

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: May 17, 2013;
Ruling No. 2013-3607; Agency: Department of Corrections; Outcome: Grievant Not in
Compliance.



COMMONWEALTH OF VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

COMPLIANCE RULING

In the matter of the Department of Corrections
EDR Ruling Number 2013-3607
May 17, 2013

The grievant has requested a compliance ruling regarding his April 22, 2013 grievance with the Department of Corrections (the agency). The agency asserts that the grievant did not initiate his April 22nd grievance within the 30-calendar day time period required by the grievance procedure. For the reasons set forth below, the grievance is untimely and may be administratively closed.

FACTS

On March 22, 2013, the agency issued a Group I Written Notice to the grievant. The grievant challenged the agency's action by submitting a grievance to the agency's first step-respondent on April 22, 2013. The agency asserts that it received the grievance on April 22, 2013 at 2:50 p.m. On April 24, 2013, the agency informed the grievant that his April 22nd grievance was administratively closed due to his failure to timely initiate the grievance. The grievant now seeks a compliance ruling from the Office of Employment Dispute Resolution (EDR) to determine whether the grievance is compliant with the grievance procedure in this regard.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he or she 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.

In this case, the event that forms the basis of the grievance is the agency's issuance of the Written Notice. EDR has long held that in a grievance challenging a disciplinary action, the 30 calendar-day timeframe begins on the date that management presents or delivers the Written

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

Notice to the employee.² Thus, if he sought to challenge the March 22, 2013 Written Notice, the grievant should have initiated a grievance within 30 days, i.e., no later than April 21, 2013. Therefore, the grievant's April 22, 2013 grievance is not timely to challenge the March 22, 2013 Written Notice. Thus, the only remaining issue is whether there was just cause for the delay.

To support his claim of just cause, the grievant contends that the 30th calendar day fell on a weekend, which is not considered a business day for the agency. Moreover, the grievant alleges that the *Grievance Procedure Manual* does not clearly identify what the due date should be when the time period falls on a weekend or holiday. He also asserts that agency management did not inform him he must submit his grievance by a certain date. Indeed, the 30th day of this time period fell on a Sunday. However, the fact that the 30th day falls on a weekend does not extend the deadline for initiating a grievance.³ EDR has consistently applied this strict construction of the 30-day rule. Further, the grievance procedure specifically states that the grievance must be filed within 30 **calendar** days, not business days. An erroneous belief that the 30-day period does not include weekends does not constitute just cause. EDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.⁴ A grievant's lack of knowledge about the grievance procedure and its requirements does not constitute just cause for failure to act in a timely manner. EDR, therefore, concludes that the grievant has failed to demonstrate just cause for his delay.

CONCLUSION

For the reasons set forth above, EDR concludes that the grievant has not established that his grievance was timely initiated or that there was just cause for the delay. Accordingly, the parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. EDR's rulings on matters of compliance are final and nonappealable.⁵



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² E.g., EDR Ruling No. 2005-986; EDR Ruling No. 2003-147; EDR Ruling No. 2002-118.

³ See EDR Ruling No. 2008-1881; EDR Ruling No. 2006-1201; EDR Ruling No. 2003-118.

⁴ See, e.g., EDR Ruling No. 2008-1985; EDR Ruling Nos. 2006-1349, 2006-1350; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

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