

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: April 6, 2010; Ruling #2010-2581; Agency: University of Virginia; Outcome: Grievant Not In Compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of University of Virginia  
Ruling Number 2010-2581  
April 6, 2010

The grievant has requested a ruling on whether his March 15, 2010 grievance with the University of Virginia (the university) is in compliance with the grievance procedure. The university asserts that the grievance does not comply with the grievance procedure because it was not timely initiated. For the reasons set forth below, this Department determines that the grievance is untimely and may be administratively closed.

**FACTS**

The grievant is employed as a Project Manager with the university. In March 2009, the grievant was denied a salary adjustment. Thereafter, he filed a complaint with the university's human resource department challenging the denial of a salary adjustment as well as other alleged improper actions by a former member of management at the university. The investigation into the grievant's allegations was apparently ongoing until January 2010. In December 2009, while the investigation was still ongoing, the grievant was also given a poor performance evaluation.

On March 15, 2010, the grievant filed a grievance challenging the March 2009 denial of a salary adjustment and the December 2009 poor performance evaluation. The university subsequently administratively closed the grievance due to noncompliance for failing to initiate the grievance in a timely manner. The grievant now appeals that determination.

**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>1</sup> When an employee initiates a

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

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.

Here, the events that form the basis of the grievance are the March 2009 denial of a salary adjustment and the December 2009 poor performance evaluation. The grievance challenging these two issues was not initiated until March 15, 2010, and thus, was untimely. The only remaining issue is whether there was just cause for the delay.

The grievant asserts the following reason for his delay in initiating his grievance: he was gathering an extensive amount of documentation to support his grievance and 30 calendar days was simply not enough time to accomplish this task. In addition, the grievant asserts that his grievance should be reopened because the university has indicated that it would “like to review this [grievance]” but is unable to do so because of the 30 calendar day rule.

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.<sup>2</sup> Further, to the extent the grievant is arguing that the ongoing agency investigation prevented him from filing the grievance, this Department likewise concludes that this is insufficient to establish just cause. Even when agency investigations are ongoing, the grievance must be filed within 30 calendar days of the event being grieved unless the parties agree in writing to extend the 30 calendar day requirement until conclusion of the internal investigation.<sup>3</sup> There is no evidence of such an agreement in this case. This Department, therefore, concludes that the grievant has failed to demonstrate just cause for his delay. As such, the university may administratively close the March 15, 2010 grievance.

With regard to the grievant’s assertion that the university would like to process his grievance but cannot due to the 30 calendar day requirement, this Department notes that the grievance process specifically sets forth two alternatives to administratively closing the grievance based on noncompliance with the 30 calendar day requirement. First, the university may, but is not required to, waive the 30 calendar day requirement and process the grievance despite the grievant’s noncompliance.<sup>4</sup> Alternatively, the university could allow the grievance to proceed through the management resolution steps only. More specifically, the *Grievance Procedure Manual* states: “[t]o promote improved employee relations, management may allow a grievance to proceed through the resolution steps, even if the grievance does not comply with the [30 calendar day requirement]. If the agency intends to allow the grievance to proceed through the management steps but plans to deny a hearing due to noncompliance, management should inform the employee of that intention as soon as it becomes aware of the noncompliance.”<sup>5</sup>

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<sup>2</sup> 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.

<sup>3</sup> See *Grievance Procedure Manual* § 2.2.

<sup>4</sup> See *Grievance Procedure Manual* § 8.4 (“Upon mutual agreement, parties to a grievance may extend all pre-qualification time limits including, but not limited to, the 30 calendar day grievance initiation requirement.”)

<sup>5</sup> *Grievance Procedure Manual*, § 2.4.

Based on the foregoing, the university has three options in this case: (1) administratively close the grievance for noncompliance with the 30 calendar day requirement; (2) waive the 30 calendar day requirement; or (3) allow the grievance to proceed through the management resolution steps only.

#### 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 unless the university elects to either waive the 30 calendar day requirement or to process this grievance in accordance with Section 2.4 of the *Grievance Procedure Manual*. The university shall notify the grievant in writing within 5 workdays of its receipt of this ruling which option it has chosen.

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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<sup>6</sup> See Va. Code §§ 2.2-1001(5), 2.2-3003(G).