
SUBJECT: PAYROLL/PERSONNEL

CHAPTER TITLE: GRIEVANCES

Effective: 7/1/07

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I. **INTRODUCTION**

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Included in this procedure are the West Virginia Department of Transportation policies and processes for resolving grievances and a discussion of employees' rights and responsibilities. It is the goal of the agency to provide a prompt and equitable answer to employees' complaints in compliance with all statutory and regulatory requirements.

This procedure is supplemental to West Virginia Code Chapter 6C, Article 2, "West Virginia Public Employees Grievance Procedure. "To ensure an understanding of the employee's/employer's rights and responsibilities, a complete review of this procedure, including the appendices and the referenced section of the State Code is recommended.

A. **GRIEVANCE DEFINED**

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A grievance is a claim by an employee alleging a violation, misapplication or misinterpretation of the statutes, policies, rules, regulations or written agreements applicable to the employee, including the following:

1. Any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status, or discrimination, unless the discrimination is related to the actual responsibilities of the employee or agreed to in writing by the employee.

Discrimination complaints based on Title VII of the Civil Rights Act, including sexual harassment, may also be filed with the West Virginia Human Rights Commission (within 365 days of the date of the occurrence), the U.S. Equal Employment Opportunity Commission (within 300 days of the date of occurrence), or with the West Virginia Department of Transportation (Highways') Equal Employment Opportunity Division. For the definition of discrimination and sexual harassment in particular, see Volume III, Chapter 6 of these Procedures.

2. Any discriminatory or otherwise aggrieved application of unwritten policies or practices of the employer.
3. Any specifically identified incident of harassment or favoritism.
4. Any action, policy or practice constituting a substantial detriment to or interference with effective job performance or the health and safety of the employee.

B. EXCLUDED FROM GRIEVANCE PROCEDURE

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1. Any pension matter or other issue relating to public employees insurance.
2. Any matter relating to public employees retirement.
3. Any other matter in which authority to act is not vested with the employer.

II. DOT GRIEVANCE POLICY

Effective: 7/1/07

Employees and employers should strive to resolve problems at the lowest possible administrative level. Grievances will be resolved in a fair, efficient, cost-effective and consistent manner to maintain good employee morale, enhance employee job performance and better serve the citizens of the State of West Virginia.

A. RIGHTS AND RESPONSIBILITIES OF THE GRIEVANT AND THE EMPLOYER

1. No reprisal of any kind shall be taken against the grievant or his/her representative or any interested or participating party.
2. A grievant may choose an employee organization representative, an attorney or any other person (including a fellow employee) to represent and assist him/her in the preparation or presentation of the grievance.

3. For purposes of grievance preparation, the grievant, the employee representative, or both, shall be granted a maximum of four hours per person per grievance off during work hours without loss of pay or use of annual or compensatory leave. This time off must be requested in advance and in writing to the employee's supervisor.

However, as per State Code, "the first responsibility of any employee is the work assigned to the employee. An employee may not allow grievance preparation and representation activities to seriously affect the overall productivity of the employee."

Activity code "007" will be used to account for time spent in grievance preparation, except for the Maintenance Work Force, which will use code "807."

4. Employees attending a grievance proceeding will not receive a reduction in their regular salary, wages, rate of pay or other benefits as a consequence of attendance.
5. The grievant shall have access to the employer's equipment (including copy machine) for purposes of preparing grievance documents, subject to the reasonable rules of the employer governing the use of the equipment for non-work purposes.
6. All proceedings shall be at a convenient place accessible to all parties, and the location of the level three hearing shall be set by the administrative law judge.

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7. An employee may proceed directly to level three upon the agreement of the employee and the chief administrator or when discharged, suspended without pay or demoted or reclassified resulting in a loss of compensation or benefits.
 8. Any expenses incurred relative to the grievance procedure at levels one, two or three shall be borne by the party incurring the expenses.
 9. Decisions rendered at all levels of the grievance procedure must be transmitted to the grievant in writing and must include the following: the date of the decision; the reason(s) for the decision; and, if the grievant is denied, the relief sought and the name of the individual at the next level to whom appeal may be made.

Time limits for the three levels of the grievance procedure may be found in Section III.B. of this chapter.

B. TIME LIMITS AND PROPER FILING

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1. Grievances must be properly filed. The original signed grievance form must be mailed by U.S. Postal Service to the chief administrator, and copies must be mailed to the West Virginia Public Employees Grievance Board and the Division of Personnel. These addresses are as follows:

Chief Administrator
(Address for Commissioner/Agency Head or Designee)

West Virginia Public Employees Grievance Board
1596 Kanawha Blvd, East
Charleston, West Virginia 25311

West Virginia Division of Personnel
1900 Kanawha Boulevard, East
Building 6, Room 420
Charleston, West Virginia 25305

2. The time limits involved in filing a grievance or appealing a decision may be extended to a certain date by mutual written agreement, and shall be extended when a grievant is not working because of an accident, sickness, death in the immediate family or other cause for which the grievant has approved leave from his/her employment.
3. Any assertion by the employer that the filing of the grievance at level one was untimely must be asserted by the employer at or before level two.

