

U. S. CUSTOMS AND BORDER PROTECTION
TABLE OF OFFENSES AND PENALTIES
Effective—December 9, 2020

U.S. Customs and Border Protection (CBP) employees are expected to demonstrate high standards of integrity, both on and off the job, abide by CBP Directive No. 51735-013B, “Standards of Conduct,” and other Federal and Departmental laws, rules, regulations, and policies. When established standards of conduct are violated, or the rules of the workplace are disregarded, corrective action is warranted to ensure that employees conform to acceptable behavioral standards. Such corrective actions should comport with applicable laws and regulations, should be administered with relative consistency, and should be taken for such cause as will promote the efficiency of the service.

This Table of Offenses and Penalties (Table) serves as a **guide** to managers, supervisors, and practitioners in assessing the appropriate penalties for common types of misconduct. While the Table does not cover every possible offense, it does provide examples of many categories of misconduct, whether committed on or off-duty, for which employees may be disciplined. The absence of a specific offense covering an act does not mean that such an act is condoned, permissible, or would not result in disciplinary or adverse action. The Table is provided as a **guide**, not as a set of mandatory rules; it does not relieve supervisors and managers of the responsibility of using good judgment when taking corrective action.

TABLE OF OFFENSES AND PENALTIES STRUCTURE:

OFFENSES: The language used in the “Nature of Offenses” column provides a general description of certain types of misconduct. The offenses listed do not cover all possible acts of misconduct. Offenses not covered in the Table can be separately identified and may become the basis of disciplinary action as long as there is a nexus between the misconduct and the efficiency of the service.

OFF-DUTY MISCONDUCT: Employees may be disciplined for committing offenses while off duty when a nexus can be established between the employees’ misconduct and the efficiency of the service.

RECOMMENDED PENALTIES: The Table uses four (4) columns to cover the range of penalties. The first column is the recommended penalty for a first offense. The second column provides a recommended penalty range where the circumstances of the case allow for mitigation. The third column provides the recommended penalty range where the circumstances of the case include aggravating factors. The fourth column provides the recommended penalty range for subsequent offenses. The Table is a guide to help ensure consistent application of similar penalties for similar offenses, but the selection of a penalty should always be appropriate to the facts of the case.

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Due regard shall be given to the principle that similar penalties should be imposed for similar offenses. At the same time, the penalty for misconduct may be elevated above the Recommended Penalty when an employee has engaged in past misconduct or extenuating circumstances are present. The past misconduct does not have to be the same or similar to the current misconduct to be considered. For example, assume an employee has a past offense of absence-without-leave, and is currently facing a charge of insubordination. When using the Table, proposing and deciding officials should use the “Subsequent Offenses” column to select a penalty when also considering past misconduct. Additionally, when aggravating circumstances are present, the proposing and deciding officials should use the “Aggravated Range” column to select a penalty.

EXPLANATORY NOTES/REFERENCES: The purpose of the Explanatory Notes/References column is to clarify what is covered by the offense through the use of further information, examples, or cross-references to other offenses, and where references are provided, to identify legal or regulatory citation references for the convenience of the user. A noted citation does not mean that the citation is the only applicable reference, nor is a citation required to determine a violation. Key citations are provided for the laws most frequently referenced. If a criminal statute is cited, the level of proof required for disciplinary purposes is only “preponderance of evidence”, and does not rise to the level required for criminal prosecution under that statute (i.e. beyond a reasonable doubt).

TAKING A DISCIPLINARY ACTION:

Taking corrective action against an employee is appropriate only when the employee has engaged in misconduct adversely affecting the efficiency of the service. Before initiating such action, management should ensure an inquiry is conducted into any suspected offense to ensure the objective consideration of all relevant facts and aspects of the situation. Ordinarily, this inquiry will be conducted by the appropriate line supervisor or designee, with guidance from the servicing Labor and Employee Relations (LER) Specialist.

Once it is established that an employee engaged in misconduct necessitating corrective action, a supervisor or other management official, using the Table as a guide and in consultation with the servicing LER Specialist, must determine the action/penalty required to deter the recurrence of the unacceptable behavior.

Under the best circumstances, minor misconduct should be corrected through informal supervisory counseling advising

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the employee promptly after the first instance of misconduct. These actions are less severe than formal disciplinary and adverse actions described in the Table, are not generally subject to review by third parties, and do not become part of the employee's permanent official employment record. Written counselings document the employee's misconduct, place the employee on notice regarding the behavior expected by management, and advise the employee that more serious corrective action (e.g., reprimand, suspension, removal) will result if the unacceptable behavior is not corrected. The use of such corrective actions does not constitute a "prior penalty" for disciplinary purposes to increase the severity of penalty for a subsequent offense; however, such corrective actions may be viewed as "prior notice."

Finally, the penalty for misconduct may be less severe than those set forth in the Table as within the range for the offense, but only after full and fair consideration of all available information. Supervisors and managers should never lose sight of the fact that the Table is a useful guide, but that it cannot replace reason or good judgment.

After establishing a sufficient basis for taking action (i.e., a preponderance of the evidence to support the charge(s) and a connection (nexus) between the charge/offense and the efficiency of the service), the supervisor/manager, in consultation with the servicing LER Specialist, must determine the appropriate penalty for the employee's misconduct. The Merit Systems Protection Board (MSPB) in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), identified a number of factors—generally referred to as the "Douglas Factors"—that must be considered in taking an adverse action. CBP has elected to also give appropriate consideration to these factors when taking disciplinary actions. As a result, for all formal discipline (e.g., reprimand, suspension, removal), supervisors/managers should be prepared to demonstrate that the following factors, where applicable, were considered:

1. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. The employee's past disciplinary record;
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;

Reminder: There must be a nexus (connection) between the misconduct (on or off-duty) and the efficiency of the service.

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5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. Consistency of the penalty with the Table of Offenses and Penalties;
8. The notoriety of the offense or its impact upon the reputation of the agency;
9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10. Potential for the employee's rehabilitation;
11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

NOTE: Except in the case of a CBP employee employed at a Border Patrol Sector, a letter of reprimand does not require a proposal and is final in nature and therefore consideration of the "Douglas Factors" is appropriate.

Not all 12 Douglas Factors will apply in every case. The relevant factors must be balanced in each case to arrive at the appropriate penalty. Frequently, some of the pertinent factors will weigh in the employee's favor while others may not (or even constitute aggravating factors).

This policy (along with CBP's discipline program) is operated and maintained by the Human Resources Policy and Programs Directorate of the Office of Human Resources Management. To ensure corrective actions are taken in accordance with this, and other

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applicable laws, regulations, collective bargaining agreements, and Agency policies and procedures, managers and supervisors should consult with and seek the advice of their servicing LER Specialist whenever potential employee misconduct is discovered.

Reminder: There must be a nexus (connection) between the misconduct (on or off-duty) and the efficiency of the service.