

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling #2010-2624;
Ruling Date: May 7, 2010; Agency: Department of Education; Outcome:
Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Education
Ruling Number 2010-2624
May 7, 2010

The grievant has requested a ruling on whether his April 9, 2010 grievance with the Department of Education (DOE 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 is untimely and may be administratively closed.

FACTS

The grievant is employed as an Accountant with DOE. On March 5, 2009, the grievant was verbally notified that he was being placed on leave without pay, effective that same day, pending an investigation by outside authorities for an alleged criminal offense. As a follow-up to the March 5th verbal notice, the agency sent the grievant a letter dated March 9, 2010 notifying him that effective March 5, 2010, he was suspended without pay pending investigation. On April 9, 2010, the grievant filed a grievance challenging his suspension without pay. The agency 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.¹ 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.

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

The grievant argues that the event that forms the basis of the grievance occurred on or about March 10, 2010, when he received the letter indicating he was suspended without pay pending investigation and as such, he had 30 calendar days from March 10th to file his grievance. The agency contends that the grievant was verbally notified of his suspension without pay on March 5, 2010 and therefore he should have initiated his grievance within 30 calendar days of this date. The grievant admits that he was notified on March 5, 2010 that he was being placed on “leave” without pay pending an investigation and was told that he could be suspended for up to 90 days. He asserts, however, that there is a difference between “leave without pay pending an investigation” and “suspension without pay pending an investigation,” and that he was not notified of an actual “suspension” without pay until he received the letter on March 10th.

This Department concludes that regardless of the terms that were used during the March 5th meeting, it is apparent that the grievant was aware on March 5, 2010 that he was being removed from the work environment that day, pending an investigation and that he would not be paid during his absence.² The April 9th grievance was filed in response to management’s action to remove the grievant from the workplace on March 5, 2010 without pay pending the investigation. As such, the grievant had until April 4, 2010 to file a grievance challenging this action. However, the grievance challenging his suspension was not initiated until April 9, 2010, and thus, was untimely. The grievant has offered no just cause reason for his delay.

CONCLUSION

For the reasons discussed above, this Department has determined that this grievance is untimely. By copy of this ruling, the grievant and the agency are advised that the agency may administratively close this grievance. This Department’s rulings on matters of compliance are final and nonappealable.³

Claudia T. Farr
Director

² According to Department of Human Resource (DHRM) Policy 1.60, “[a]ny employee who is formally charged with a criminal offense (that is related to the nature of his/her job or to the agency’s mission) by outside authorities shall be immediately suspended without pay for a period not to exceed ninety (90) calendar days. (Agencies have the option to allow employees to charge accrued annual, overtime, compensatory, or family personal leave to this period of suspension provided that the employee has sufficient leave balances.)”

³ See Va. Code § 2.2-1001 (5); 2.2-3003(G).