

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

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A portrait of Ryan Meade, a middle-aged man with short, light-colored hair, wearing a dark suit jacket, a light blue dress shirt, and a patterned tie. He is smiling slightly and looking directly at the camera. The background is a blurred interior space with a wooden railing and some framed pictures or artwork on the wall.

## Meet Ryan Meade

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by Joe Murphy, CCEP, CCEP-I

# Factors to consider in imposing discipline

In a previous column, I discussed the range of options for discipline. In this column, I address factors to consider in imposing discipline.

The prior column mentioned that there is value in toning down the inherently emotional

aspect of disciplinary decisions.

Considering a range of disciplinary options helps with this process. But how do you know which options to choose?

This column adds some elements to consider in determining the level of discipline. Again, the idea is not to have

a rigid formula or to limit the process; quite the contrary, it is to stimulate the

thinking process in dealing with the difficult issue of imposing discipline.

These are all aggravating factors:

- ▶ Seriousness of violation
- ▶ Damage caused by violation
- ▶ Level in management – The higher the level, the higher the penalty. This can be tough for people to understand but is essential. Leaders set the tone for others, and more should be expected of them.
- ▶ Role in the violation (e.g., initiated, assisted, etc.)
- ▶ Knowing violation – But ignorance of the rules is not a defense or mitigating factor. Ignorance in this context needs to be carefully assessed. It is fair to expect people in responsible positions to ask first before engaging in new activities. But given the complex nature of some regulations, there may well be instances when ignorance was legitimate. Always be skeptical on this point; you do not want to provide an incentive to avoid training.

- ▶ Lying during or otherwise obstructing investigation
- ▶ Pattern of misconduct
- ▶ Retaliation against whistleblowers – This one is especially serious and merits severe treatment, given employees' inherent fear of retaliation.
- ▶ Prior violations
- ▶ Deliberately or carelessly failing to obtain advice to determine if conduct was permissible
- ▶ Deliberately or carelessly failing to get compliance training

There are also mitigating factors to apply:

- ▶ Voluntarily reporting violation – This is a key consideration, and one the government certainly understands. It is essential to learn about problems, so there is value in mitigation for those who report.
- ▶ Cooperation in investigation
- ▶ Isolated, one-time violation

One other factor to consider is what happens if you fail to discipline an executive. Under SEC rules implementing Sarbanes-Oxley, failure to discipline senior financial officers (which includes the CEO) for code violations constitutes a reportable waiver. So this is one factor also to be considered at the executive level for publicly-traded companies.

It is also worth noting factors *not* to consider, such as the person being likeable or having achieved sales objectives.

I am always interested in learning from others' experiences. If you have other factors you have used effectively, please pass them along. \*

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