

Issue: Compliance – Grievance Procedure (30 Day Rule); Ruling Date: February 2, 2018; Ruling Number: 2018-4663; Agency: Department of Housing and Community Development; Outcome: Grievant Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Equal Employment and Dispute Resolution

COMPLIANCE RULING

In the matter of the Department of Housing and Community Development
Ruling Number 2018-4663
February 2, 2018

The Department of Housing and Community Development (the “agency”) seeks a compliance ruling concerning the grievant’s filing of a dismissal grievance. The agency asserts that the grievant did not initiate her grievance within the 30 calendar day time period required by the grievance procedure. For the reasons set forth below, this grievance is untimely and will be administratively closed.

The grievance procedure provides that an employee must initiate a written grievance within thirty calendar days of the date 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 thirty 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 grievant’s termination on November 7, 2017. Thus, the grievant should have initiated the grievance within thirty days, i.e., no later than December 7, 2017. The grievant claims she mailed a dismissal grievance to EEDR on December 5, 2017.² EEDR did not receive such a grievance from the grievant in any such mailing. Upon learning that EEDR had not received the mailed copy of her grievance, she submitted a scanned copy of her dismissal grievance to EEDR on January 3, 2018.

The grievance procedure provides that “[t]he employee bears the burden of establishing the date that the grievance was initiated. Thus, employees are strongly encouraged to document the initiation date, for instance, by using certified mail or requesting a date-stamped photocopy of the Grievance Form A.”³ The grievant did not send her original grievance by certified mail. She has not provided EEDR with any documentation that would demonstrate that it was mailed or even drafted within thirty calendar days of the issuance of the Written Notice. In the absence of any such evidence, the grievant has not carried her burden to demonstrate that the grievance was timely initiated. Thus, EEDR must conclude that the grievant did not initiate the grievance until January 3, 2018 and that she has not presented any evidence of just cause for her late filing.

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

² The grievance procedure provides that, “for purposes of establishing when a mailed grievance was initiated, the postmark date is considered the initiation date.” *Grievance Procedure Manual* § 2.2.

³ *Grievance Procedure Manual* § 2.2.

Accordingly, EEDR concludes that the grievance was not timely initiated and that there was no just cause for the delay. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required.⁴ EEDR's rulings on matters of compliance are final and nonappealable.⁵



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⁴ This ruling does not address whether the grievant might have a legitimate claim under a different process, such as, for example, filing a complaint with the federal Equal Employment Opportunity Commission, United States Department of Labor, or other legal proceeding.

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