



JANET L. LAWSON
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 Virginia Department of Transportation
Ruling Number 2025-5836
February 28, 2025

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

FACTS

On or about January 27, 2025, the grievant submitted a grievance to the agency regarding issues with his compensation, indicating on the Grievance Form A that the grievance occurred on the same date. Following communication with agency human resources, the grievant appears to have resubmitted his grievance with non-material changes on or about February 11, 2025, which again raises the same issues about his compensation, but updates the date the grievance occurred to December 26, 2023, the date on which he applied for a lateral transfer. 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 the grievant listed as the date the grievance occurred. The grievant now appeals the agency's administrative closure to EDR.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he knew or should have known of the event or action that is the basis of the grievance.¹ 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.²

¹ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

² 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).

In grievances raising salary disputes, EDR applies the “paycheck rule” where it is applicable in such cases.³ 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.⁴ 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.⁵

A fair reading of the grievance indicates that the grievant appears to argue the agency’s compensation practices are inconsistent with state and/or agency policy, as demonstrated by, for example, an alleged disparity between the grievant’s salary and the salaries of other similarly situated employees. 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 first initiated, January 27, 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 an agency 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 period preceding the initiation of the grievance.”⁶

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 agency is directed to return the grievance form and any attachments to the appropriate step respondent for a substantive response.

EDR’s rulings on matters of compliance are final and nonappealable.⁷

Christopher M. Grab
Director
Office of Employment Dispute Resolution

³ *E.g.*, EDR Ruling No. 2016-4296; EDR Ruling No. 2013-3581; EDR Ruling No. 2010-2441.

⁴ *See* EDR Ruling No. 2010-2441 (and authorities cited therein).

⁵ 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.

⁶ *Rules for Conducting Grievance Hearings* § VI(C)(1).

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