on her annual performance evaluations but received an “Effective” rating on her most recent 2024 evaluation. Regarding her compensation claim, it appears that a compensation review meeting was held on January 5, 2024, and since that date, the grievant has been “continually trying to resolve the compensation issue” stemming from what the grievant perceived as falsified data used in calculating her compensation. Over the timespan of the grievant’s attempts to resolve the issue, she claims that her supervisor would repeatedly tell her that her position was being reviewed by the university. After the university’s most recent update regarding the issue on April 18, having felt no progress had been made, the grievant decided to file a grievance to address the matter. The first-step respondent administratively closed the grievance on grounds that it was not timely initiated because it was not initiated within 30 calendar days of the date on which the basis for the grievance occurred. The grievant now appeals the university’s administrative closure to EDR.

¹ The grievant also notes that she most recently received communication from the university on May 7, 2025, requesting her to provide an update on her job duties. The May 7 communication also informed her that the university was leaning toward reclassifying her position and removing her supervisory responsibilities.

Since the request for this ruling, the university has provided EDR with additional context and arguments surrounding its basis for administratively closing the grievance on the grounds of timeliness. As to the grievant's claim of improper compensation, the university has stated that no adverse actions have been taken towards her pay. It states that the mentioned January 5 meeting was "part of a broader administrative review of compensation structures and did not result in any formal employment action or change in [the grievant's] pay or status." It further states that the grievant has received in full each state-approved pay increase for 2023 and 2024, and that no reduction or impact on her compensation has occurred. Finally, the university contests the grievant raising the issue of receiving an "Effective" performance evaluation rating, stating that she did not appeal this rating within the 30-calendar-day timeframe.

Following the university's submission of additional information, the grievant has also provided additional information of her own. She emphasizes that the January 5 meeting was when her allegedly falsified salary data was presented in a spreadsheet, and she was given "ongoing assurances" following the meeting from her supervisor that her compensation would be properly reviewed. She also alleges that the market salary data for her position was "apparently manipulated via incorrect Job Profiles listed for some individuals and inaccurate job descriptions used."

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.² 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. 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

In grievances raising salary disputes, EDR applies the "paycheck rule" where it is applicable in such cases.⁴ The "paycheck rule" provides that every payday for which an employee receives compensation reduced by the alleged impropriety constitutes a separate accrual, or "trigger date," for timeliness purposes; thus, with the issuance of each paycheck that is alleged to be improper, a new 30-calendar-day period begins to run.⁵ Accordingly, a grievance that is alleging that an agency's actions relating to compensation are inconsistent with state and/or agency policy or are otherwise improper in some way, is timely to dispute such alleged improper compensation practices raised in the grievance for the thirty calendar days preceding the date on which it was initiated.⁶

² Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

³ See *AMTRAK v. Morgan*, 536 U.S. 101, 115-18 (2002) (holding the same in a Title VII hostile work environment harassment case); see also *Guessous v. Fairview Prop. Invs., LLC*, 828 F.3d 208, 221-24 (4th Cir. 2016).

⁴ E.g., EDR Ruling No. 2016-4296; EDR Ruling No. 2013-3581; EDR Ruling No. 2010-2441.

⁵ See EDR Ruling No. 2010-2441 (and authorities cited therein).

⁶ This approach is consistent with available remedies in a case under Title VII, for example. See, e.g., *Kellogg v. Ball State Univ.*, 984 F.3d 525, 529 (7th Cir. 2021) (plaintiff could rely on an "initial discriminatory statement, even though it occurred outside the limitations period, to seek damages from any paychecks that she received within the statute of limitations window."); see also EDR Ruling No. 2016-4296.

A fair reading of the grievance indicates that the grievant appears to argue the university's compensation practices are inconsistent with state and/or university policy, as demonstrated by, for example, an alleged falsification of salary data leading to an inaccurate salary calculation for the grievant. Applying the paycheck rule reasoning to the facts of this case, the grievance is timely to dispute the alleged improper compensation practices raised in the grievance for the thirty calendar days preceding the date on which it was initiated, May 12, 2025. It should be noted, however, that even if such a grievance were to qualify for an administrative hearing, a hearing officer may only order a university to grant an increase in compensation if required by policy, and such an increase would "commenc[e] at the beginning of the 30 calendar day statutory period preceding the initiation of the grievance."⁷ While the university contends that it has not taken any adverse action against the grievant and has not altered her compensation in any way, this does not bar the grievant from being able to file a grievance on the basis of alleged improper compensation.

Additionally, the claims of retaliation, age or disability discrimination, and those relating to a general lack of professionalism by the university all appear to be ongoing allegations and are timely for the purposes of initiating this grievance. While the grievant has not provided specific dates regarding the other alleged incidences of professional misconduct, the grievant's claims appear to be connected to her allegation of improper compensation. Indeed, she has expressed throughout her grievance attachment that she perceives the university's alleged stalling of her compensation review as one of multiple forms of retaliation, discrimination, and or professional misconduct. For that reason, the grievance is timely with respect to her retaliation, discrimination, and professional misconduct claims, and must be addressed by the university in its step responses pursuant to this grievance.

Finally, the university is correct to note that the grievant has not timely grieved her "Effective" performance evaluation rating on its own. However, due to the grievant considering the rating as a part of her general retaliation and/or discrimination claims, such a rating can be considered relevant for the purposes of those claims. In other words, the university may consider the grievant's dispute over her "Effective" rating within the context of her broader retaliation/discrimination claims but does not have to grant any form of relief specific to that rating, such as revising the grievant's 2024 performance evaluation.

⁷ *Rules for Conducting Grievance Hearings* § VI(C)(1).

CONCLUSION

For the reasons set forth above, EDR directs that the grievance is reopened and must be allowed to proceed as discussed above. This ruling does not address the merits of the claims presented in the grievance and only decides that the grievance was timely filed with respect to the claims identified above. The university is directed to return the grievance form and any attachments to the appropriate step respondent for a substantive response.⁸

EDR's rulings on matters of compliance are final and nonappealable.⁹

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⁸ The grievant has expressed some confusion surrounding whether to forward the grievance to the second-step respondent. As stated in this conclusion, the university is directed to return the grievance form and any attachments to the appropriate first-step respondent for review.

⁹ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).