

13.12: US Sentencing Guidelines for Organizations

Learning Outcomes

- Explain the US Sentencing Guidelines for Organizations.
- List the compliance steps from the U.S. Sentencing Commission Guidelines.

Purpose of Sentencing Guidelines

Even when an employee's actions go against company policy, the company can be held legally responsible, despite its best efforts to prevent unethical behavior. This applies only when the employee acts within the scope of employment. An employee who deals drugs while on the job is not operating within the scope of employment, so the company would not be held liable for the offense. However, if an employee uses the account information of bank customers to steal money from them, the bank would be held responsible. The most common offenses related to companies include fraud, hazardous waste discharge, tax evasion, antitrust offenses, and food and drug violations.

Punishment for corporate offenses is governed by chapter eight of the Federal Sentencing Guidelines for Organizations. These guidelines were designed to enhance two purposes of criminal sentencing: "just punishment" and "deterrence." The guidelines apply to corporations, partnerships, nonprofit entities, government bodies, trusts, labor unions, and pension funds. They govern only sentencing for felonies and serious misdemeanors.

US Sentencing Guidelines

US Sentencing Guidelines reflects the following general principles:

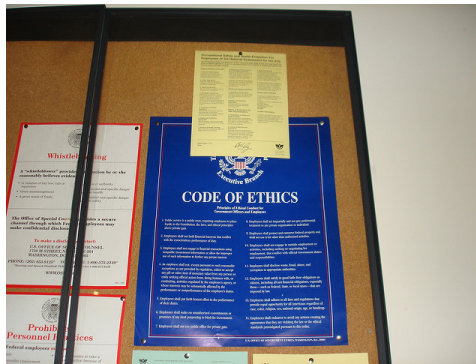
- First, the court must, whenever practicable, order the organization to remedy any harm caused by the offense. The resources expended to remedy the harm should not be viewed as punishment, but rather as a means of making victims whole for the harm caused.
- Second, if the organization operated primarily for a criminal purpose or primarily by criminal means, the fine should be set sufficiently high to divest the organization of all its assets.
- Third, the fine range for any other organization should be based on the seriousness of the offense and the culpability of the organization. The seriousness of the offense generally will be reflected by the greatest of the pecuniary gain, the pecuniary loss, or the amount in a guideline offense level fine table. Culpability generally will be determined by six factors that the sentencing court must consider. The four factors that increase the ultimate punishment of an organization are: (i) the involvement in or tolerance of criminal activity; (ii) the prior history of the organization; (iii) the violation of an order; and (iv) the obstruction of justice. The two factors that mitigate the ultimate punishment of an organization are: (i) the existence of an effective compliance and ethics program; and (ii) self-reporting, cooperation, or acceptance of responsibility.
- Fourth, probation is an appropriate sentence for an organizational defendant when needed to ensure that another sanction will be fully implemented, or to ensure that steps will be taken within the organization to reduce the likelihood of future criminal conduct.

These guidelines offer incentives to organizations to reduce and ultimately eliminate criminal conduct by providing a structural foundation from which an organization may self-police its own conduct through an effective compliance and ethics program. The prevention and detection of criminal conduct, as facilitated by an effective compliance and ethics program, will assist an organization in encouraging ethical conduct and in complying fully with all applicable laws.

Practice Question

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Guideline Compliance Steps



Compliance steps are posted in a workplace.

The US Sentencing Commission has done the hard work of designing an ethics program, and this model has become the backbone of every corporate ethics program. Essentially, organizations are offered incentives for detecting and preventing crime, provided that any offense is reported to the authorities, and no high-level employee has committed the offense. Some incentives include reduced fines, the avoidance of incarceration, supervised release, and reductions in the time to be served.

The guidelines are only a model of “corporate good citizenship” and do not include details for implementation. The compliance steps from the Federal Sentencing Guidelines include the following:

- Establish standards and procedures to prevent and detect criminal conduct, which starts with a code of ethics or statement of values.
- Senior management must be knowledgeable about the compliance and ethics program as well as oversee its implementation and make reasonable efforts to ensure its effectiveness.
- Make reasonable efforts to exclude any individual who has committed an illegal act or engaged in other activities inconsistent with a compliance and ethics program from substantial authority in the organization.
- Periodically communicate the aspects of the compliance and ethics program to its members by conducting training programs and disseminating relevant information.
- Ensure that the program is followed by (1) monitoring and auditing activities to detect criminal conduct, (2) periodically evaluating its effectiveness, and (3) employing systems that allow for anonymity or confidentiality if employees want to report criminal conduct without fear of retaliation. A common practice is a whistleblower hotline.
- Promote and enforce the program by offering incentives for performance in accordance with the program and instituting disciplinary measures for engaging in or failing to take reasonable steps to prevent/detect criminal conduct.
- Respond to criminal conduct and take steps to prevent future and similar offenses when criminal conduct has been detected.

By establishing and enforcing a compliance and ethics program, a company can prevent fraud and shield itself, although not completely, from the repercussions of the unethical and illegal acts of its employees.

? Practice Question

<https://assessments.lumenlearning.com/assessments/12297>

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