

# Corporate Compliance Forms and Tools

## Factors for Consideration in Evaluating Employee Discipline for Compliance Failures

Discipline for compliance failures is a key part of having an effective compliance program. As you develop a structure for discipline related to compliance failures, here are some factors that should be taken into account. Modify and adjust this document as needed to fit the specific requirements of your organization.

Factor	Task	Person Responsible	Action Plan	Completion Date
Mitigating Factors:				
Employee Ignorance	Identify the laws, regulations, rules, and policies applicable to the failure.			
	Was the violation the result of the employee being unaware of the applicable rule, policy, law, or regulation?			
	Determine whether the organization has provided sufficient guidance, resources, and information to employees to make them aware of the applicable rule, policy, law, or regulation.			
	If ample notice and opportunity <i>has been</i> given to the employee to learn, understand, and apply the applicable rule, policy, law, or regulation, ignorance <i>should not</i> be considered a mitigating factor.			
	If ample notice, resources, and opportunity <i>havenot</i> been given to the employee, then ignorance of the applicable rule, policy, law, or regulation <i>should be</i> considered a mitigating factor resulting in less severe disciplinary action. Immediate plans should be made to ensure employee awareness, understanding, and ability to apply are provided.			

<b>Employee Acting As Instructed by Manager</b>	Was employee directed or instructed to engage in the behavior resulting in the compliance failure by a manager or supervisor?			
	If so, this may be a potentially mitigating factor to be considered.			
<b>Employee Self-Disclosure</b>	Did the employee come forward to report the failure themselves?			
	If so, this should be considered a mitigating factor and should result in a reduction in penalty or discipline.			
<b>Employee Cooperation</b>	Did the employee support and cooperate in the investigation of the failure? Were they transparent, forthcoming, and honest?			
	If so, this should be considered a mitigating factor and should result in a lesser form of discipline.			
<b>“Everybody Is Doing It”</b>	Is the employee only one of many employees who engaged in the same behavior resulting in a larger compliance failure?			
	If so, consider carefully whether all employees are being treated equally, and ensure your disciplinary action isn’t biased or seeking to hold only one person accountable instead of all involved employees. Look carefully at controls.			
<b>Aggravating Factors:</b>				
<b>Willful/Intentional Violation</b>	Did the employee intentionally circumvent or violate the applicable rule, policy, law, or regulation?			
	If so, this should be considered an aggravating factor and should result in harsher discipline.			

<b>Employee Certification</b>	Had the employee certified their knowledge and understanding of the applicable rule, policy, law, or regulation?			
	If so, this should operate as an aggravating factor resulting in harsher disciplinary action.			
<b>Senior Management Position</b>	Did the employee involved have a senior management position?			
	Employees in senior management positions are expected to lead by example and must be held accountable for ethical and compliance failures. Consider a senior management position to be an aggravating factor resulting in harsher discipline.			
<b>Obstruction of Investigation</b>	Did the employee obstruct, block, or refuse to cooperate with the investigation of the matter?			
	If so, this should be considered an aggravating factor resulting in harsher disciplinary action.			
<b>Retaliation</b>	Did the employee retaliate against other employees in connection with this matter?			
	If so, this should be considered a severe aggravating factor resulting in the harshest of possible disciplines due to the damage to culture that results from retaliation of any kind.			
<b>Manager Purposely Overlooks Wrongdoing</b>	Did the manager involved purposely turn a blind eye to wrongdoing by one or more of their employees?			
	If so, this should be considered an aggravating factor resulting in harsher discipline for the manager involved.			

<b>Personal Gain</b>	Did the employee involved obtain personal gain from the wrongdoing or compliance failure?			
	If so, this should be considered an aggravation factor resulting in harsher discipline.			
<b>Employee Intentionally Avoided or Refused to Complete Training Offered</b>	Did the employee avoid or purposely refuse to complete training offered on the issue related to the compliance failure?			
	If so, this should be considered an aggravating factor. Consider also whether the manager of the involved employee failed to properly supervise the employee or failed to ensure the completion of required training and should also be subject to discipline for failure to exercise proper oversight.			
<b>Violation Was Severe and/or Material</b>	Did the failure result in severe and/or material harm, damage, or injury to either the organization as a whole or to other individuals?			
	If so, this should be considered an aggravating factor, and special care should be taken to ensure disciplinary action is proportional to and fully takes into account the damage caused.			
<b>Employee Instigated Violation</b>	Did the employee initiate or instigate the event resulting in the failure? Did they “recruit” or persuade others to participate in or cover up the wrongdoing?			
	If so, this should be considered an aggravating factor resulting in more severe forms of disciplinary action.			
<b>Employee Helped to Hide Violation</b>	Was the employee involved in an attempt to hide or cover up the compliance failure in any way?			

	If so, this should be considered an aggravating factor resulting in harsher discipline.			
Repeat Offender	Has the employee been involved in prior compliance issues? If the employee was previously implicated in another issue where <i>any</i> of the above aggravating factors were involved, this should be considered as severe, and the harshest form of discipline is recommended.			
Other Consideration:	If the employee was acting in response to financial need, carefully look at internal controls and processes that should have prevented this, and look at employee support/hardship programs, including employee assistance programs, to ensure support is available.			

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