

Filing Grievance: A Shop Steward's Guide

UE Local 170, West Virginia Public Workers Union, seeks to make the best possible use of the existing grievance procedure available to our members. Actions that can give rise to a formal grievance by West Virginia state employees include any:

- violation of laws, policies, rules or written agreements
- violation of pay, hours, terms and conditions of work, work status
- discrimination
- act of discrimination, favoritism, harassment, retaliation
- interference with job assignment or health and safety

West Virginia Code §6C-2-2(i)(1) et seq.

What are some examples of a valid grievance?

- any act of discipline
- an improper job evaluation
- promoting a less qualified person for an job opening
- reprisal against an employee for lawful activity

What is probably not a valid grievance?

- having an idiot for a boss
- pension and retirement issues
- new duties taking under 20% of work time
- imposing a new dress code or other agency policy

West Virginia Code §6C-2-2(i)(2).

What are the deadlines for filing grievance?

A worker has 15 working days after an incident, or after a reason to file becomes known to the worker, to file a grievance. If it is a continuing practice, the deadline is 15 days after the most recent incident.

If the grievance does not involve a dismissal, suspension or demotion with loss of pay, it must be filed a level one, copies sent to the worker's head of agency or designated examiner, the state division of personnel and the state grievance board.

Upon written denial at level one, the grievance must be appealed within ten working days for a level two mediation. If there is no settlement at mediation, the appeal to a level three hearing must be made within ten working days of written notice.

Missing time-lines without good reasons can lead to the grievance's dismissal. *West Virginia Code §6C-2-4, et seq.*

How should the grievance statement be worded?

The statement of grievance should be short and precise. The

statement does not have to be spell out the case or the argument in detail. Just say, "reprimand without good cause," or "non-selection for posting."

What is the remedy to request on the grievance?

In addition to "being made whole in every way," the statement of remedy should address what it will take to resolve the problem. Not specifying a proper remedy can lead to the grievance being dismissed. Do not ask for remedies that are by law not available, such as:

- a written apology
- disciplinary action or reassignment of someone else
- a discretionary pay raise during a wage freeze

What is the difference between a level one conference and a level one hearing?

Different agencies conduct the level one proceedings in different ways, but the main difference is that a conference is informal and generally not recorded, while a hearing is recorded and sworn testimony is given.

Are grievances conducted on leave time?

No, they are conducted on work time. "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." *West Virginia Code* §6C-2-3(p)(1).

Whose forms and supplies are used to file a grievance?

"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 non-work purposes." *West Virginia Code* §6C-2-3(p)(3).

Who has the burden of proof?

Generally, if a grievance is about discipline, then the agency has to present its case first and prove that the discipline was justified. According to law, the grievant does not have to testify against him or herself. *West Virginia Code* §6C-2-3(g)2. But, if the grievance does not involve discipline, it is the worker who must go first in a proceeding and prove the case.

The burden of proof is defined in public employee grievances as the "preponderance of the evidence," which means one side has the burden to present evidence that is more likely true than not. So, for example, reliance on hearsay wouldn't be good in proving a case and meeting a burden.