

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: May 3, 2010; Ruling #2010-2611; Agency: Virginia Department of Transportation; Outcome: Grievant In Compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Transportation  
Ruling Number 2010-2611  
May 3, 2010

The grievant has requested a ruling on whether her April 8, 2010 grievance with the Department of Transportation (VDOT or the agency) is in compliance with the grievance procedure. The agency 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 was timely initiated.

FACTS

The grievant is employed as an Administrative Office Specialist III with VDOT. On January 5, 2010, the grievant was given an Initial Notice of Layoff. After being offered several options in regard to her upcoming layoff, on January 22, 2010, the grievant elected to apply for placement within the agency. The grievant made her decision based upon her review of the potential placement opportunities within her desired district. According to the grievant, based upon the information she had gathered from the district website, there were 19 available placement options within her district and she "felt confident" that she would be placed in one of these positions due to her seniority.

On February 4, 2010, after the grievant had made her election for placement within the agency, the acting agency head sent out an e-mail notifying agency employees that there would be some "small alterations to [the agency's] initial plans." This e-mail stated that the "adjustments" would not result in any additional position eliminations but would involve alterations in the following "key business areas": TAMS Contract Administration and Monitoring; Roadside Management/Contract Administration; Pavement Management; Equipment Management and Program Support; Transportation Operations Customer Call Centers; and Contract Administration for SAAP and No-Plan Contracts. The e-mail stated that VDOT leadership and human resources staff would meet with impacted employees to communicate the affect of the changes. According to the grievant, she was not contacted by VDOT leadership or human resources and therefore, believed the changes communicated in the February 4, 2010 e-mail did not affect her.

Thereafter, on April 5, 2010, the grievant was notified of her placement in another district and not in one of the 19 positions the grievant believed she would be placed. As a result, on April 8, 2010, the grievant filed a grievance. In her April 8<sup>th</sup> grievance, the grievant alleges that the “[p]lacement [p]rocess was flawed with regard to [her] current placement offer.” The grievant goes on to state that she should have been offered one of the remaining positions in her desired district. More specifically, the grievant believes that there are currently four vacant Administrative and Office Specialist III positions in the call center within her district and the agency has wrongly failed to place her in one of these alleged vacant positions.

On April 13, 2010, the agency 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 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.

In this case, the agency claims that the grievant should have initiated her grievance within 30 calendar days of February 4, 2010, as this is the day that the grievant became aware that, via the acting agency head’s e-mail, changes were being made to the Transportation Operations Customer Call Centers. However, the grievant in this case is not challenging the adjustments to be implemented that were communicated on February 4, 2010, but rather is challenging her placement on April 6, 2010 into a position outside of her desired district. While the “adjustments” referenced in the February 4, 2010 e-mail may have altered some of the positions into which the grievant believed she should have been placed, the event or action that forms the basis of the grievant’s April 8, 2010 grievance is her actual placement. This placement was communicated to the grievant on April 5, 2010 and as such, the grievant had 30 calendar days from that date to initiate her grievance. Because she initiated her grievance on April 8, 2010, the grievance is timely and must be allowed to proceed.<sup>2</sup>

### CONCLUSION

Based on the foregoing, the grievant and the agency are advised that the grievant has **10 workdays from the date of this ruling** to advance her grievance to the first

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

<sup>2</sup> It should be noted that this Department’s decision does not assess the merits of the April 8<sup>th</sup> grievance, but rather merely finds that the April 8<sup>th</sup> grievance was timely initiated and must be allowed to proceed through the management resolution steps of the grievance process.

resolution step, at which point the agency must address all issues raised in the April 8<sup>th</sup> grievance. This Department's rulings on matters of compliance are final and nonappealable.<sup>3</sup>

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Claudia T. Farr  
Director

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<sup>3</sup> See Va. Code § 2.2-1001(5), 2.2-3003(G).