



Risks and Penalties

An effective compliance and ethics program helps prevent and manage civil and criminal compliance risks that could devastate an organization's cash flow and reputation if not the organization itself.

There are no criminal consequences if a nonpublic company does not have an effective compliance and ethics program, unless there is an incident that the [U.S. Sentencing Commission requirements](#) are intended to prevent and detect. In such cases there are also increasingly severe civil implications for the entities and their leaders.

An organization can be held criminally liable whenever an employee or agent, including a volunteer, commits an illegal act within the apparent scope of his or her responsibilities, even if they acted directly contrary to policy and instructions.

Some effective compliance and ethics programs may be unable to assure compliance by all employees and agents all of the time. Misconduct by one individual can trigger civil or criminal enforcement against the entire organization and its leadership.

However, the existence of an effective compliance and ethics program, even if it fails to prevent a particular violation of law, is a major consideration taken into account by prosecutors and agencies when deciding whether or not to:

- Take enforcement action against the organization,
- Pursue criminal charges or administrative actions, or
- Bring charges against the organization's leader or leaders

And if there are charges or actions, just having an effective compliance and ethics program can reduce a fine by up to 95%, or a sentence. It also has benefits in civil litigation and administrative actions.

An effective compliance and ethics program is now the standard of care expected of every organization's leadership. Providing such a program also puts the organization, and its leadership, in a better position to defend against many staff and business disputes as well as other civil actions and litigation.

Of critical importance: Compliance after enforcement has been triggered is almost always more costly and offers fewer options than when it has been addressed proactively.

There are some ethics and policy compliance issues that can be as devastating to a company as criminal liability, and they too can be effectively prevented or managed through a well-designed program.

Organizations that are dependent on their reputation, including charities, companies that do business with government entities, and major retail organizations, additionally benefit from a compliance and ethics program that addresses reputational risks just as it addresses legal compliance risks.