UNDERSTANDING AND USING THE GRIEVANCE PROCEDURE

WELCOME

Please complete pre-test
What is a Grievance?

- A formal way to bring work-related concerns to the attention of management.

- Resolution of issues at lowest possible level in the organization.
Why a Grievance Procedure?

- Due process
- Fair and prompt review and resolution of disputes
- Use encouraged in law (VA. Code *21-116.03)
What do you think?

What can you do to minimize the likelihood of a grievance?
Role of the Supervisor

Supervisors are responsible to:

- Inform staff that the grievance procedure is available to them.
- Reflect support for employee use of the grievance procedure.
- Encourage employees to contact EO if any concern about discrimination.
- Reflect support for EO as an employee resource.
Role of Employee Relations

- Accurate information and guidance to managers
- Accurate information and guidance to employees
- Neutrality/balance
- Adherence to policy and timelines
Who has access to the Grievance Procedure?

- Non-probationary classified employees

- Employed at the time grievance is initiated (unless termination or involuntary separation)

(Hourly employee do not have access.)
The Grievance Process

Management Resolution Steps

1st Resolution Step

2nd Resolution Step

3rd Resolution Step

Qualification → Hearing → Review of Decision

Expedited Process

2nd Resolution Step

Qualification → Hearing → Review of Decision

Hearing

Appeal to EDR, then Circuit Court

Administrative Judicial

Appeal to EDR, then Circuit Court

Administrative Judicial
Compliance Issues

- Time Compliance
  - 30 calendar days to initiate Grievance
  - 5 workdays
    - 1st step resolution
    - 2nd step meeting
    - 2nd step response
    - 3rd step response
    - Grievant’s response to each of the above
What happens if Non-Compliance?

- **Notification of non-compliance:**
  - In general, must go to the employee
  - Goes to agency head if agency is out of compliance
  - Give 5 additional workdays to correct

- **If not corrected**
  - Appeal to EDR
  - EDR may order the party to correct the non-compliance or render a decision against the non-complying party if just cause is not shown
Progressive Phases of the Grievance Process

1. Management Resolution Steps (3 successive levels)
   - 1st Resolution Step (Supervisor)
   - 2nd Resolution Step (Dean/Director)
   - 3rd Resolution Step (VP)

2. Qualification for Hearing
   - Determined by agency head.
Progressive Phases of the Grievance Process

3. Hearing
   - Were actions warranted and reasonable?

4. Review of Hearing Decisions
   - Administrative Review
   - Judicial Review
The Grievance Procedure

- 2\textsuperscript{nd} and 3\textsuperscript{rd} Step Respondents are designated by the Agency
- ODU designations
  - 1\textsuperscript{st} step = Supervisor
  - 2\textsuperscript{nd} step = Dean/Director
  - 3\textsuperscript{rd} step = Vice President
EXPEDITED GRIEVANCES

Grievance involving:
- Claims of discrimination and/or retaliation against immediate supervisor
- Termination, demotion, suspension, loss of wages

May initiate with:
- Next higher level of supervisor
- Second-step respondent
- Hearing
The Grievance Procedure

How to Begin

- Consult with ER Manager
- Grievance Form A or Expedited Form A
- Grievance Procedure Manual
  - Read Manual
  - Complete the Form A/Expedited Form A
  - Present Form to Management
  - Consult with HR and EDR as Needed
First Resolution Step

When Employee presents a written grievance:

- Accept grievance, if immediate supervisor
- Enter date of receipt
- Review grievance
- Notify ER Manager, Kathy Williamson
First Resolution Step

Within 5 workdays determine:

- Eligibility
- Timeliness
- Identify issues raised by the employee
- Gather and review facts presented
- Analyze the information
Analyze The Information

- Is the rule, policy or standard reasonable?
- Was it communicated to the employee?
- Has enforcement been consistent?
- Is the discipline appropriate?
- Is there sufficient documented evidence?
- Was the investigation fair and objective?
- Is granting relief a good management decision?
Exercise I

