

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: October 7, 2015; Ruling No. 2016-4242; Agency: Department of Behavioral Health and Developmental Services; 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 Department of Behavioral Health and Developmental Services  
Ruling Number 2016-4242  
October 7, 2015

The Department of Behavioral Health and Developmental Services (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.

FACTS

The grievant initiated a dismissal grievance directly with the Office of Employment Dispute Resolution (EDR) on September 25, 2015, signing and dating the Dismissal Grievance Form A, then sending to EDR via facsimile. According to the Dismissal Grievance Form A, the grievant's dismissal date was August 25, 2015, which the agency confirms. As such, the agency asserts that the grievance was initiated untimely.

Ordinarily, if a Grievance Form A does not comply with the requirements for initiating a grievance, the agency may notify the employee, using the Grievance Form A, that the grievance will be administratively closed.<sup>1</sup> Because dismissal grievances are initiated directly with EDR,<sup>2</sup> an agency is essentially unable to follow this process as outlined. Accordingly, it has requested a ruling from this Office regarding the issue of alleged noncompliance.

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>3</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.

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<sup>1</sup> *Grievance Procedure Manual* § 2.4.

<sup>2</sup> *Grievance Procedure Manual* § 2.5.

<sup>3</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.2.

In this case, the event that forms the basis of this grievance is the grievant's termination on August 25, 2015. Therefore, the grievant should have initiated her grievance within 30 days, i.e., no later than September 24, 2015. The date upon which EDR received the faxed grievance indicates that it was not initiated until September 25, 2015. Because the grievant initiated her grievance more than 30 calendar days beyond the date on which she was terminated, the grievance is untimely. Thus, the only remaining issue is whether there was just cause for the delay.

The grievant presents no facts that would constitute evidence of just cause for a delay in initiating her grievance. EDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.<sup>4</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 her 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>5</sup>



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Director  
Office of Employment Dispute Resolution

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<sup>4</sup> See, e.g., EDR Ruling Nos. 2006-1349, 2006-1350; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

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