

Frequently Asked Grievance Questions

Initiating the Grievance

1. What is a grievance?

A grievance is a process through which an employee can raise a workplace concern with his or her agency's management. A grievance can have up to four phases: (1) the management resolution steps; (2) qualification for hearing; (3) hearing; and (4) review of the hearing decision. Not all grievances are qualified for hearing. For example, under the grievance statutes, grievances that relate solely to informal supervisory actions or the contents of personnel policies cannot proceed on to a hearing. On the other hand, some issues are automatically qualified for hearing, such as formal discipline or dismissal for unsatisfactory performance. (Grievance Procedure Manual § 4.1). Even if your concern is over an issue that cannot be qualified for hearing, it is important to note that many grievances result in resolution during the management steps, without a hearing.

2. Are there limits on what issues can be grieved?

No; any issue can be grieved, at least through the management resolution steps, so long as the grievance: is filed within 30 calendar days of the event being grieved; arises in the agency in which the employee works; pertains directly and personally to the employee's own employment; is not used to harass or disrupt agency business; has not been pursued through another state process; and, finally, does not challenge the same management action challenged by another grievance. (Grievance Procedure Manual § 2.4).

3. How do I begin my grievance?

To begin your grievance, you must complete the Grievance Form A and present it to the appropriate person (most often, your immediate supervisor). Fill out the data section at the top of the Form A.

Next, describe the issue(s) you are challenging in the section marked "issues." A basic description of these concerns is necessary in order to allow management to fully explore and address the situation. If you need more space than the Form A provides to describe your concerns, simply write or type "see attached" on the Form A, then describe briefly but completely your concerns on separate sheet(s) of paper and attach it to the Form A.

Next, state the facts that support your claim. The more specific you are, the better. Again, feel free to use attachments (including supporting documents) if necessary.

Finally, state the "relief" you seek. The "relief" is what you hope to accomplish through the grievance process, in other words, the result you want. **Remember that the grievance must be initiated within 30 calendar days of the event that forms the basis of the grievance** (Grievance Procedure Manual §§ 2.2, 2.4).

4. Which form should I use?

There are three different forms to consider. The basic Grievance Form A should be the default form used. However, if you are filing an expedited grievance under the Expedited Process, you should use the Grievance Form A – Expedited Process. If you are challenging the fact that you were terminated on the basis of a disciplinary action or for unsatisfactory performance, you should use the Grievance Form A – Dismissal Grievance. There is additional information below on the Expedited Process (see question 9) and Dismissal Grievance process (see question 10).

5. When must I file my grievance?

You **must** initiate your grievance within 30 calendar days of the event that forms the basis of the grievance. (Grievance Procedure Manual § 2.4). The “trigger date” for the 30-calendar day period is the date you knew, or should have known, of the management action at issue. You must initiate your grievance within 30 calendar days of the “trigger date” even if you are actively discussing the disputed issue with management. (Grievance Procedure Manual § 2.2). For instance, if you believe that improper favoritism influenced how job duties were assigned among you and your co-workers, you must initiate your grievance challenging the assignments within 30 calendar days of the day you first learned, or should have learned, that your supervisor assigned the duties. This is true even if your supervisor states that she is considering rethinking the assignments. An employee and management may agree to waive or disregard the 30-day rule, but any such agreement **must be in writing** to preserve your grievance rights. (Grievance Procedure Manual § 8.4). Note: If the 30th day falls on a weekend or holiday, you have until the following business day to file the grievance.

6. Are there exceptions to the 30-day rule?

EDR will allow exceptions to the 30-day rule, but only in extreme situations upon a showing of “just cause”. “Just cause” means that there was a compelling reason to excuse the delay. (Grievance Procedure Manual § 9). An example of just cause might be if the employee had been physically or mentally incapable of acting on her grievance rights. “Just cause” does not include attempting to resolve issues informally with management nor does it include a limited period of illness during the 30-day period. Also, parties to a grievance may mutually agree to extend the 30-day timeframe. However, any such agreement must be in writing. (Grievance Procedure Manual § 8.4).

