

Issue: Compliance/30-day rule; Benefits/Leave/Annual Leave; Ruling Date: September 29, 2005; Ruling #2005-1110; Agency: Old Dominion University; Outcome: grievant in compliance



**COMMONWEALTH of VIRGINIA**  
**Department of Employment Dispute Resolution**  
**COMPLIANCE RULING OF DIRECTOR**

In the matter of Old Dominion University  
Ruling Number 2006-1110  
September 29, 2005

The grievant has requested a compliance ruling in her August 2, 2005 grievance with Old Dominion University (ODU or the agency). 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 discussed below, this grievance is timely.

FACTS

The grievant is employed as an Office Specialist III. The grievant had requested annual leave for June 10, 13, and 14, 2005. The agency asserts that she was told that unless she brought her workload into current status, her leave request would be denied. The grievant worked on June 9<sup>th</sup> but it appears that a final review of her workload never occurred, thus her leave request was never expressly approved or denied. The grievant did not work or report on at least two of the three days that she requested leave.<sup>1</sup> On June 27, 2005, the agency informed the grievant that she would not be paid for her unexcused absences on June 13<sup>th</sup> and 14<sup>th</sup>. The grievant's pay was docked on August 16, 2005.

DISCUSSION

h T 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 forms the basis of the grievance.<sup>2</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> The grievant seeks pay for June 10<sup>th</sup> and 13<sup>th</sup>. The agency asserts that she failed to work on June 13<sup>th</sup>

<sup>2</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4(1).

In this case, the date of the event that forms the basis of the grievance was August 16, 2005, the date that the grievant's pay was in fact docked.<sup>3</sup> Although the grievant received written notice on June 27, 2005 that her pay *would be* docked, she did not have notice until August 16, 2005 when she received her paycheck that her pay *had been* docked. The event that forms the basis of this grievance is the actual docking of pay on August 16<sup>th</sup>, not the June 27<sup>th</sup> memorandum indicating that the agency planned to dock her pay.<sup>4</sup> Therefore, the challenge to the docking of pay is timely.<sup>5</sup>

### CONCLUSION

The Second-Step Respondent is directed to arrange for a second-step meeting in accordance with the *Grievance Procedure Manual* within 5-workdays of receipt of this ruling to address the docking of the grievant's pay. 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>3</sup> See EDR Ruling 2003-106.

<sup>4</sup> *Id.*

<sup>5</sup> To the extent that the grievance attempts to challenge contents of the written counseling memorandum *other than the docking of pay*, such a challenge is untimely. The grievant received the memorandum on June 27<sup>th</sup> but did not initiate the grievance until August 2<sup>nd</sup>. The grievant has provided no just cause for the delay.

<sup>6</sup> Va. Code § 2.2-1001 (5).