

## Virginia's Grievance Process for State Employees

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At Berry & Berry, PLLC, our attorneys represent employees who are employed by an agency of the Commonwealth of Virginia in various types of disciplinary action and grievance matters. Generally, one of the most important tools in defending an employee in these types of cases involves the use of the grievance/hearing process.

The Commonwealth of Virginia has issued a grievance procedure that consists of three stages for its agencies and their employees to use in attempting to resolve employment matters. The grievance process is administered by the Virginia Department of Human Resource Management (DHRM), Office of Employment Dispute Resolution (EDR).

### **Stage One: Filing the Initial Grievance**

The first step in resolving an employment dispute with an agency of the Commonwealth of Virginia is for the state employee to submit an initial written grievance. Grievances can involve a number of employment issues, including adverse employment actions (e.g., termination, suspension), the unfair application of state policies, discrimination, retaliation for earlier participation in the grievance process, transfers, demotions, etc.

The state employee seeking to bring these employment issues forward must generally file a written grievance within 30 days of the date that he or she knew or should have known about the issue being grieved. This is very important. If the grievance is not filed in a timely manner, it will likely be dismissed by state authorities. The grievance form provided by DRHM/EDR is known as Grievance Form A. If there is not enough space on the form to accurately describe the grievance, attachments may be used. The initial written grievance, also referred to as the Step 1 Grievance, is generally filed with the employee's immediate supervisor.

### **Stage Two: The 3-Step Grievance Process**

*The First Resolution Step:* The First Resolution Step process is where the state employee's immediate supervisor identifies the grievance issues, gathers information, and reviews the grievance issues. During the first step, a meeting may be held to discuss the grievance issues, but it is not required. If the grievance is unresolved during the first step, the process then moves to the second step.

*The Second Resolution Step:* The Second Resolution Step is usually considered a fact-finding session and should include an open discussion of the grievance issues. Unlike the first step where a meeting is not required, a meeting is required during the second step. During the second step, witnesses may be called by either side. If the grievance is still unresolved during the second step, the process then moves to the third step.

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*The Third Resolution Step:* In the Third Resolution Step, a meeting may be held to discuss the grievance issues, but it is not required. The Third Resolution Step Respondent (State Agency) must submit a written response, address the grievance issues and relief requested, and should notify the state employee of his or her procedural options. If the third step does not resolve the grievance and the state employee wishes to take his or her grievance to a hearing, he or she must then file a request on Section V of Grievance Form A to have his or her grievance certified for the hearing process by the agency head.

*Expedited Process:* In some cases where a grievance involves a demotion, suspension without pay, or any other action that results in an actual loss of wages, the state employee may be able to elect the Expedited Process for grievance review. The Expedited Process generally follows the Second Step Resolution procedures and a hearing, thus eliminating the First and Third Resolution Steps in the normal 3-Step Grievance Process. State employees should view the Expedited Process as a faster means to a resolution of the grievance.

### **Stage Three: The Grievance Hearing**

Grievances that are not resolved in the 3-Step Grievance Process may proceed to a possible hearing. Not every grievance, however, is eligible for a hearing. Cases involving formal written notices of disciplinary actions and dismissals for unsatisfactory performance usually qualify for the hearing stage. Other grievances involving adverse employment actions may also qualify for a hearing. These may include: (1) unfair application of state/agency policies; (2) discrimination; (3) arbitrary or capricious performance evaluation; (4) retaliation for participation in the grievance process; and (5) informal discipline (i.e., transfers, assignments, demotions and suspensions that are not accompanied by a formal notice but taken for disciplinary reasons). If a grievance is deemed by an agency head as not eligible for a hearing, the state employee may appeal the adverse decision to EDR.

Once the right to a hearing is established, the hearing process consists of the appointment of a hearing officer, a pre-hearing conference, and the formal hearing, in addition to other procedures. The hearing officer may issue orders for the appearance of witnesses and the production of documents in preparation for the hearing. During the hearing, documents will be introduced as exhibits and witnesses will be examined and cross-examined. If the grievance involves an underlying disciplinary matter, then the agency involved must prove its case by a preponderance (51%) of the evidence presented. Following the hearing, the hearing officer will provide a decision in writing either upholding or denying the grievance.

### **Judicial Review of the Grievance Decision**

If the hearing officer rules against a party, that party can appeal the adverse decision to the EDR or DHRM, depending on the issue to be appealed, before it becomes final. Once a hearing decision becomes final, a party can appeal an adverse determination to the relevant circuit court and subsequently to the Court of Appeals of Virginia. A petition can also be filed with the jurisdictional circuit court if implementation of the final hearing decision is required.

## Contact Us

Berry & Berry, PLLC represents employees who are employed by the Commonwealth of Virginia in grievance matters and can be contacted at (703) 668-0070 or [www.berrylegal.com](http://www.berrylegal.com) to schedule an initial consultation regarding the grievance process and their individual matter.

## Attorneys

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## Practice Areas

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