7. With whom do I initiate my grievance?

Normally, you present your grievance to your immediate supervisor, who will respond as the first step-respondent. There are exceptions to this general rule. First, if you are claiming that your immediate supervisor has retaliated or illegally discriminated against you, then your grievance may be initiated with the next level supervisor. Second, in grievances challenging formal discipline issued by someone other than your immediate supervisor, you may initiate the grievance with the person who issued the discipline. Third, a grievance submitted under the Expedited Process should be initiated with the second step-respondent. Fourth, if you are challenging a selection or hiring process,

you can begin the grievance with the hiring manager or other appropriate member of management involved in the selection decision. (Grievance Procedure Manual § 2.4). Finally, if you are initiating a dismissal grievance, you should submit it directly to EDR. (Grievance Procedure Manual § 2.5).

8. Why do I have to initiate my grievance with my supervisor? He/she did what I want to challenge, why do I have to go back to that person again?

One of the primary purposes of the grievance procedure is to provide a method for employees and management to resolve work-related concerns at the earliest possible level. Therefore, the first step is intended to be at the immediate supervisor level in most cases so that issues can be addressed at that lowest level in the management chain. Also, it gives the person who allegedly may have made a mistake the opportunity to correct it himself or herself rather than proceeding immediately past that person in the chain of command.

9. What is the Expedited Grievance Process and when is it available?

The expedited grievance process is an accelerated version of the grievance procedure that can be used if your grievance involves a demotion, suspension, or any other loss of pay, including removals that do not qualify as “dismissals,” such as a layoff. (Grievance Procedure Manual § 3.4). It is not available for claims based on possible or potential losses of pay. For instance, if your grievance is based on your non-selection for a position with a higher starting pay than your current position, it would not qualify for the **Expedited Process**, although you could file under the regular procedure. However, the grievant and the agency may agree in any case to use the Expedited Process regardless of the issue being grieved. (Grievance Procedure Manual §§ 3.4, 8.4).

The expedited process has a single management step instead of the usual three steps. To initiate an expedited grievance, you should use a “Grievance Form A-Expedited Process.” The grievance form is then presented to the second step-respondent who must schedule a face-to-face meeting within 5 workdays of receipt of the grievance. Within 5 workdays of the meeting, the second step-respondent must issue a response. Within 5 workdays of the response, the employee may then request that the agency head qualify the grievance for a hearing. (Note: The grievance procedure also allows an agency to elect to utilize the expedited process for all grievances. Agencies that have made such an election should notify employees of the appropriate process to follow.)

10. I was terminated, how do I challenge it?

If you were terminated based on a disciplinary action or for unsatisfactory performance, you can initiate a “Dismissal Grievance” directly with EDR. Once EDR receives your grievance, it will be provided to your former agency for submission of certain documentation to facilitate appointment of a hearing officer. Unlike other grievances, Dismissal Grievances do not proceed through any management resolution steps. Rather, your grievance will proceed directly to hearing before a hearing officer appointed by EDR. (Grievance Procedure Manual § 2.5).

11. I recently quit my job, but want to initiate grievance proceedings against my former agency. Can I do this?

It depends. Generally, grievances **must** be initiated **prior** to the effective date of your resignation. The **only** exception to this rule is that you may initiate a grievance that challenges a termination or involuntary separation anytime within 30-calendar days of the date of your termination or involuntary separation from state employment. If you voluntarily quit your job, you no longer have access to the grievance procedure. (Grievance Procedure Manual § 2.3).

12. Can I file a grievance over my termination if the agency gave me the choice of quit or be fired?

Again, it depends. If you initiate a grievance **prior** to the effective date of separation from employment, then your grievance will be allowed to go forward, at least through the management steps. Also, if the evidence raises a sufficient question as to whether your resignation may have been involuntary, then you may use the grievance procedure if you file your grievance within 30 calendar days of being presented with the “quit or be fired” choice.