4. The grievant prevails by default if a required response is not made by the employer within the required time limits (see Section III.B., below), unless the employer is prevented from doing so directly as a result of injury or illness or a justified delay not caused by negligence or intent to delay the grievance process.
5. Within ten days of the default, the grievant may file with the chief administrator a written notice of intent to proceed directly to the next level, or to enforce the default. If the chief administrator objects to the default, then the chief administrator may request a hearing before an administrative law judge for the purpose of stating a defense to the default, or showing that the remedy requested by the prevailing grievant is contrary to law or contrary to proper and available remedies.
6. If the administrative law judge finds that the employer has a defense to the default, or that the remedy is contrary to law or not proper or available at law, the administrative law judge may deny the default or modify the remedy to be granted to comply with the law or otherwise make the grievant whole.

III. DOT GRIEVANCE PROCESS

Effective: 7/1/07

The following sections list the steps and specifies responsibility for the DOT grievance process. For a brief synopsis of the time limits for each step, see Appendix A in the back of this chapter.

A. DEFINITIONS OF CHIEF ADMINISTRATOR

Grievance filings at all levels of the grievance process must be made with the chief administrator. "Chief administrator" means, in the context of DOT, the Commissioner/Agency Head or his designee. The Commissioner/Agency Head may delegate others within the agency (e.g., attorneys, division heads, grievance evaluators, etc.) with the authority to handle any aspect of the grievance procedure on his behalf. Each agency's Commissioner/Agency Head is responsible to apply this guideline to his or her own organizational structure.

B. THE THREE LEVELS OF THE GRIEVANCE PROCESS

Effective: 7/1/07

1. Level One-internal Grievance Evaluator

- i. Employee/grievant may file a written grievance on a West Virginia Public Employees Grievance Form (see Appendix B) with the chief administrator and submits copies to the West Virginia Public Employees Grievance Board and the Division of Personnel.

- ii. Form must be filed within:
 - a. 15 working days (exclusive of Saturdays, Sundays and official holidays) following the grievable event; or,
 - b. within 15 working days of the event becoming known to the grievant; or,
 - c. within 15 working days of the most recent occurrence of a continuing practice.
- iii. The written grievance must state the nature of the grievance and the relief requested.
- iv. On the grievance form, the grievant may request either a conference or a hearing.
- v. A conference or hearing shall be scheduled within 5 working days of receipt of the written grievance and held within 10 working days of receipt of the written grievance. Hearings shall be held within 15 working days of receipt of the written grievance.
- vi. Grievance evaluator must issue a written decision to the grievant or his/her representative within 15 working days of the conference or hearing.

2. Level Two-Alternative Dispute Resolution (ADR)

- i. Grievant may file a written request for ADR with the West Virginia Public Employees Grievance Board within 10 working days of receiving an adverse level one written decision. A copy of the appeal must be filed with the chief administrator and the Division of Personnel.
- ii. In the appeal, the grievant may request mediation conducted by an administrative law judge of the Board, private mediation, or private arbitration. If no selection is made, mediation will be conducted by an administrative law judge of the Board at no cost to the parties.
- iii. Mediation, private mediation or private arbitration must be scheduled within 20 working days of the grievant's request.
- iv. Agreements reached through mediation and decisions issued through arbitration shall be documented in writing within 15 working days of the mediation or arbitration. Agreements and decisions are binding and enforceable.
- v. If no settlement is reached through mediation, the administrative law judge/mediator may provide a written summary of the issues presented, and issue a scheduling and discovery order that is binding upon the parties in preparation for level three within 15 working days of mediation.

3. Level Three-Hearing and Adjudication

- i. Within 10 working days of receiving a written report stating that ADR at level two was unsuccessful, the grievant may file a written appeal to level three with the West Virginia Public Employees Grievance Board. A copy of the appeal must be filed with the chief administrator and the Division of Personnel.
- ii. An administrative law judge will schedule a hearing and any other deadlines within a reasonable time in consultation with the parties.
- iii. A representative of the Division of Personnel may appear at the hearing and submit oral or written evidence upon matters in the hearing.
- iv. The administrative law judge must issue a written decision within 30 working days of the hearing. A copy of the decision will be sent to all parties in the grievance and the chief administrator.
- v. The decision of the administrative law judge is final upon the parties and is enforceable in the circuit court of Kanawha County.
- vi. An appeal of the level three decision may be made by either party. It must be filed in the circuit court of Kanawha County within 30 working days of receipt of the administrative law judge's decision. A separate motion to stay the decision may also be filed.

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TIME FRAME TABLE FOR GRIEVANCE PROCESS

1. All "days" designated below are work days, exclusive of Saturdays, Sundays and official holidays.
2. All decisions must be in writing.
3. Appeals should be requested in writing. No reasons need to be stated for an appeal.
4. Time frames can be extended at any level if agreed to by all parties.
5. Level Three decisions may be appealed to Kanawha County circuit court.

