

Issue: Compliance – Grievance Procedure (30 Day Rule); Ruling Date: September 21, 2015; Ruling No. 2016-4220; Agency: Virginia Department of Health; Outcome: Grievant in Compliance (in part), Grievant Not in Compliance (in part).



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

COMPLIANCE RULING

In the matter of the Virginia Department of Health
Ruling Number 2016-4220
September 21, 2015

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether his grievance dated August 20, 2015 with the Virginia Department of Health (the “agency”) was timely initiated. For the reasons discussed below, the grievance is timely in part and untimely in part.

FACTS

On or about July 8, 2015, the grievant was notified that, due to a restructuring, he would be required to supervise an additional business location in the future, but that his work duties would have “no change” and he would receive no additional compensation. At that time, the grievant was told “to think it over about the work location” and to let the agency know “within 10 to 14 days” The grievant subsequently corresponded with a member of management about his concerns, but the restructuring plans were not changed. The changes were scheduled to take place effective on or about August 25, 2015.

On August 20, 2015, the grievant initiated a grievance challenging the restructuring plans, as well as an alleged inappropriate communication by Human Resources. On or about August 25, 2015, the first step respondent notified the grievant that his grievance had been administratively closed due to untimeliness. The grievant now appeals that determination to EDR.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 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.

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

In this case, the grievant challenges two management actions. The first event that forms the basis of the grievance is the restructuring that resulted in the grievant receiving an additional supervisory assignment without any additional compensation. The grievant was apparently notified of the planned restructuring on July 8, 2015. The agency asserts that because the grievant “knew or should have known” of this management action on July 8, he should have initiated his grievance within 30 calendar days of that date, or not later than August 7, 2015. While EDR understands the agency’s reasoning that the grievant “knew or should have known” of the management action on July 8, 2015, for purposes of initiating a grievance, in this case, the actual action did not take place until approximately August 25, 2015. During the time period between July 8 and August 25, it was possible that management’s plans for the restructuring could have changed. In that sense, the management action challenged in this case is best analogized to grievances involving layoff. In layoff grievances, EDR has long held that the final event forming the basis of such a grievance is the actual effective date of layoff, not a grievant’s receipt of a Notice of Layoff or Placement indicating that such an action will likely occur in the future.² In challenges to layoffs, EDR considers the effective date of layoff as the final date the thirty-day filing clock begins to run because circumstances can change from the time the employee receives his Notice of Layoff or Placement to the time that he is actually laid off. A grievant may initiate a grievance at any point prior to the final effective date of layoff, but EDR permits such a grievance to be filed within thirty calendar days of a grievant’s actual separation by layoff. Applying this reasoning to the facts presented in this case, EDR concludes the grievant’s challenge to the restructuring is timely.

The grievant also challenges the alleged improper sharing of confidential information. Specifically, the grievant asserts that against his wishes, an employee acting in a human resources capacity shared information about their discussions regarding the restructuring with one of the grievant’s managers. The grievant states that he became aware of this alleged action on July 9, 2015. However, the grievant did not initiate the grievance challenging this action until August 20, 2015, more than 30 calendar days after he learned of the conduct. In contrast to the restructuring decision, the alleged action by the human resources representative was not subject to further change before taking effect; rather, the challenged conduct was completed no later than July 9, 2015 and was discrete in nature. For these reasons, EDR finds that the claims regarding the alleged improper sharing of information were untimely, as the grievance was initiated more than 30 calendar days after the grievant became aware of the conduct.

CONCLUSION

For the reasons set forth above, we conclude that the grievant’s claims regarding the restructuring were timely initiated and may be allowed to proceed. This ruling does not address the merits of these claims and only decides that they were timely initiated. The grievance must be returned to the second step-respondent to be addressed at that level and proceed through the grievance process. As the grievant’s claims regarding the alleged inappropriate sharing of

² See EDR Ruling No. 2014-3738; EDR Ruling No. 2013-3627; EDR Ruling No. 2011-2707; EDR Ruling No. 2010-2623; EDR Ruling No. 2004-784.

information are untimely, these claims do not need to be addressed by the agency during the subsequent resolution steps.³

EDR's rulings on matters of compliance are final and nonappealable.⁴



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³ To avoid unnecessary confusion, the parties may choose for the grievant to substitute at the second step a revised grievance containing only the timely claims.

⁴ See Va. Code §§ 2.2-1001(5); 2.2-3003(G).