

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: April 11, 2016; Ruling No. 2016-4326; Agency: Virginia Commonwealth University; Outcome: Grievant Not in Compliance.



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

**COMPLIANCE RULING**

In the matter of Virginia Commonwealth University  
Ruling Number 2016-4326  
April 11, 2016

Virginia Commonwealth University (the “University”) has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether the grievant’s March 19, 2016 grievance is in compliance with the grievance procedure. The University asserts that the grievance does not comply with the grievance procedure because it was not timely initiated<sup>1</sup>. For the reasons set forth below, this grievance is untimely and may be administratively closed.

FACTS

The grievant was employed by the University as an operations specialist. On November 12, 2015, the grievant resigned from his employment with the University, after being advised that the University intended to issue him a Group III Written Notice with termination for sleeping on the job. On or about December 7, 2015, the grievant initiated a complaint with the University’s Equity and Access Services office. On or about March 18, 2016, that office advised the grievant that his complaint did not meet the requirements for intake and/or that no additional inquiry by the University was appropriate. On or about March 19, 2016, the grievant subsequently initiated a dismissal grievance with EDR.

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.<sup>2</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.

In this case, the event that forms the basis of this grievance is the conclusion of the grievant’s employment with the University on November 12, 2015. Therefore, the grievant

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<sup>1</sup> The University also argues that the grievant lacks access to the grievance procedure, because he voluntarily resigned his employment. Although, as the University notes, the grievant may in fact lack access due to his resignation, for purposes of this ruling only, EDR will assume that access exists.

<sup>2</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.2.

should have initiated his grievance within 30 days, i.e., no later than December 12, 2015. The grievance was not initiated until March 19, 2016. Because the grievant initiated his grievance more than 30 calendar days beyond the challenged management conduct, the grievance is untimely. Thus, the only remaining issue is whether there was just cause for the delay.

To explain his late filing, the grievant asserts that he was unaware of the dismissal grievance process. EDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.<sup>3</sup> 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. Thus, we conclude that the grievant has failed to demonstrate just cause for the delay.

### CONCLUSION

For the reasons set forth above, EDR concludes that the grievance was not timely initiated and there is no just cause for the delay. The grievance will be marked as concluded due to noncompliance and EDR will close its file. EDR's rulings on matters of compliance are final and nonappealable.<sup>4</sup>



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Director  
Office of Employment Dispute Resolution

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<sup>3</sup> See, e.g., EDR Ruling Nos. 2006-1349, 2006-1350; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

<sup>4</sup> Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).