Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and OEA website. Parties should promptly notify the Chief Operating Officer of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,	)	OEA Matter No. 1601-0079-25
	)	
	)	Date of Issuance: November 9, 2026
v.	)	
	)	JOSEPH E. LIM, ESQ.
DEPARTMENT OF GENERAL SERVICES,	)	SENIOR ADMINISTRATIVE JUDGE
Agency	)	

Erin Meadors, Esq. Agency Representative
Derrick Hunter, Employee Representative

INITIAL DECISION

PROCEDURAL HISTORY

On September 18, 2025, Employee filed a Petition for Appeal with the D.C. Office of Employee Appeals ("OEA" or "Office") contesting the Department of General Services' ("DGS" or "Agency") decision to suspend her from her position as a Special Police Officer, Grade 7, with the DGS Protective Services Division ("PSD") for thirty (30) days, effective August 25, 2025. Following an Agency investigation, Employee was charged with "Attendance related offenses: unexcused tardiness, including delay in: (a) Reporting at the scheduled starting time." 6B DCMR section 1605.4 (f)1.

In response to OEA's September 18, 2025, letter, Agency submitted its Answer to Employee's Petition on October 17, 2025. I was assigned this matter on October 17, 2025. A Status Conference in the above matter was held on November 18, 2025. Thereafter, the parties were ordered and have submitted their briefs on the issue(s) identified by January 28, 2026. The record is now closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUES

1. Whether Agency violated 6B DCMR § 1602.3 (c), otherwise known as the "90-day rule" in suspending Employee for thirty (30) days.

2. If so, whether Agency's action of suspending Employee from service for thirty (30) days should be reversed.

FINDINGS OF FACT[1], ANALYSIS AND CONCLUSIONS OF LAW

Employee was hired as a Special Police Officer Grade 6 within the Protective Services Division of the Department of General Services on May 21, 2012. Effective August 24, 2023, Employee began serving a 5-Day Suspension from her position of Protective Services Special Police Officer due to tardiness. Effective December 2, 2024, Employee began serving a 7-Day Suspension from her position of Protective Services Special Police Officer due to tardiness.

In response to the Advance Notice of Proposed Suspension leading to the 7-Day Suspension, Employee filed a response and had a sit down to discuss the suspension, which was originally proposed as a 10-Day Suspension. After discussions with PSD leadership, Employee's proposed suspension time was reduced to 7 days.

As of March 2025, Employee's position of Special Police Officer within the PSD was promoted to Grade 7. On December 10, 2024, Employee was assigned to the John Wilson Building Viewing Stand detail from 2130 to 0600 hours. It is alleged that she was tardy reporting to the post assignment at 2240 hours. On December 14, 2024, Employee was again assigned to the John Wilson Building Viewing Stand detail from 2130 to 0600 hours and it is alleged that she was tardy reporting to the post assignment at 2145 hours. On December 15, Employee was assigned to the John Wilson Building Viewing Stand detail from 1330 to 2200 hours. Employee experienced another tardiness, reporting to the post assignment at 1347 hours. On December 10, December 14, and December 15 of 2024, it is alleged that Employee was late to her post on all three (3) occasions at the start of the duty shift.

Agency called a 12 p.m. meeting on January 14, 2025, to discuss the proposed adverse action of a 30-Day suspension with Employee. Employee was brought to Agency headquarters to attend the meeting with the personnel authority and her union representative but, upon arrival, she advised her supervising officer that she was unwell. So, the meeting was canceled due to Employee's illness. Employee subsequently took leave under the Family Medical Leave Act (FMLA) from January 17, 2025, returning on July 17, 2025.

Agency's human resources lead Shawn Winslow notified Employee's union representative on January 23, 2025, that the topic of the January 14, 2025, meeting was to discuss the proposed adverse action and that upon Employee's return the Agency would again schedule a meeting to discuss and follow-through on the proposed action. Agency routinely does not contact employees out on FMLA leave except to offer added leave options when it is concluding and an employee has not signaled a return plan. Employee returned to work on July 17, 2025.

On July 28, 2025, Employee received a fifteen (15) day advance written notice of a proposal to suspend her for cause from her position of Special Police Officer, Grade 7, with the Department of General Services' (DGS) Protective Services Division (PSD), for the following reason:

[1] Obtained from the parties' Joint Stipulation of Facts and official documents of record.