13. In a grievance, may an employee request a new supervisor as relief?

An employee is not limited in the relief that she requests in her grievance. While management may have the discretion to grant such a request, a hearing officer does not have the authority to order a new supervisor as relief.

The Resolution Steps

14. Who is my first step-respondent? Second step? Third step?

Generally, the first step respondent is your immediate supervisor. Your agency’s human resources department can provide you with the names of the second and third step respondents. EDR also publishes the title of each agency’s step respondents on our website.

15. Why does that person have to be a respondent during the management steps? Can I ask for someone else?

The parties to a grievance (the grievant and the agency) may agree to modify the grievance process in any number of ways, including substituting or eliminating the normal steps and default step-respondents in the process. However, if both the grievant and the agency do not agree on such a modification, the normally designated step-respondents will be the proper individuals to be involved with the grievance.

16. There are only two possible respondents to my grievance in my agency. How will my grievance proceed since there are three steps in the grievance procedure?

On occasion, due to the small size of an agency or an employee’s relatively high level in an agency’s management structure, less than three resolution steps are available. In

such cases, the number of steps may be reduced. Virginia law requires that the Commonwealth provide its eligible employees with “not more than three” successively higher resolution steps and one face-to-face meeting. Therefore, if you report directly to the agency head, for instance, then you will likely have a single step: a meeting with the agency head followed by his or her response. Once the response is received, you will have 5 workdays to request qualification for a grievance hearing.

Another situation where an employee could have fewer than three steps would be in a situation where formal discipline is issued by the individual who would otherwise serve as the agency’s second step-respondent. In such a case, the first and second step collapse into a single step. The grievance is initiated with the second step-respondent, who must within 5-workdays of receipt of the grievance, arrange and hold the second step fact-finding meeting. Within 5-workdays of the meeting, the respondent must provide a written response on the grievance and return it to the employee. The employee may then advance the grievance to the third step respondent.

17. I don’t want to have a meeting during the second step phase of my grievance. Can I waive that meeting?

If both you and management agree to waive the meeting, then you may do so. However, bear in mind that any party to a grievance has a right to insist on the second step meeting, and if either party demands it, then the second step meeting generally must take place. Exception: If you do not want to meet with the second step-respondent because your grievance alleges retaliation or discrimination by the second step-respondent, then you have a choice of how to proceed. You may either: (1) request that the agency designate another second step-respondent; or (2) waive the face-to-face meeting with the original second step-respondent and receive only a written second step response to the grievance. If you elect to waive the face-to-face meeting with the original second step-respondent, the agency must allow you to meet with the third step-respondent, if that is your choice.

18. Who can I bring to the second step meeting?

You may bring your husband or wife, friend, attorney, or anyone else to the second step meeting. Both parties are limited to a single accompanying individual but may bring other persons to appear as witnesses. Witnesses must not be present, however, except while providing information.

19. What is the role of the person I select to accompany me to the second step meeting and will that person be allowed to participate in the second step meeting?

The role of that individual is essentially one of supporter and counselor. The selected individual is not entitled to be an active participant in the second step meeting, although an agency is certainly free to allow such participation if it chooses. Unless permitted by the agency, the selected individual may not directly ask questions of the witnesses, make opening or closing arguments, answer questions on behalf of a grievant or in any other way **directly** participate in the meeting. (If the second step-respondent allows the grievant’s selected individual to participate, the second step respondent’s selected individual may also participate in the meeting to the same extent allowed for the grievant’s selected individual.)

On the other hand, however, for a grievant's right to be accompanied by a person of his or her choice to be meaningful, the selected individual cannot be required to act merely as a silent observer. Rather, the individual selected by a grievant must be allowed the opportunity to interact with the grievant during the second step meeting, provided the interaction is not unduly disruptive or disrespectful of others present. Examples of appropriate interaction include conferring quietly or exchanging notes. Unless a grievant and her selected individual have refused to interact in an appropriate manner, they may not be forced to leave the meeting in order to engage in these interactions, but rather must be allowed to conduct these interactions throughout the course of the meeting and in the room in which the meeting is being held.

