

Issue: Compliance – Grievance Procedure (30-day rule); Ruling Date: December 18, 2007; Ruling #2008-1881; Agency: Department of Minority Business Enterprise; Outcome: Grievant Not in Compliance.



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

**COMPLIANCE RULING OF THE DIRECTOR**

In the matter of Department of Minority Business Enterprise  
No. 2008-1881  
December 18, 2007

The grievant has requested a ruling on whether her November 26, 2007 grievance with the Department of Minority Business Enterprise (the agency) is in compliance with the grievance procedure. The agency asserts that the grievance was not timely initiated. For the reasons set forth below, this Department determines that the grievance is untimely and may be administratively closed.

FACTS

On October 24, 2007, the grievant was given a Group I Written Notice. The grievant initiated a grievance challenging the disciplinary action on November 26, 2007.<sup>1</sup> The agency asserts that the grievance was untimely. The grievant has now sought a ruling from this Department to determine whether she was compliant with the grievance procedure.

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>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> This date appears on the grievant's signature line on the Form A, although the grievance was stamped as received by the agency on November 27, 2007. For purposes of this ruling only, it is assumed the grievant initiated the grievance by hand delivery on November 26, 2007. The difference of one day is not determinative to the outcome of this ruling.

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

Here, the event that forms the basis of the grievance is the agency's issuance of the Written Notice. This Department has long held that in a grievance challenging a disciplinary action, the 30 calendar-day timeframe begins on the date that management presents or delivers the Written Notice to the employee.<sup>3</sup> The grievant received the Group I Written Notice on October 24, 2007, and, thus, should have initiated this grievance within 30 days, i.e., no later than November 23, 2007. The grievant did not initiate the grievance until November 26, 2007, which was 33 days after the Written Notice was issued and, thus, untimely. The only remaining issue is whether there was just cause for the delay.

The grievant states she had assumed that holidays were not included in the 30 calendar-day timeframe. There were three intervening state holidays during the 30-day period following the issuance of the Written Notice in this case (Veterans Day, Thanksgiving, and the day after Thanksgiving). Indeed, the 30<sup>th</sup> day of this time period fell on the day after Thanksgiving. EDR has held that intervening holidays do not impact the 30-day timeframe.<sup>4</sup> In addition, the fact that the 30<sup>th</sup> day falls on a weekend or on a state holiday does not extend the deadline for initiating a grievance.<sup>5</sup> This Department has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.<sup>6</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. This Department, therefore, concludes that the grievant has failed to demonstrate just cause for her delay.<sup>7</sup>

We note further that although the grievance may not proceed, mediation may be a viable option for the parties to pursue. EDR's mediation program is a voluntary and confidential process in which one or more mediators, neutrals from outside the grievant's agency, help the parties in conflict to identify specific areas of conflict and work out possible solutions that are acceptable to each of the parties. Mediation has the potential to effect positive, long-term changes of great benefit to the parties and work unit involved. For more information on this Department's Workplace Mediation program, the parties should call 888-232-3842 (toll free) or 804-786-7994. In addition, the grievant may have additional rights under the Virginia Government Data Collection and Dissemination Practices Act (the Act). Under the Act, if the grievant gives notice that she wishes to challenge, correct or explain information contained in her personnel file, the agency shall conduct an investigation regarding the information challenged, and if the information in dispute is not corrected or purged or the dispute is otherwise not resolved, allow the grievant to file a statement of not more than 200 words setting forth her position regarding the information.<sup>8</sup> This "statement of dispute" shall accompany the disputed information in any subsequent dissemination or use of the information in question.<sup>9</sup>

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<sup>3</sup> *E.g.*, EDR Ruling No. 2005-986; EDR Ruling No. 2003-147; EDR Ruling No. 2002-118.

<sup>4</sup> *See* EDR Ruling No. 2007-1596; EDR Ruling No. 2006-1201.

<sup>5</sup> *See* EDR Ruling No. 2006-1201; EDR Ruling No. 2003-118.

<sup>6</sup> *See, e.g.*, EDR Ruling No. 2006-1349, 2006-1350; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

<sup>7</sup> The grievant also asserts that lack of time contributed to her delay because of her family obligations and the fact that she was very busy at work during this period. Unfortunately, while understandable, these are not sufficient grounds in this case beyond the grievant's control to justify the untimely initiation of the grievance.

<sup>8</sup> Va. Code § 2.2-3806(A)(5).

<sup>9</sup> *Id.*

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### CONCLUSION

For the reasons set forth above, this Department concludes that the grievance was not timely initiated and there is no evidence of just cause for the delay. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. This Department's rulings on matters of compliance are final and nonappealable.<sup>10</sup>

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Claudia T. Farr  
Director

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<sup>10</sup> See Va. Code § 2.2-1001(5).