

WEST VIRGINIA CODE: §6C-2-3

§6C-2-3. Grievance procedure generally.

(a) Time limits. --

(1) An employee shall file a grievance within the time limits specified in this article.

(2) The specified time limits may be extended to a date certain by mutual written agreement and shall be extended whenever a grievant is not working because of accident, sickness, death in the immediate family or other cause for which the grievant has approved leave from employment.

(b) Default. --

(1) The grievant prevails by default if a required response is not made by the employer within the time limits established in this article, unless the employer is prevented from doing so directly as a result of injury, illness or a justified delay not caused by negligence or intent to delay the grievance process.

(2) 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, within five days of the filing of the notice of intent, request a hearing before an administrative law judge for the purpose of stating a defense to the default, as permitted by subdivision (1) of this subsection, or showing that the remedy requested by the prevailing grievant is contrary to law or contrary to proper and available remedies. In making a determination regarding the remedy, the administrative law judge shall determine whether the remedy is proper, available and not contrary to law.

(3) If the administrative law judge finds that the employer has a defense to the default as permitted by subdivision (1) of this subsection 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.

(c) Defenses and limitations. --

(1) Untimeliness. -- Any assertion that the filing of the grievance at level one was untimely shall be made at or before level two.

(2) Back pay. -- When it is a proper remedy, back pay may only be granted for one year prior to the filing of a grievance, unless the grievant shows, by a preponderance of the evidence, that the employer acted in bad faith in concealing the facts giving rise to the claim for back pay, in which case an eighteen-month limitation on back pay applies.

(3) Statutory defense. -- If a party intends to assert the application of any statute, policy, rule or written agreement as a defense at any level, then a copy of the materials shall be forwarded to all parties.

(d) Withdrawal and reinstatement of grievance. -- An employee may withdraw a grievance at any time by filing a written notice of withdrawal with the chief administrator or the administrative law judge. The grievance may not be reinstated by the grievant unless reinstatement is granted by the chief administrator or the administrative law judge. If more than one employee is named as a grievant, the withdrawal of one employee does not prejudice the rights of any other employee named in the grievance.

(e) Consolidation and groups of similarly situated employees. --

(1) Grievances may be consolidated at any level by agreement of all parties or at the discretion of the chief administrator or administrative law judge.

(2) Class actions are not permitted. However, a grievance may be filed by one or more employees on behalf of a group of similarly situated employees. Any similarly situated employee shall complete a grievance form stating his or her intent to join the group of similarly situated employees. Only one employee filing a grievance on behalf of similarly situated employees shall be required to participate in the conference or level one hearing.

(f) Intervention. -- Upon a timely request, any employee may intervene and become a party to a grievance at any level when the employee demonstrates that the disposition of the action may substantially and adversely affect his or her rights or property and that his or her interest is not adequately represented by the existing parties.

(g) Representation and disciplinary action. --

(1) An employee may designate a representative who may be present at any step of the procedure as well as at any meeting that is held with the employee for the purpose of discussing or considering disciplinary action.

(2) An employee may not be compelled to testify against himself or herself in a disciplinary grievance hearing.

(h) Reprisal. -- No reprisal or retaliation of any kind may be taken by an employer against a grievant or any other participant in a grievance proceeding by reason of his or her participation. Reprisal or retaliation constitutes a grievance and any person held responsible is subject to disciplinary action for insubordination.

(i) Improper classification. -- A supervisor or administrator responsible for a willful act of bad faith toward an employee or who intentionally works an employee out of classification may be subject to disciplinary action, including demotion or discharge.

(j) Forms. -- The board shall create the forms for filing grievances, giving notice, taking

appeals, making reports and recommendations and all other necessary documents and provide them to chief administrators to make available to any employee upon request.

(k) Discovery. -- The parties are entitled to copies of all material submitted to the chief administrator or the administrative law judge by any party.

(l) Notice. -- Reasonable notice of a proceeding shall be sent at least five days prior to the proceeding to all parties and their representatives and shall include the date, time and place of the proceeding. If an employer causes a proceeding to be postponed without adequate notice to employees who are scheduled to appear during their normal work day, the employees may not suffer any loss in pay for work time lost.

(m) Record. -- Conferences are not required to be recorded, but all documents admitted and the decision, agreement or report become part of the record. All the testimony at a level one and level three hearing shall be recorded by mechanical means and a copy of the recording provided to any party upon request. The board is responsible for paying for and promptly providing a certified transcript of a level three hearing to the court for a mandamus or appellate proceeding.

(n) Grievance decisions and reports. --

(1) Any party may propose findings of fact and conclusions of law within twenty days of an arbitration or a level three hearing.

(2) A decision, agreement or report shall be dated, in writing, setting forth the reasons for the decision or outcome and transmitted to the parties and, in a private arbitration, to the board, within the time limits prescribed. If the grievance is not resolved, the written decision or report shall include the address and procedure to appeal to the next level.

(o) Scheduling. -- All proceedings shall be scheduled during regular work hours in a convenient location accessible to all parties in accommodation to the parties' normal operations and work schedules. By agreement of the parties, a proceeding may be scheduled at any time or any place. Disagreements shall be decided by the administrative law judge.

(p) Attendance and preparation. --

(1) The grievant, witnesses and an employee representative shall be granted reasonable and necessary time off during working hours to attend grievance proceedings without loss of pay and without charge to annual or compensatory leave credits.

(2) In addition to actual time spent attending grievance proceedings, the grievant and an employee representative shall be granted time off during working hours, not to exceed four hours per grievance, for the preparation of the grievance without loss of pay and without charge to annual or compensatory leave credits. However, 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.

(3) The grievant and an employee representative shall have access to the employer's equipment for purposes of preparing grievance documents subject to the reasonable rules of the employer governing the use of the equipment for nonwork purposes.

(4) Disagreements regarding preparation time shall be decided by the administrative law judge.

(q) Grievance files. --

(1) All grievance forms decisions, agreements and reports shall be kept in a file separate from the personnel file of the employee and may not become a part of the personnel file, but shall remain confidential except by mutual written agreement of the parties.

(2) The grievant may file a written request to have the grievant's identity removed from any files kept by the employer one year following the conclusion of the grievance.

(r) Number of grievances. -- The number of grievances filed against an employer by an employee is not, per se, an indication of the employer's or the employee's job performance.

(s) Procedures and rules. -- The board shall prescribe rules and procedures in compliance with this article, article three of this chapter and the state Administrative Procedures Act under chapter twenty-nine-a of this code for all proceedings relating to the grievance procedure.