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## COMPLIANCE RULING

In the matter of the Virginia Department of Transportation  
Ruling Number 2026-5926  
July 30, 2025

The grievant seeks a compliance ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) concerning a July 18, 2025 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 the grievance to proceed.

### FACTS

On July 18, 2025, the grievant emailed their grievance to an agency manager. The grievance seeks to challenge the grievant’s receipt of a due process notice of possible disciplinary action, which the grievant states was received on June 11, 2025. The agency manager responded to the grievance to indicate that no final action had been taken with regard to the due process notice because the grievant has been on leave since that time. The agency manager further notified the grievant that to the extent they were filing the grievance as to the due process notice, it was not timely. Communication from the agency’s human resources office further confirmed that no disciplinary action has been issued and, thus, nothing can be grieved. The grievant now appeals the agency’s administrative closure of this grievance 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.<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. 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.<sup>2</sup>

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

<sup>2</sup> 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 this case, the Grievance Form A reflects that the event that prompted the grievant to file this grievance was the receipt of a due process notice on June 11, 2025.<sup>3</sup> Because 30 calendar days from June 11 would have been July 11, and the grievant did not submit this grievance until July 18, the grievance is not timely and EDR has not been presented with a just cause basis justifying the late filing.<sup>4</sup> Accordingly, EDR concurs with the agency that the grievance will remain administratively closed.

EDR will point out that to the extent the circumstances prompting the June 11, 2025 due process notice result in disciplinary action eventually being issued against the grievant, the grievant will have 30 calendar days to submit a new grievance to challenge such a disciplinary action. If such a grievance is filed, it could include all the reasons the grievant seeks to dispute the circumstances addressed in the due process notice, any additional arguments that may arise as to an eventually issued disciplinary action, and the claims of discrimination, retaliation, and/or harassment that appear to be concerns the grievant seeks to address. Following the grievant's return to work, if the grievant experiences further actions the grievant asserts are discrimination, retaliation, or harassment, or if the circumstances of any alleged ongoing failure to accommodate under the Americans with Disabilities Act continue to occur, this ruling does not prevent the grievant from submitting a new grievance at that time to address matters that are ongoing and currently affecting their employment. Based on EDR's review, we are unable to identify an action that has occurred in the 30 calendar days preceding the initiation of the grievance that would support a timely grievance.

As stated above, the July 18, 2025 grievance will remain administratively closed. EDR's rulings on matters of compliance are final and nonappealable.<sup>5</sup>

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<sup>3</sup> The agency states that the grievant received the due process notice on June 5. (2\_email) However, a meeting apparently took place to discuss the notice on June 11, and the notice is also dated June 11. (id; document 8)

<sup>4</sup> See *Grievance Procedure Manual* § 9 (defining just cause as “[a] reason sufficiently compelling to excuse not taking a required action in the grievance process).

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