Introducing Raul Garcia

Analyze the Information
First Resolution Response

Within 5 workdays:

- Provide response on grievance form; use attachment for details.
- Include the reasons for the decision and facts supporting the decision.
- Meet with employee to provide response.
Second Resolution Step

- Director or Dean accepts grievance
- Enter date of receipt
- Review grievance
- Consult ER Manager
- Conduct fact-finding meeting with grievant within five workdays
2nd Step - Employee Option

If employee fears that 2nd step respondent is discriminatory or will retaliate:

- Request agency designate another second-step respondent; or
- Waive meeting with the second-step respondent - written response only.
- If waived, the employee must be allowed to meet with the third-step respondent
The Second Step Meeting

Preparing for fact-finding meeting

- Identify issues and information needs
- Develop questions to be asked
- Identify appropriate witnesses
- Gather relevant information
Conducting The Meeting

Effective Techniques for information gathering:

- Ask grievant to provide their complaint
- Listen carefully
- Summarize or paraphrase
- Clarify using open-ended questions
- Assess credibility and reliability of witnesses
After The Meeting

- Five workdays to respond
  - Review and analyze information
  - Was management action appropriate?
  - Decide about relief
  - Provide response on Grievance Form (add attachments if needed)
Exercise II

Instructions: Complete the portion of the Form as if you are the Second Step Respondent.

- Who do you want to talk with about this grievance?
- What information do you need?
- What policies/procedures/practices would you like to see?
Third Resolution Step

- Vice President accepts grievance
- Enter date of receipt
- Review grievance
- Meeting with employee optional
- Respond within 5 workdays.
Qualification For Hearing

Actions Which AUTOMATICALLY Qualify

- Formal Discipline (a Written Notice)
- Dismissal for unsatisfactory performance.
Qualification For Hearing

Actions Which *May* Qualify

- Unfair application or misapplication of policies, procedures, rules, and regulations
- Discrimination
- Arbitrary or capricious performance evaluation
- Retaliation
- Adverse employment actions
Actions Which Do not Qualify
(unless misapplication, retaliation, or discrimination exists)

- Classification and compensation decisions
- Contents of policies
- Methods, Means and Personnel
- Hiring decisions
- Informal supervisory actions
Hearing Officer Limitations

Hearing Officer CAN:

- Reinstate to former or similar position.
- Uphold, reduce or rescind actions
- Award full, partial, or no back pay (interim earnings are deducted)
- Restore full benefits and seniority.
- Order agency to comply with applicable law and policy.
Hearing Officer Limitations

Hearing Officer CANNOT grant:
- Selection for position
- Upward reallocation
- Higher performance rating
- Transfer or reassignment

Only management can direct these personnel actions
The Hearing

- Conducted by Hearing Officer
- Decision within 30 calendar days of appointment of hearing officer
- Witnesses may be called
- Hearing Officer Decision
- Implement decision immediately and fully
- Hearing Decision Review
- Final Administrative Decision
- University and employee may have attorney
Hearing Decision Review

- Three Types of Administrative Review
  - Reconsideration (new information)
  - Consistency of decision with policy
  - Compliance with the Grievance Procedure

- Final Administrative Decision
Hearing Decision Review

- Judicial Review of Final Administrative Decision
  - Circuit Court Review
  - Court Appeals
  - University Counsel
A Word on Retaliation

- Respect an employee’s right to grieve and/or complain.
- Manage your emotions in dealing with conflict.
- Consistently follow relevant procedures.
The Grievance Procedure

Grievance Procedure Manual and Forms - EDR Web Site
http://www.edr.state.va.us

Standards of Conduct, Policy 1.60 from DHRM Web Site
http://www.dhram.state.va.us
Wrap Up

- PARKING LOT?
- OTHER QUESTIONS
- POST TEST
- SESSION FEEDBACK FORM
- THANK YOU!