

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: December 1, 2015; Ruling No. 2016-4274; Agency: Department of Behavioral Health and Developmental Services; Outcome: Grievant 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 2016-4274
December 1, 2015

The Department of Behavioral Health and Developmental Services (the “agency”) has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) on whether the grievant’s November 9, 2015 dismissal grievance was timely initiated.

On Monday, November 9, 2015, EDR received the grievant’s dismissal grievance filing. 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.¹ 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 grievant’s receipt of the Written Notice terminating her employment on October 9, 2015.

Therefore, the grievant should have initiated her grievance within 30 days, i.e., no later than November 8, 2015. However, pursuant to the newly updated *Grievance Procedure Manual*, if the 30th calendar day by which a grievance must be initiated falls on a Saturday, Sunday, or legal holiday, the grievance may be filed on the next business day.² In this case, November 8, 2015 was a Sunday. Thus, the grievance should have been initiated by the next business day, Monday, November 9, 2015, which the grievant did in this case.

The agency argues that the revision to the *Grievance Procedure Manual* appears to address a grievant’s difficulty in filing a grievance if the state office where the grievance is to be filed is closed, and points out that in this instance, the grievant did not complete and sign the Form A until the 31st calendar day. The language of the *Grievance Procedure Manual* does not support the agency’s argument in this case. The grievance complied with the parameters of Section 2.2 in filing the grievance on the next business day following the 30th calendar day, which fell on a Sunday. The date on which the form was signed has no bearing in this instance.

Accordingly, EDR concludes that the grievance was timely initiated and shall proceed to a hearing. Within five workdays of the date of this ruling, the agency shall request the

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

² See *Grievance Procedure Manual* § 2.2.

appointment of a hearing officer, using the Grievance Form B, if it has not already done so. EDR's rulings on matters of compliance are final and nonappealable.³



Christopher M. Grab
Director
Office of Employment Dispute Resolution

³ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).