

# Compliance & Ethics *Professional*<sup>®</sup>

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by Joe Murphy, CCEP, CCEP-I

# Discipline? I don't think she should be fired!

I recently gave a talk to a Fordham Law School class on discipline in compliance programs. On this subject, I find people understand the need for discipline, but often do not go much further. But I believe we should give more attention to this topic.



Murphy

Drawing from my years in-house, I remember hearing the type of reaction I used for the title of this column: that “discipline” meant firing. But there are, in fact, numerous options; most offenses are not crimes and many are relatively minor (e.g., missing the training). I have provided a list of disciplinary steps here for people to consider.

One interesting phenomenon I have observed is that managers can get emotional about discipline. If you can rationally engage them through such processes as giving them a list of options, they tend to shift from an emotional reaction to one that is more rational and reasoned.

This list is not to suggest a rigid system that automatically assigns punishment. Rather, such a list allows for appropriate distinctions based on factors that relate to culpability and impact. The list is not comprehensive; it is offered as a starting tool.

- ▶ **Counseling or re-education/training.** This is a mild form of discipline for a minor, inadvertent infraction.
- ▶ **Apology, reimbursement to injured party(ies).** This step could be taken in association with other actions.
- ▶ **Oral reprimand (no file entry).** Such a warning would similarly be for a minor infraction.

- ▶ **Written reprimand** (entry into personnel file).
- ▶ **Transfer or re-assignment.** This action would be for a more serious violation, but not one worthy of firing.
- ▶ **Probation.** We tend not to think of this, but it could work in a company. An employee would be watched and counseled regularly to be sure he or she had learned the lesson.
- ▶ **Suspension with pay.** This has to be handled carefully, because suspension with pay might look like a paid vacation, and we do not want to be rewarding misconduct.
- ▶ **Suspension without pay.** Being sent home without pay can be potent, but check with the labor lawyers first, since there may be wage and hour implications.
- ▶ **Impact on/loss of bonus.**
- ▶ **Salary reduction.**
- ▶ **Ineligibility for promotion.** The company could keep a list of those who cannot be promoted, at least for a period of time.
- ▶ **Demotion.**
- ▶ **Dismissal.**
- ▶ **Referral to government for prosecution.** In some jurisdictions outside the U.S., criminal conduct must be reported.

Whatever methodology is used, it needs to be carefully written so that the company's options are not limited. Discipline must be consistent with the terms of any employment and union contracts. Outside the U.S., local labor law must be consulted first. \*

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