> On December 10, 2024, [she was] assigned to the John Wilson Building Viewing Stand detail from 2130 to 0600 hours. [She] reported late for [her] assignment at 2240 hours. On December 14, 2024, [she was] assigned to John Wilson Building Viewing Stand detail from 2130 to 0600 hours. [She] reported late for [her] assignment at 2145 hours. On December 15, 2024, [she was] assigned to the John Wilson Building Viewing Stand detail from 1330 to 2200 hours. [She] reported late to [her] assignment at 1347 hours.
>
> (**Attendance Related Offenses:** Unexcused tardiness, including delay in: (a) Reporting at the scheduled starting time. **6B DCMR § 1605.4 (f) 1**.)
>
> *Proposed Action:* **30 Day Suspension**.
>
> Here, cause for suspension is found in 6B DCMR §1605.4 (f), attendance related offenses.

On August 11, 2025, Employee, by and through her union, submitted a written response to the proposed 30-Day suspension. On August 18, 2025, Employee received the written notice of the final decision of the proposed suspension. On August 19, 2025, Deputy Director of the Protective Services Division Christopher Prince emailed a letter dated August 14, 2025, in response to Employee's written response to the proposed 30-Day suspension.

As documented in the Proposing Official's Rationale Worksheet, Employee's length of suspension was for repeatedly being late to her job on not only December 10, 2024, December 14, 2024, and December 15, 2024, but also on the occasions leading to the 5-Day and 7-Day Suspensions, which are July 13, 2023, July 17, 2023, August 6, 2023, September 23, 2024, September 24, 2024, September 25, 2024, September 30, 2024, and October 1, 2024. Effective August 25, 2025, Employee began her one-month suspension.

ANALYSIS AND CONCLUSIONS OF LAW

Whether Agency's Notice to Employee was timely per 6B DCMR § 1602.3 (c), otherwise known as the "90-day rule" in suspending Employee.

6B DCMR § 1602.3 (a) establishes the **"90-day rule"** for District of Columbia government employees. Under this regulation, a DC government agency must commence corrective or adverse disciplinary action against an employee "no more than ninety (90) business days after the agency or personnel authority knew or should have known of the performance or conduct supporting the action."

6B DCMR § 1602.3 (b) further states: "When there is an investigation involving facts or circumstances germane to the performance or conduct supporting a corrective or adverse action, the time limit established in paragraph (a) shall be tolled pending any criminal investigation by the Metropolitan Police Department or any other law enforcement agency with jurisdiction within the United States, the Office of the United States Attorney for the District of Columbia, or the Office of the Attorney General; or, pending any investigation by the Office of the Inspector General, the Office of the District of Columbia Auditor, or the Office of Police Complaints."

In this matter, 6B DCMR § 1602.3 (b) does not apply as there was no allegation that this matter was tolled because of any criminal investigation or any other investigation by the Office of the Inspector General, the Office of the District of Columbia Auditor, or the Office of Police Complaints.

Parties' Allegations

Employee accuses Agency of violating 6B DCMR § 1602.3 (c), which requires Agency to initiate an adverse action against a sworn member of the police force no later than ninety (90) business days after the agency or personnel authority knew or should have known of the performance or conduct supporting the action. Employee argues that this violation of the 90-day rule renders her suspension improper.

Agency contends that the action did commence no more than ninety (90) business days after it knew of the conduct supporting the action when Agency called a 12 p.m. meeting on January 14, 2025, to discuss the proposed adverse action with Employee. On this date, which was approximately 30 days after her tardiness on December 15, 2024, became known to the Agency, Employee was brought to Agency headquarters to attend the meeting with the personnel authority. But, upon arrival, she advised her supervising officer that she was unwell. The meeting was cancelled because Employee was unable to attend due to illness.

Agency points out that it notified Employee's union representative on January 23, 2025, that the topic of the meeting was to discuss the proposed adverse action and that upon Employee's return from FMLA leave, Agency would again schedule a meeting to discuss and follow-through on the proposed action. Agency ceased any further communication with Employee to comply with federal law as relates to employer communications with an employee on FMLA leave. Agency contends that Employee deserved the 30-day suspension from her job for constant tardiness.

