

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: July 7, 2010;
Ruling #2010-2651; Agency: Virginia Employment Commission; Outcome: Grievant
Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Virginia Employment Commission
Ruling No. 2010-2651
July 7, 2010

The grievant has requested a compliance ruling related to his April 29, 2010 grievance with the Virginia Employment Commission (the agency). The agency asserts that the grievant failed to initiate his grievance in a timely manner. For the reasons set forth below, this grievance was not initiated timely and is administratively closed.

FACTS

The grievant had discussed with management his desire to move to another position in the agency because his former position was “no longer well suited for [him].” The agency offered to transfer the grievant into another position on February 22, 2010. The agency allegedly told the grievant at that time that the transfer would have to be accompanied by a 5% reduction in salary. The grievant accepted the transfer and the pay reduction the same day. He was effectively moved into the new position on March 25, 2010. Later, on April 29, 2010, the grievant submitted his grievance to challenge the salary reduction.¹ His grievance indicates that on April 14, 2010 he first became aware of policy language, which, in his opinion, allowed for less than a 5% salary reduction. The agency has closed the grievance, asserting that it was not initiated timely, which the grievant now challenges.

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.² 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 action forming the basis of the grievance is the March 25, 2010 five percent salary reduction. There is no question that the grievant knew on March 25, 2010 that his salary was being reduced by five percent. He had 30 calendar days from March 25 (to April 24) to file his grievance. The grievant initiated his grievance on April 29, 2010. Because the grievance was initiated more than 30 days after the salary reduction (and the grievant’s

¹ The grievance is dated April 28, 2010, but was not submitted until April 29, 2010.

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

knowledge of that reduction), this grievance is untimely. The only remaining issue is whether there was just cause for the delay.

The grievant states that not until April 14, 2010 did he realize that the reduction of his salary was, in his opinion, inconsistent with policy. This argument does not demonstrate just cause for his delay. The grievant was aware as early as February 22, 2010 that his salary would be reduced in conjunction with the transfer. Nothing prevented the grievant from consulting the applicable policies at that time or certainly before the April 24 deadline for filing a grievance. Unfortunately, after researching policy on April 14, the grievant waited until April 29, 2010 to file his grievance. The grievant has alleged no grounds beyond his control that would justify the untimely initiation of this grievance. This Department, therefore, concludes that the grievant has failed to demonstrate just cause for his delay.

The grievant also argues that his April 29, 2010 grievance is timely based on the application of the paycheck accrual rule applied by this Department to certain cases. This rule provides that every payday for which an employee receives less compensation than an alleged similarly-situated employee constitutes a separate accrual, or “trigger date,” for statute of limitations purposes; thus, with the issuance of each paycheck that is alleged to be improperly lower, a new statute of limitations period begins to run.³ While EDR will continue to follow the paycheck accrual rule, we are equally bound to apply the requirements of the grievance statutes and *Grievance Procedure Manual* that require an employee to initiate a grievance “within 30 calendar days of the employee's knowledge of the event that gave rise to the complaint.”⁴ Because the grievance was submitted more than 30 days after the grievant was clearly aware of his salary reduction, the grievance cannot be deemed timely.

CONCLUSION

For the reasons set forth above, this Department determines that the grievance is untimely. 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.⁵

Claudia T. Farr
Director

³ See, e.g., EDR Ruling No. 2010-2441; EDR Ruling No. 2005-991; EDR Ruling No. 2003-508; EDR Ruling No. 2002-103.

⁴ Va. Code § 2.2-3003(C); see also *Grievance Procedure Manual* § 2.4 (requiring an employee to submit a grievance “within 30 calendar days of the date the employee knew or should have known of the event that forms the basis of the grievance”). To the extent the analysis in this case differs from EDR Ruling No. 2010-2441, it is simply the result, upon further consideration, of reconciling the paycheck accrual rule with the knowledge standard of the controlling state statute. In addition, reasons for which the paycheck accrual rule are utilized, e.g., certain improper pay practices being difficult to discover immediately and evolving over time, see, e.g., *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618, 645 (2007) (Ginsburg, J., dissenting), are not present here.

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