

Issue: Misapplication of policy; Hearing Date: 09/20/05; Decision Issued: 10/05/05;
Agency: VCU; AHO: Carl Wilson Schmidt, Esq.; Case No. 8170



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case Number: 8170

Hearing Date: September 20, 2005
Decision Issued: October 5, 2005

PROCEDURAL HISTORY

On May 19, 2005, Grievant filed a grievance to challenge the Agency's application of certain DHRM policies. The outcome of the Third Resolution Step was not satisfactory to the Grievant and she requested a hearing. On August 25, 2005, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On September 20, 2005, a hearing was held at the Agency's regional office.

APPEARANCES

Grievant
Agency Party Designee
Agency Advocate
Witnesses

ISSUE

Whether the Agency misapplied DHRM Policies 3.10, *Compensatory Leave*, and 4.25, *Holidays*?

BURDEN OF PROOF

The burden of proof is on the Grievant to show by a preponderance of the evidence that the relief she seeks should be granted. Grievance Procedure Manual (“GPM”) § 5.8. A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not. GPM § 9.

FINDINGS OF FACT

After reviewing the evidence presented and observing the demeanor of each witness, the Hearing Officer makes the following findings of fact:

The Virginia Commonwealth University employs Grievant as a lead operator at one of its facilities. She is responsible for monitoring various mechanical systems installed in buildings throughout the campus. Her unit operates and must be staffed on a continuous basis. She is a full time classified employee who works 40 hours per week. Her work schedule involves working on Saturdays and/or Sundays based on the needs of her employer. On occasion, a holiday will fall on one of Grievant’s scheduled days off from work. The Agency awards her eight hours of compensatory leave to account for the holiday. On other occasions, Grievant will have to work on a holiday. The Agency pays her salary for the day worked plus awards her eight hours of compensatory leave to account for the holiday.

CONCLUSIONS OF POLICY

In a work week for a full time classified employee, the employee would work five days for a total of 40 hours within a seven calendar day period.¹ Grievant refers to an employee who works eight hours per day, Monday through Friday as a standard employee. She refers to an employee who works on a Saturday and/or a Sunday but has two rest days between Monday and Friday as a shift employee. For the purpose of this discussion, the Hearing Officer will adopt Grievant’s definitions. Grievant is a shift employee.²

Holiday on Scheduled Day Off

DHRM Policy 3.10, *Compensatory Leave*, provides that compensatory leave is “paid time off ... when a holiday falls on an employee’s scheduled day off.” DHRM Policy 4.25(III)(D), *Holidays*, provides that employees “whose scheduled day off falls on a holiday and who do not work that day may receive compensatory leave or be paid for

¹ DHRM Policy 1.25.

² This decision does not discuss the situation where a shift employee must work overtime, namely more than 40 hours per seven day period.

the holiday” Thus, under DHRM Policy 3.10 and Policy 4.25, if a shift employee is scheduled off on Friday and that Friday is a holiday, the shift employee would receive eight hours of compensatory leave.³

On those days when a holiday fell on a day Grievant was scheduled to be off of work, Grievant received eight hours of compensatory leave which she could use on a later day. No evidence has been presented showing the Agency has misapplied DHRM Policy 3.10. The Agency elected to give Grievant compensatory leave rather than a cash payment for the holiday. DHRM Policy 4.25(III)(D) gives the Agency the option to choose how to compensate Grievant.

Working on a Holiday

DHRM Policy 3.10 states that compensatory leave is “paid time off for an eligible employee ... having worked on a holiday” DHRM Policy 4.25(D)(2) states that employees, “who are required to work on a holiday that also is their scheduled day off will receive pay for working on a holiday as described in section III(C)(1)” DHRM Policy 4.25(III)(C)(1) provides:

When employees are required to work on a holiday

1. Receive double compensation
 - a. Full-time classified employees (F)
Full-time employees who are required to work on a holiday will be paid eight hours for the holiday and, in addition, will be paid or credited with compensatory leave for the hours actually worked.