Both parties disagree on the anchor date or the start date that Agency knew or should have known that Employee had been tardy to work on three occasions. In her brief, Employee asserts that based on Agency's emails, which Employee argues should be treated as admissions, the anchor date should either be January 16, 2025, or at the latest, January 23, 2025. Ninety business days from January 16, 2025, would be May 28, 2025. Ninety business days from January 23, 2025, would be June 3, 2025.

In Employee's Petition for Appeal to OEA, she attached a July 28, 2025, letter entitled "Re: Proposed Suspension Thirty (30) Days" which indicated that Employee was personally served this document and refused to sign her receipt on July 28, 2025. Based on this document, it is undisputed that Employee was personally served her advance notice of adverse action on July 28, 2025. If we were to take Employee's anchor date, Agency's notice would indeed be untimely.

On the other hand, Agency asserts an earlier anchor date, the day after December 15, 2024, to be the start date of the 90-day rule as it was the date that Agency knew that Employee had been tardy to work on three occasions. Ninety business days from December 16, 2024, would be April 30, 2025. Agency argues that it met the 90-day rule on January 14, 2025, the date that it called for

a meeting with Employee to inform and discuss with her Agency's proposed adverse action. It is undisputed that the meeting never took place since Employee declined to attend due to her illness. Agency does not assert that it had served Employee her advance notice of adverse action on January 14, 2025. When Agency notified Employee's representative on January 23, 2025, that the purpose of the January 14, 2025, was to inform them of Agency's proposed action, it stands to reason that Agency had not made Employee aware of the reason before. The date that Employee was actually served with the proposed notice of adverse action, July 28, 2025, was more than ninety (90) business days from Agency's own anchor date of December 16, 2024.

Agency then goes on to argue that should this tribunal not find the action to have commenced when the meeting was scheduled and was in the process of being hosted with Employee on-site at headquarters or when Agency subsequently notified Employee's union representative of the corrective or adverse action, Agency contends that under 6B DCMR § 1602.3 (c), OEA should find that the personnel authority appropriately "suspended" the commencement of the corrective or adverse action of a 30-Day Suspension "for good cause" as it "may" when Employee left the Agency on FMLA leave on January 14, 2025.[2]

6B District Personnel Manual (DPM) 1602.3 (c) states: "Except in matters involving employees of the Metropolitan Police Department and Fire and Emergency Medical Services Department, *the time limit imposed in paragraph (a) mav be suspended by the personnel authority for good cause* and shall be suspended pending any related investigation by the Board of Ethics and Government Accountability." Emphasis supplied by Agency.

While "good cause" is not defined here, Agency claims that its decision not to communicate personnel actions with an employee who is on FMLA leave obeys the FMLA prohibitions on employers when an employee is on FMLA leave. Agency argues that, instead of contacting Employee who was on sick leave and realizing that Employee would be on leave for some time following her FMLA request and its approval, Agency instead communicated with Employee's union representative its intent to have Employee disciplined upon her return to work. Agency claims that as a matter of professionalism and courtesy, it decided that it would have been inappropriate to add to Employee's situation a personnel matter that would cause additional stress when Employee was ill. Agency goes on to contend that this is good cause to suspend the 90-Day rule.

The full text on FMLA Prohibitions for Employers states: [3]

> Employers are prohibited from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any FMLA right.
>
> Any violations of the FMLA or the Department's regulations constitute interfering with, restraining, or denying the exercise of rights provided by the FMLA. Examples include: Refusing to authorize FMLA leave, or Discouraging an employee from using

[3] See "FMLA Prohibitions" on page 71 of the *Employer's Guide to the Family and Medical Leave Act* as published by the Wage and Hour Division of the United States Department of Labor as posted online at https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/employerguide.pdf.

such leave.

Interference also includes manipulation to avoid responsibilities under the FMLA. Examples include:

- Transferring employees from one worksite to another for the purpose of keeping a worksite below the 50-employee threshold for employee eligibility under the Act,
- Changing the essential functions of the job in order to preclude the taking of leave, or
- Manipulating an employee's work hours to avoid employee eligibility under the FMLA.

Employers are prohibited from discriminating or retaliating against an employee or prospective employee for having exercised or attempting to exercise any FMLA right. Examples include:

- Using the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions;
- Counting FMLA leave under "no fault" attendance policies, or
- Failing to provide benefits to an employee on unpaid FMLA leave if the employer provides those benefits to employees who use other types of unpaid leave.

  Employers are prohibited from discharging or in any other way discriminating against any person, whether or not an employee, for opposing or complaining about any unlawful practice under the FMLA.

