

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: July 8, 2015;
Ruling No. 2016-4184; Agency: Virginia Department of Health; 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 Virginia Department of Health
EDR Ruling Number 2016-4184
July 8, 2015

The Virginia Department of Health (the “agency”) has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether the grievant’s June 22, 2015 dismissal grievance was timely initiated.

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 agency’s issuance of the Written Notice. EDR has long held that in a grievance challenging a disciplinary action, the thirty calendar-day timeframe begins on the date that management presents or delivers the Written Notice to the employee.²

In this case, the grievant received a Group II Written Notice and was terminated due to his accumulation of discipline on May 22, 2015.³ He initiated a dismissal grievance challenging the disciplinary action on June 22, 2015. Because the grievant received the Written Notice on May 22, he should have initiated the grievance within thirty days, i.e., no later than June 21, 2015. He did not initiate the grievance until June 22, 2015, and has presented no evidence of just cause for his late filing.⁴

Accordingly, EDR 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

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

² E.g., EDR Ruling No. 2015-4181; EDR Ruling No. 2013-3582; EDR Ruling No. 2005-986; EDR Ruling No. 2003-147.

³ The grievant had a prior active Group II Written Notice in his personnel file. See DHRM Policy 1.60, *Standards of Conduct*, § B(2)(b) (stating that the issuance of “[a] second active Group II Notice normally should result in termination”).

⁴ June 21, 2015 was a Sunday. However, EDR has consistently applied a strict construction of the thirty-day rule, and the fact that the thirtieth calendar day falls on a weekend does not extend the deadline for initiating a grievance. E.g., EDR Ruling No. 2013-3607; EDR Ruling No. 2008-1881; EDR Ruling No. 2006-1201; EDR Ruling No. 2003-118. The grievance procedure specifically provides that a grievance must be filed within 30 *calendar* days, and an erroneous belief that the thirty-day period does not include weekends does not constitute just cause. *Id.*

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