

Issue: Compliance/30-day rule; Ruling Date: August 16, 2004; Ruling #2004-784;  
Agency: Virginia Community College System; Outcome: grievance is timely in part.



***COMMONWEALTH of VIRGINIA***  
***Department of Employment Dispute Resolution***

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Virginia Community College System/ No. 2004-784  
August 16, 2004

The grievant has requested a ruling in his June 29, 2004 grievance with the Virginia Community College System (VCCS or the agency). The agency administratively closed the grievance, claiming that the grievant failed to initiate his grievance within the required 30-calendar day period.<sup>1</sup> For the reasons discussed below, we find that the grievance was, in part, timely.

**FACTS**

The grievant was employed as an Operation Supervisor. The agency asserts that he was informed on February 17, 2004 that he would be laid off effective May 31, 2004. On June 29, 2004, the grievant challenged his layoff by initiating a grievance. He also claimed that the layoff was in retaliation for prior grievance activity and constituted racial discrimination. In addition, the grievant claims that the agency misapplied the layoff policy by not placing him into an Information Technology Specialist I position with one of the Community Colleges. The agency claims that his grievance is not timely because it notified the grievant on February 17, 2004 that he would be laid off effective May 31, 2004. Thus, the agency asserts, he should have initiated his grievance within 30 days of the February 17<sup>th</sup> notification, or no later than March 18, 2004.

**DISCUSSION**

The *Grievance Procedure Manual* lists six requirements for the initiation of a grievance by an employee with access to the grievance procedure.<sup>2</sup> The agency challenges the grievant's compliance with the first requirement, specifically, that an employee must initiate a written grievance within 30 calendar days of the date he knew or should have known of the event or action that is the basis of the grievance.<sup>3</sup> When an

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

<sup>2</sup> See *Grievance Procedure Manual* § 2.4, *Initiating a Grievance*.

<sup>3</sup> *Grievance Procedure Manual* § 2.4(1); Va. Code § 2.2-3003(C).

employee initiates a grievance beyond the 30 calendar day period without just cause,<sup>4</sup> the grievance may be administratively closed.

*Discriminatory, Retaliatory, and Improper Layoff*

While it may be accurate that the grievant was informed on February 17<sup>th</sup> of the agency's intention to lay him off, the *event* forming the basis of the grievance is the actual layoff, not the notice that such an action would likely occur. The grievant was laid off on May 31, 2004. He claims that the layoff was discriminatory, retaliatory, and a misapplication of policy. Thus, he had 30 days from that date to initiate a grievance challenging his layoff. Because he initiated his grievance on June 29, 2004, the challenge to the layoff is timely.

*Failure to Properly Consider for Vacancy*

The grievant also contends that the agency misapplied policy when it did not place him into a vacant Information Technology Specialist I position prior to his layoff. The grievant was informed on or about May 18, 2004, that he would not be placed in that position under the state's layoff policy's placement ("yellow card") provisions.<sup>5</sup> Because the grievant's June 29, 2004 challenge to the agency's failure to place him in the Information Technology Specialist I position was not initiated within 30 calendar days of May 18, 2004 (when he was informed of his non-appointment to that position), this placement issue is not timely. The grievant has provided no evidence of just cause for the delay. Accordingly, this issue may not be further pursued through the grievance procedure.

This Department's rulings on matters of compliance are final and nonappealable.<sup>6</sup>

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Claudia T. Farr  
Director

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William G. Anderson, Jr.  
EDR Consultant, Sr.

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<sup>4</sup> *Just cause* is defined as a reason sufficiently compelling to excuse not taking a required action in the grievance procedure. *Grievance Procedure Manual* § 9.

<sup>5</sup> See the Department of Human Resources Management Policy 1.30, Layoff, which extends a hiring preference via a 'yellow card' to those who have received the initial layoff notice but not the final notice.

<sup>6</sup> See Va. Code § 2.2-1001(5).