All persons, whether or not employers, are prohibited from discharging or in any other way discriminating against any person, whether or not an employee, because that person has:

- Filed any charge, has instituted, or caused to be instituted, any proceeding under or related to the FMLA;
- Given, or is about to give, any information in connection with an inquiry or proceeding relating to any right under the FMLA; or testified, or is about to testify, in any inquiry or proceeding relating to a right under the FMLA.

Contrary to Agency's excuse for violating the 90-day rule, the full text of the FMLA does not prohibit the employer from disciplining an employee for pre-existing performance or conduct issues. Indeed, discipline up to termination is allowed if it stems from performance problems, missed deadlines, or policy violations that occurred *before* the leave began and are thoroughly documented. Emphasis supplied. The Court of Appeals of North Carolina recently held that an employer didn't interfere with an employee's rights under the Family Medical Leave Act ("FMLA") or retaliate against her by contacting her to schedule her disciplinary hearing while she was on FMLA leave.[4]

[4] *Jennings v. Univ. of N.C.,* N.C. Ct. App., No. COA16-1031, 7/5/17.

In this matter, it is undisputed that Employee returned to work on July 17, 2025. Even if we were to accept Agency's excuse for violating the 90-day rule, Agency does not explain why it still waited until July 28, 2025, to serve Employee her fifteen (15) day advance written notice of a proposal to suspend her for the same offenses that the agency commenced adverse action discussions with Employee when it scheduled the January 14, 2025, meeting.

Agency's next argument is that on January 23, 2025, it constructively notified Employee through her union representative of its intent to stay the adverse action until her return and at such time as the penalty could be served. However, Agency does not cite any statute or regulation that a mere communication of its intent to Employee's representative suffices to replace the requirement that an employee must be served her Advance Notice of Adverse Action within the 90-day deadline under 6B DCMR § 1602.3 (c).

Finally, Agency argues that Employee should not be able to frustrate the Agency's ability to impose discipline on the grounds that the notice of proposed suspension was served more than 90-days after the Agency knew or should have known of the misconduct when Employee's own absence from work was the only reason for the delay in handing her the adverse action paperwork. In essence, Agency blames Employee for getting an illness serious enough to avail of FMLA as an excuse for Agency's own violation of 6B DCMR § 1602.3 (c).

The facts establish that the day after December 15, 2024, is the start date of the 90-day rule as it was the date that Agency knew that Employee had been tardy to work on three occasions. Ninety business days from December 16, 2024, would be April 30, 2025. It is undisputed that Agency finally served Employee her Advance Notice of Adverse Action on July 28, 2025, which is 150 business days from December 16, 2024. In conclusion, after carefully reviewing the record and the arguments of the parties, the undersigned finds that the Agency initiated its adverse action in an untimely manner.

Whether Agency's action of suspending Employee from service for thirty (30) days should be reversed.

On the procedural front, I find that Agency did not comply with the 90-day rule as stated in D.C. Code Section 5-1031(a). In *D.C. Department of General Service vs. Office of Employee Appeals*, the Superior Court of the District of Columbia held that the 90-day deadline under D.C. Code Section 5-1031(a) is mandatory and Agency's violation of such is reversible error.[5] The D.C. Court of Appeals also affirmed the mandatory nature of the 90-day deadline in *District of Columbia Fire and Emergency Medical Services Department v. District of Columbia Office of Employee Appeals*.[6] Based on these findings, I conclude that Employee's thirty day suspension should be reversed.

[5] *D.C. Department of General Service vs. Office of Employee Appeals*, Case No. 2020 CA 001096 (D.C. Super. Ct. February 3, 2021).

[6] *District of Columbia Fire and Emergency Medical Services Department v. District of Columbia Office of Employee Appeals*, 986 A.2d 419 (D.C. 2010).

ORDER

It is hereby ORDERED that:

1. Agency's decision to suspend Employee for thirty (30) days is REVERSED.

2. Agency is directed to issue the back pay to which she is entitled and restore any benefits lost as a result of the suspension, no later than 30 calendar days from the date of issuance of this Decision.

3. Agency is directed to file with this Office documents within 45 calendar days to reflect its compliance with the directives of this Initial Decision.

s/ *Joseph Lim*
FOR THE OFFICE: Joseph E. Lim, Esq.
Senior Administrative Judge