

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: April 3, 2008; Ruling #2008-1985; Agency: Department of Motor Vehicles; Outcome: Grievant Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Motor Vehicles
Ruling Number 2008-1985
April 3, 2008

The grievant has requested a compliance ruling in her February 19, 2008 grievance with the Department of Motor Vehicles (DMV 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 untimely and may be administratively closed.

FACTS

The grievant is employed as an Administrative Office Specialist with DMV. On January 19, 2008, the grievant received a Group I Written Notice for calling in sick and failing to come to work on December 26, 27 and 29. The grievant challenged the Group I Written Notice by initiating a grievance on February 19, 2008. On February 27, 2008, the agency administratively closed the February 19th grievance for untimeliness. The grievant now seeks a compliance ruling from this Department.

DISCUSSION

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 is the basis of the grievance.¹ When an employee initiates a grievance beyond the 30-calendar day period without just cause,² 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 the grievance is the grievant's receipt a Group I Written Notice. The grievant received the Written Notice on January 19, 2008 and thus should have initiated her grievance within 30 days of January 19, 2008, or by February 18, 2008. The grievant did not initiate her grievance until February 19, 2008, which was untimely. Thus, the only remaining issue is whether there was just cause for the delay.

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

² "Just cause" is defined as "[a] reason sufficiently compelling to excuse not taking a required action in the grievance process." *Grievance Procedure Manual* § 9.

To support her claim of just cause, the grievant asserts that (1) she did not know that weekends were included in calculating the 30-day period; and (2) she was untimely because she was gathering facts. This Department has consistently strictly applied the 30-day rule. An erroneous belief that the 30-day period does not include weekends does not constitute just cause. This Department has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.³ 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. Additionally, this Department has long held that awaiting additional supporting documentation or information does not constitute just cause for failure to initiate a grievance in a timely manner.⁴ This Department, therefore, concludes that the grievant has failed to demonstrate just cause for her delay.

We note further that although the grievance may not proceed, 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.⁵ This "statement of dispute" shall accompany the disputed information in any subsequent dissemination or use of the information in question.⁶ In addition, as the grievant appears to have raised a claim that she may have been inappropriately disciplined because of a medical condition, she may wish to consider contacting the Commonwealth's Department of Human Resource Management's Office of Equal Employment Services through its toll-free telephone number (800-533-1414), or by visiting its website at www.dhrm.virginia.gov/employeerelations.html.

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.⁷

Claudia T. Farr
Director

³ See, e.g., EDR Ruling No. 2006-1349, 2006-1350; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

⁴ See e.g., EDR Ruling No. 2008-1909; EDR Ruling No. 2004-881; EDR Ruling No. 2003-087; EDR Ruling No. 2003-101 and EDR Ruling No. 2002-126.

⁵ Va. Code § 2.2-3806(A)(5).

⁶ *Id.*

⁷ See Va. Code § 2.2-1001(5).