20. Management told me that there would be no time for witnesses at the second step meeting. Can they do this?

No. Be advised, however, that a party's right to call witnesses to a second step meeting is not without limit. For instance, management need not listen to a multitude of witnesses all of whom have been called to testify as to an identical point. Management has the right to limit witnesses if the testimony would be merely cumulative.

21. Does EDR represent employees throughout the grievance procedure?

No, EDR is the neutral administrator of the grievance process, and represents neither employees nor agencies. Thus, EDR does not appear with employees at their second step meetings or hearings, nor does it otherwise "represent" employees. However, EDR consultants routinely provide information and guidance to employees and agency management throughout the grievance process via the EDR AdviceLine at 1-888-23-ADVICE (1-888-232-3842).

EDR Consultants provide general information on state law, policy, and dispute, but they **do not** provide legal advice. If you need legal advice, you must consult an attorney.

Qualification for Hearing

22. I was informed that my grievance was qualified for a hearing. What do I do next?

You should begin preparation for your hearing. Tips for preparing for your hearing and on basic skills for presenting your case at hearing are found on EDR's Website. If you have specific questions regarding your hearing, you may contact an EDR Consultant via the AdviceLine at 1-888-23ADVICE (1-888-232-3842). The hearing officer assigned to your case will contact you to arrange for a mutually convenient hearing date, and a pre-hearing conference.

23. What if my grievance is not qualified for hearing?

If the agency head does not qualify the grievance for a hearing, the employee may appeal to EDR. If the employee appeals to EDR, the employee must submit his grievance form to the agency's Human Resources Office within 5 workdays of receiving the agency head's qualification decision. Within 5 workdays of receipt of the appeal request, the agency's Human Resources Office must send a copy of the grievance

record, complete with all attachments, to EDR. (The original grievance record should be kept by the agency.) (Grievance Procedure Manual § 4.3). EDR's qualification rulings are final.

24. The agency qualified one of my issues but not the other. What can I do if I still want all of my issues to proceed to hearing?

You may appeal the agency head's ruling to EDR. If you elect this course of action, you must postpone advancing your grievance to a hearing until the completion of the appeal process. EDR's decision is final. (Grievance Procedure Manual § 4.3).

The Hearing

25. Can I testify at my hearing?

Yes. The grievant can testify as a witness under oath. There is no requirement that the grievant testify at the hearing, but, often, as the grievant, you will have knowledge of the most central evidence in your case. If you do not testify, you could run the risk of not presenting critical evidence for the hearing officer's consideration.

26. Can I ask the Hearing Officer to order a particular person to appear at hearing or require the agency to produce a particular document?

Either party may ask the hearing officer to order a person to appear at hearing. Likewise, either party may request that the hearing officer order the opposing party to produce relevant documents. (Grievance Procedure Manual § 5.3). (Documents may be requested by a party to a grievance from the opposing party any time after the grievance is initiated.) (Grievance Procedure Manual § 8.2).

27. What if one of my witnesses cannot be present at the hearing?

You should decide if that witness is critical to your presentation at hearing. If so, then you should inform the hearing officer as soon as possible of the situation and request that the hearing be postponed. You must include the opposing side on any such request. It is within the discretion of the hearing officer whether he elects to postpone. (Grievance Procedure Manual § 5.5). You might also consider having your witness testify by phone. If you want a witness to testify by phone, you should notify the hearing officer and the opposing side of that approach.

28. Can an individual act as both a party to the hearing and as a witness?

Yes. However, the hearing officer may require that individual to testify first, before all other witnesses.

Compliance

29. I submitted my “Form A” to my supervisor, but I haven’t heard back from her. The deadline for her response has passed-what should I do?

The process for addressing party non-compliance is as follows: (1) notify the other party in writing of the noncompliance (if the agency is out of compliance, written notice of noncompliance must be made to the agency head); (2) allow the other party 5 workdays after receipt of the written notice to correct the noncompliance; and (3) if the noncompliance is not corrected within 5 workdays, you may request a ruling from EDR; the request must identify the specific requirement of the grievance procedure that has not been followed. (Grievance Procedure Manual § 6.3).