On those days Grievant worked on a holiday, Grievant received her regular pay (namely, the pay received for working on a day that was not a holiday) plus Grievant received eight hours of compensatory holiday leave which she could take on another day of her choosing. Grievant argues this means she did not receive “double compensation” as required by DHRM Policy 4.25. Grievant argues she should receive double her salary for the day worked plus eight hours of accrued compensatory holiday leave. Grievant’s argument fails because even though the policy says “double compensation” the phrase is confusing. Double compensation is not defined as two days of pay for one day of work plus compensatory holiday leave. Double compensation actually means compensation “in addition.” When Grievant works on a holiday, she is to be “paid eight hours for the holiday” plus (in addition) she is either “paid ... for the hours actually worked” **or** “credited with compensatory leave for the hours actually worked.” She does not receive both.

Grievant argues that when a holiday falls on one of her scheduled days off she is entitled to eight hours of holiday leave and eight hours of compensatory leave. This argument fails. Although policy uses the term “holiday” leave, that type of leave is the

³ Or the agency could pay the employee for the day and not award compensatory leave.

same as compensatory leave. In other words, holiday leave is compensatory leave that arises as the result of a holiday. Compensatory leave can arise for other reasons than holidays. If Grievant's approach were followed, the Agency would have to award her 16 hours of compensatory leave. Nothing in policy authorizes 16 hours of compensatory leave for an eight hour period of time.⁴ Grievant's argument is understandable in light of the language requiring "double compensation", but as explained, the phrase is misleading.

Grievant argues that other State agencies pay additional compensation to employees with holidays on scheduled days off or on holidays that they have to work. To the extent other Agencies may pay additional sums, they do so at their own preference. DHRM policy does not require agencies to pay more than the minimum amount specified in policy. VCU's practice is in accordance with DHRM pay policies.

Many employees would prefer to avoid having to work on Christmas and, thus, it would appear that the hardship on the standard employee is less than on the shift employee. While this may be true, there is nothing in policy that requires State agencies to compensate employees for their inconvenience.

DECISION

For the reasons stated herein, the Grievant's request for relief is denied. The Agency has not misapplied State policy.

APPEAL RIGHTS

You may file an administrative review request within **15 calendar** days from the date the decision was issued, if any of the following apply:

1. If you have new evidence that could not have been discovered before the hearing, or if you believe the decision contains an incorrect legal conclusion, you may request the hearing officer either to reopen the hearing or to reconsider the decision.
2. If you believe the hearing decision is inconsistent with state policy or agency policy, you may request the Director of the Department of Human Resource Management to review the decision. You must state the specific policy and explain why you believe the decision is inconsistent with that policy. Please address your request to:

⁴ Grievant presented an example schedule comparing a "standard employee" and a "shift employee". The standard employee works Monday through Friday and is off on Saturday and Sunday. The shift employee is off Friday and Saturday. Grievant argues that if Christmas falls on a Friday, the shift employee should be paid holiday leave of eight hours plus eight hours of compensatory leave. Since holiday leave is a type of compensatory leave, the shift employee would receive 16 hours of compensatory leave. Nothing in DHRM policy authorizes 16 hours of compensatory leave for an eight hour holiday on which the employee did not work.

Director
Department of Human Resource Management
101 North 14th St., 12th Floor
Richmond, VA 23219

3. If you believe that the hearing decision does not comply with the grievance procedure, you may request the Director of EDR to review the decision. You must state the specific portion of the grievance procedure with which you believe the decision does not comply. Please address your request to:

Director
Department of Employment Dispute Resolution
830 East Main St. STE 400
Richmond, VA 23219

You may request more than one type of review. Your request must be in writing and must be **received** by the reviewer within 15 calendar days of the date the decision was issued. You must give a copy of your appeal to the other party. The hearing officer's **decision becomes final** when the 15-calendar day period has expired, or when administrative requests for review have been decided.

You may request a judicial review if you believe the decision is contradictory to law. You must file a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose within **30 days** of the date when the decision becomes final.⁵

[See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation, or call EDR's toll-free Advice Line at 888-232-3842 to learn more about appeal rights from an EDR Consultant].

Carl Wilson Schmidt, Esq.
Hearing Officer

⁵ Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.