

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: May 12, 2014;  
Ruling No. 2014-3881; Agency: Old Dominion University; Outcome: Agency Not in  
Compliance.



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

**COMPLIANCE RULING**

In the matter of Old Dominion University  
Ruling Number 2014-3881  
May 12, 2014

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to the failure of Old Dominion University (the “University”) to comply with the grievance procedure.

On or about April 17, 2014, the University placed the grievant on administrative leave and ordered him to complete a fitness for duty evaluation. The grievant initiated a grievance challenging these actions on or about April 25, 2014. The grievant wishes to advance his grievance through the management resolution steps, but the University has informed him that the grievance process is temporarily suspended because he is on administrative leave. The grievant requests a compliance ruling to allow his grievance to proceed.

The grievance process is intended to provide the parties with an expeditious way to resolve workplace issues.<sup>1</sup> In furtherance of this goal, the five workday rule requires the parties to a grievance to take appropriate action, depending on the procedural stage of the grievance, within five workdays of receipt of the grievance.<sup>2</sup> Thus, for example, a grievant must advance or conclude his grievance within five workdays of receiving each step response, and each step-respondent is required to issue his or her response within five workdays of receiving the grievance. The *Grievance Procedure Manual* defines “workdays” as the “[n]ormal work schedule (excluding authorized leave time) for the individual responsible for taking the required action.”<sup>3</sup>

This case, however, presents a unique issue: whether the grievance process may proceed when a grievant is on administrative leave, but nevertheless wishes to pursue his grievance. The answer to that question depends on the particular facts of each situation. That a grievant has been placed on administrative leave does not mean that the grievance process would be automatically stayed until he returned to work.<sup>4</sup>

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<sup>1</sup> See *Grievance Procedure Manual* § 1.1.

<sup>2</sup> See *id.* §§ 3.1, 3.2, 3.3.

<sup>3</sup> *Id.* § 9.

<sup>4</sup> Indeed, in certain cases, such as when a grievant may ultimately transition from short-term to long-term disability, he would potentially not return to work at all, and thus never be afforded the opportunity to pursue his grievance.

In this case, there is nothing to indicate that the grievant is somehow incapable of pursuing his grievance through the management resolution steps at this time. There is also nothing to indicate that the University is prevented from proceeding at this time. In the absence of any such information, and given the grievant's unequivocal request to EDR and the University to permit the grievance process to continue while he is on administrative leave, the grievance must be allowed to proceed. The grievant has filed an expedited grievance.<sup>5</sup> Accordingly, the University must contact the grievant to schedule the second step meeting **within five workdays of the date of this ruling.**<sup>6</sup>

This ruling only addresses whether the grievance may proceed while the grievant is on administrative leave. Because the grievance has not yet reached the qualification phase, EDR has not considered the relative merits of the parties' positions regarding the agency's decision to place him on administrative leave or order the fitness for duty evaluation, and nothing in this ruling is meant to indicate that EDR has done so. That the grievant is challenging the University's instruction to him to undergo a fitness for duty evaluation does not modify, suspend, or otherwise alter the University's authority to issue such an order. The grievant's obligation to comply with the University's instruction remains similarly unaltered while the grievance proceeds. In short, the fact that the grievance has been filed does not hold in abeyance the University's directives to the grievant in relation to the fitness for duty evaluation.

EDR's rulings on matters of compliance are final and nonappealable.<sup>7</sup>



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Director  
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<sup>5</sup> Although the management actions challenged in the grievance are not among those that would ordinarily be eligible for the expedited process, the University seems to have agreed to use the expedited process in this case. *See Grievance Procedure Manual* § 3.4.

<sup>6</sup> We further note that, “[u]pon mutual agreement, the grievance procedure permits the parties to modify any “pre-qualification rules during the management resolution steps,” including “conducting the second step meeting other than in-person.” *Grievance Procedure Manual* § 8.4. The grievant has indicated that he would like to waive the second step meeting and receive only a written response. If the University agrees, the meeting may be waived, but it is also free to insist on holding a face-to-face meeting if it so desires. Alternatively, the second step meeting could be conducted via telephone or at a neutral location off-campus, so long as both parties agree.

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