30. I presented my grievance to my immediate supervisor on Monday. She will be on annual leave on Thursday and Friday. Our office is closed on Saturday and Sunday. When must she respond to my grievance?

As an initial point, you should know that the 5-workday “clock” begins to run on the day after you present the grievance to your supervisor. Therefore, Tuesday is the first of the five workdays in which your supervisor must respond to your grievance. Wednesday is considered day two but Thursday and Friday do not count as workdays because your supervisor is on annual leave. (It does not matter that you may have worked on those days; the workday is viewed from the perspective of the person who is required to take the pending action—in this case the supervisor who must respond). Monday is day three, Tuesday is day four, and the response is due by the end of the day on Wednesday, day five. (Grievance Procedure Manual § 8.3).

31. Does a half-day count as a “workday”?

Yes, any portion of a day worked is considered a workday.

Other Grievance Issues

32. I have filed a grievance and want to obtain documents to support my claim. How can I obtain such documentation?

An agency must provide to the employee, upon request, all information relevant to a grievance unless the agency can show “just cause” for not disclosing the information. (An example of “just cause” might be if a law enforcement agency established that release of the requested information would pose a security threat.) While the grievance statutes do not require that the request be in writing, written requests are preferable. Because of a July 1, 2000 statutory change, document requests are no longer associated with the Freedom of Information Act and that Act alone cannot be used as the reason for refusing to produce documents. Note that an employee must also provide all relevant grievance information to the agency, upon request, unless the employee can show just cause for not disclosing the information. Grievance Procedure Manual § 8.2.

33. Once I have begun a grievance, may I amend my “Form A” to reflect other issues that arise?

Once you have initiated your grievance, you may not add new issues to the grievance. However, if you have other concerns that do not arise out of the same facts as your original grievance, you may initiate a separate grievance. Any subsequent grievances are subject to all Grievance Procedure rules.

34. How does an agency close a grievance on the basis of non-compliance?

It depends. If the agency is closing the grievance based on the grievant’s failure to follow one of the grievance initiation rules (e.g., the 30 calendar-day filing rule) then management may notify the employee, using the “Form A,” that the grievance will be administratively closed due to noncompliance. The agency must also notify the employee on the “Form A” that the employee has the right to request a compliance ruling from EDR to overturn the closing of the grievance. Any such ruling request from the grievant to EDR must be made within 5 workdays of the notice of closure and be accompanied by a copy of the grievance record, complete with all attachments. (The original grievance record should be kept by the agency). The agency may raise noncompliance at any point through the agency head’s qualification decision. (See Grievance Procedure Manual § 6.2).

The other circumstance in which the agency may desire to close a grievance is in a case of abandonment (where the grievant fails to advance his or her grievance). An agency may not, however, close an allegedly non-compliant grievance without first seeking a ruling from EDR. Before seeking such a ruling, the agency must inform the grievant, in writing, of the noncompliance and allow the grievant 5 workdays after receipt of the written notice to correct the noncompliance. If EDR finds that the grievant is out of compliance, EDR will order the grievant to correct the non-compliance. If it is not corrected within the designated timeframe, the agency may close the grievance. (Grievance Procedure Manual § 6.3).

35. Can the agency seek to close a grievance if an employee files too many grievances?

The grievance statutes provide that employees shall not utilize the grievance process to harass or otherwise impede the efficient operations of government. (Va. Code § 2.2-3003(C); Grievance Procedure Manual § 2.4) Agencies should not tolerate abuse of the grievance process and can accordingly seek to close an employee’s grievance for such harassment or impediments to government operations. For example, one context in which this can occur is if an employee files a large number of grievances. EDR will balance the rights of employees to access the grievance procedure to raise legitimate issues of concern. However, if an employee files multiple grievances about exceedingly minor or inconsequential matters, agencies are encouraged to address such behavior through a compliance ruling request to EDR.