LEVEL ONE	LEVEL TWO	LEVEL THREE
Grievable Event	Grievance Evaluator's written decision	Summary of issues presented in ADR and scheduling/discovery order
15 days to file grievance with chief administrator with copies to Grievance Board and DOP	10 days to file appeal to Grievance Board and chief administrator for ADR	10 days to file appeal to Grievance Board and chief administrator
10 days to hold Conference; 15 days to hold Hearing (after June 6, 2008)	20 days to schedule ADR	Hearing held within "reasonable time"
15 days to issue Grievance Evaluator's written decision	If settlement/decision: 15 days to document. If no settlement/decision: 15 days to provide summary/order	30 days to submit administrative law judge's written decision (30 days to appeal)

Revised: 1/1/2011

**GRIEVANCE FORM WITH NOTES ON NEXT 2 PAGES
AND ALSO AVAILABLE AT
http://www.pegb.wv.gov/Forms/Grievance_Form.pdf**

FOR INTERNAL USE ONLY
L2 ALJ:
L3 ALJ:
Topic:

**West Virginia
Public Employees Grievance Board**

Grievance Form for Levels 1, 2, and 3

Do not write above this line.

Grievant's information (Please print. All information is required)

DOCKET number: _____

Grievant's full name	Agency, Institution, Board, Division	Grievant's representative (if applicable)
Grievant's home address	Grievant's work address	Representative's address
City, State and zip code	City, State and zip code	City, State and zip code
Grievant's home phone number	Grievant's work telephone number	Representative's telephone number
Grievant's home email address	Grievant's work e-mail address	Representative's e-mail address
	Grievant's job title or classification	

Statement of Grievance (Please state the event causing this grievance and list the specific statutes, policies, rules, regulations or agreements you claim have been violated, misapplied or misinterpreted. Additional sheets may be attached.):

Relief Sought:

Level One (Choose one)	Level Two (Choose one)	Level Three (Choose one)
<input type="checkbox"/> 1. Hearing <input type="checkbox"/> 2. Conference <input type="checkbox"/> 3. Default <input type="checkbox"/> 4. Proceed directly to Level 3 (See instructions)	<input type="checkbox"/> 1. Mediation by ALJ <input type="checkbox"/> 2. Private Mediation (See instructions) <input type="checkbox"/> 3. Private Arbitration (See instructions)	<input type="checkbox"/> 1. Hearing <input type="checkbox"/> 2. Submit on Level 1 Hearing Record
Date filed	Date filed	Date filed
Grievant's signature	Grievant's signature	Grievant's signature

Please note the following:

- This form is to be used for all levels of the grievance procedure.
- Grievance forms may not be filed by interdepartmental mail. See the Grievance Board's Procedural Rule § 156-1-2.1.4.
- "Days" means working days. See W. Va. Code § 6C-2-2(c).
- The Docket Number will be assigned by the Grievance Board.
- An employee may proceed directly to Level Three only under circumstances listed in the Code:

W. Va. Code § 6C-2-4(a)(4): An employee may proceed directly to level three upon the agreement of the parties or when the grievant has been discharged, suspended without pay or demoted or reclassified resulting in a loss of compensation or benefits. Level one and level two proceedings are waived in these matters. [Emphasis added]

- If all parties agree to proceed directly to level three, a statement verifying this fact, signed by all parties, must be submitted with the Grievance Form.

Level One – W.Va. Code § 6C-2-4(a)

- Grievances must be filed within 15 days of the grievable event.
- Send a copy to the Chief Administrator of your agency; and a copy to the Public Employees Grievance Board, 1596 Kanawha Boulevard, E., Charleston, West Virginia 25311.
- State employees must also send a copy to the Director of the Division of Personnel, Building 6, Room 416, State Capitol Complex, Charleston, West Virginia 25305.
- A hearing will be recorded; a conference will not be recorded.

Level Two – W.Va. Code § 6C-2-4(b)

- Grievant may appeal a Level One decision within 10 days of receiving an adverse written decision.
- Send a copy to the Chief Administrator of your agency; and a copy to the Public Employees Grievance Board, 1596 Kanawha Boulevard, E., Charleston, West Virginia 25311.
- State employees must also send a copy to the Director of the Division of Personnel, Building 6, Room 416, State Capitol Complex, Charleston, West Virginia 25305.
- The grievant may choose mediation by a Board administrative law judge; private mediation; or private arbitration. Grievant must select one of the three options.
- Mediation by a Board administrative law judge is free.
- If private mediation or private arbitration is selected, a Mediation Agreement Form must be filed with the Grievance Form.

Level Three – W. Va. Code § 6C-2-4(c)

- Grievant may file a written appeal within 10 days of receiving a written report stating that the Level Two mediation was unsuccessful.
- Send a copy to the Chief Administrator of your agency; and a copy to the Public Employees Grievance Board, 1596 Kanawha Boulevard, E., Charleston, West Virginia 25311.
- State employees must also send a copy to the Director of the Division of Personnel, Building 6, Room 416, State Capitol Complex, Charleston, West Virginia 25305.