

Issue: Compliance – Grievance Procedure (30 Day Rule); Ruling Date: July 9, 2007; EDR Ruling #2007-1690; Agency: University of Virginia; Outcome: Grievant Not In Compliance.



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

**COMPLIANCE RULING OF THE DIRECTOR**

In the matter of the University of Virginia  
No. 2007-1690  
July 9, 2007

The grievant has requested a compliance ruling related to her May 7, 2007 grievance with the University of Virginia (UVA or agency). The agency asserts that the grievant is out of compliance with the grievance procedure because her grievance did not cite to any specific employment activity that occurred within the last 30 calendar days. For the reasons set forth below, the grievance is out of compliance and may be administratively closed by the agency.

**FACTS**

The grievant is employed with the agency as an Administrative Office Specialist II. The grievant asserts that beginning in August 2005, all evening and nightshift booth attendants began receiving a 65 cents per hour nightshift pay differential. The grievant claims that because she works a mid-shift that begins at 12 p.m., resulting in “two thirds of [her] shift” being nightshift work, she too should be entitled to the differential.

On May 7, 2007, the grievant initiated a grievance challenging the agency’s application of its shift differential policy. The agency responded on May 11, 2007, by closing the grievance, asserting that the grievant did not cite to any specific employment activity that occurred within the last 30 days.

**DISCUSSION**

*Timeliness of the Grievance*

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 forms the basis of the grievance.<sup>1</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.

---

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

Here, the grievant is challenging a pay action that occurred in August 2005. Accordingly the grievant should have challenged that action within 30-calendar days of when the actions occurred back in 2005. The grievant did not challenge these actions until May of 2007, which makes her grievance untimely. Thus, the only remaining issue is whether there was just cause for the delay.

According to grievant, she was attempting to informally work out the pay issue with management. While the grievance procedure instructs employees to discuss their concerns with their supervisors prior to initiating a grievance, it also cautions that “the written grievance must be initiated within 30 calendar days of the date that the employee knew, or should have known, of the event that formed the basis of the dispute.”<sup>2</sup> Moreover, the grievance procedure plainly warns that the “30-day requirement may be extended only if the parties agree.”<sup>3</sup> Accordingly, we find no just cause to excuse the grievant’s delay in initiating her grievance.<sup>4</sup>

For the reasons discussed above, this Department has determined that this grievance was untimely filed.

---

Claudia T. Farr  
Director

---

<sup>2</sup> *Grievance Procedure Manual* § 2.2.

<sup>3</sup> *Id.*

<sup>4</sup> In the past, this Department viewed pay claims differently from other types of claims. The basis for treating such claims differently was based largely on Title VII case law, under which courts had previously reasoned that “a claim of discriminatory pay . . . involves a series of discrete, individual wrongs rather than a single and indivisible course of wrongful action.” E.g., EDR Ruling No. 2005-991; EDR Ruling No. 2004-586. Thus, courts had concluded that every payday that an employee receives less compensation than an alleged similarly-situated employee constituted a separate accrual, or “trigger date,” for statute of limitations purposes, and that with the issuance of each paycheck that is alleged to be improperly lower than that of a similarly-situated employee, a new statute of limitations period began to run. Based primarily on these Title VII court decisions, this Department adopted for the grievance procedure a rule that each paycheck starts a new 30 calendar day grievance filing deadline (the paycheck accrual rule). Moreover, this Department generally used the paycheck accrual rule in all pay cases, including those not based on Title VII claims. New developments in Title VII law, however, have given us occasion to reexamine our across-the-board adoption of the paycheck accrual rule. It is now appropriate to modify that rule as set forth below.

On May 29, 2007, the U.S. Supreme Court held in the case of *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, 127 S. Ct. 2162 (2007) that under Title VII, a new violation does not occur, and a new charging period does not commence, upon the occurrence of subsequent nondiscriminatory acts that entail adverse effects resulting from the past discrimination. See *id.* at 2166-76. While EDR is not bound by this decision, particularly in a non-Title VII case like this one, it makes little sense to treat all pay claims differently from other types of claims, particularly, in a case such as this, where the grievant has known of the pay issue being grieved well beyond 30 calendar days prior to the initiation of the grievance. EDR does not allow employees who allege discriminatory management acts other than pay actions to use the effects of those actions to restart the clock for filing a grievance. Therefore, as a general rule, there is little reason to continue to grant an extension to an employee who has long since been aware of the alleged pay violation solely because the grievance involves pay.