

FEDERAL BUREAU OF INVESTIGATION  
PENALTY GUIDELINES

The Penalty Guidelines are used in assessing the appropriate penalties for common types of misconduct. While the Guidelines do not specifically name every possible offense, they do provide the general categories of misconduct for which employees may be disciplined. The absence of a specific regulation covering an act does not mean that such an act is condoned, permissible, or would not result in disciplinary action. These Guidelines supercede all previously published tables, listings, and applicable policies regarding disciplinary offenses.

**Purpose and Progressive Nature of Discipline:** Disciplinary penalties are imposed to correct behavior and teach the employee and others that certain actions are inappropriate for an employee of the FBI. Discipline also serves to enforce the expected high standards of conduct for the Bureau. Although not specifically reflected in the Guidelines, discipline is usually progressive in nature and, therefore, subsequent misconduct is treated with increasing severity. However, while the concept of progressive discipline is appropriate for most types of infractions, some offenses (such as theft or lack of candor) are so egregious that a single instance is sufficient to warrant removal.

**Factors Considered When Determining a Penalty:** Many factors are considered in determining the penalty to impose, including the nature of the misconduct and its consequences, as well as the position and record of the employee. Of particular importance are the mitigating and/or aggravating factors in each case. Aggravating factors which apply to all offense categories include supervisory or high-grade status, prior disciplinary record, prior warning/advisement not to commit the misconduct, media attention or public awareness, repetitive misconduct in a single case, and failure to report. Mitigating factors common to all categories include self reporting, efforts to remedy the wrongdoing, acknowledgment of wrongdoing, limited employee experience, and a long period of unblemished service. At times, a consideration that is mitigating in one case may be aggravating in another. For example, limited employee experience may tend to ameliorate an employee's conduct in many instances, but may aggravate it in cases involving multiple instances of misconduct during a short tenure. In some cases, the aggravating and mitigating factors will warrant selecting a penalty at the upper or lower range, or even outside the range of penalties provided.

Other matters formally considered by OPR prior to disciplinary action being imposed in serious cases of misconduct (those involving a likely penalty of dismissal, demotion, or suspension of more than 14 days) are the "Douglas Factors." Not all of these factors are pertinent in every case. Selection of an appropriate penalty must thus involve a balancing of the *relevant* considerations. The "Douglas Factors" are:

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;

5. the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' 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 any applicable agency table of 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.

### Explanation of the Penalty Guidelines

Offenses: The Penalty Guidelines are (like the Offense Table) arranged into five separate categories of offenses, which are *Investigative Misconduct*, *Integrity/Ethical Misconduct*, *Property Related Misconduct*, *Illegal/Criminal Conduct*, and *General Misconduct*. Within each category, the offenses are listed in alphabetical order.

*Investigative Misconduct:* Misconduct associated with the investigative process, to include misconduct involving assets, informants, and Cooperating Witnesses. Also includes investigative deficiencies, including the improper handling of documents and property; and misconduct during judicial proceedings.

*Ethical/Integrity Misconduct:* Includes falsification and lack of candor/lying. Also includes the misuse of position; failure to cooperate in, and obstruction of, an OPR inquiry; and the violation of ethics regulations and guidelines.

*Property Related Misconduct:* Offenses pertaining to the loss of government property, including thefts of property due to employee negligence in safeguarding the property; the damage, destruction, or improper disposal of government property; the misuse of government property, such as computers and motor vehicles; and the misuse of government credit cards. Also encompasses unauthorized access to government property, to include databases.

**Illegal/Criminal Conduct:** Offenses typically or frequently charged by law enforcement as violations of the criminal code (local, State, or Federal), to include: assault, drug offenses, DWI, fraud/theft, indecent/lascivious acts, other felony and misdemeanor offenses, and the unauthorized disclosure of information. These types of offenses fall within this category even if not charged by local authorities. For example, a failed drug urinalysis would fall under this category, even though no criminal charges are filed. Similarly, domestic violence and assaults are included in this category, even though a party may not be arrested or charged.

**General Misconduct:** The General Misconduct offenses include a broad range of offenses, such as: alcohol-related misconduct (w/the exception of DWIs); failure to report; dereliction; sexual misconduct; discrimination; disruptive behavior; failure to honor just debts; improper relationships; misuse of weapons; insubordination; retaliation; security violations; unprofessional conduct; and the violation of miscellaneous rules and regulations.

**Levels of Discipline:** The different levels of discipline are designated as follows: Mitigated Range, Normal Penalty, and Aggravated Range. Within each category, disciplinary penalties for the specified offenses are provided. Penalties expressed in terms of "days" (e.g., 3 days) refer to calendar days of suspension without pay. Although demotion is not specifically designated as a penalty in the Guidelines, demotion may be assessed in appropriate cases involving serious misconduct.

In adjudicating a case, one would begin at the Normal Penalty and, depending upon an assessment of the facts and circumstances of the case and whether mitigating/aggravating factors are present, the level of discipline could go up or down. Some of the more common aggravating and mitigating factors for each offense (by no means an exhaustive listing) are often listed in the grids depicting the aggravated and mitigated ranges. On certain occasions, the facts and circumstances of a case may call for the application of a penalty that is outside of the ranges indicated, and it is possible for any offense to rise to the level of dismissal under appropriate circumstances. Penalties below the Mitigated Range or above the Aggravated Range must be personally approved, for reasons specified in writing, by the Assistant Director, OPR, or the Assistant Director, Inspection Division (for delegated cases), or the Assistant Director, Administrative Services Division (for cases on appeal). Moreover, the Director, FBI, retains the discretion to review and correct disciplinary determinations within his authority, either in favor of or to the disadvantage of an employee, when the Director considers it necessary to correct an injustice or to prevent harm to the FBI. This power of correction is not intended as an additional level of appeal and will not be routinely exercised.

**Combination of Penalties:** In cases where more than one offense is substantiated against an employee, the penalties for the respective offenses will normally be added together. However, in adjudicating cases, OPR will exercise care in assessing multiple penalties where the substantiated charges are essentially restatements of the same act of misconduct. For example, where an Agent loses both his weapon and his laptop in one incident, penalties will not be separately assessed for the loss of the weapon and the loss of the laptop. Similarly, where an employee makes an unauthorized disclosure of classified information, penalties will not be separately assessed for the unauthorized disclosure and a security violation. In such cases, the greater of the two penalties will normally be applied, unless the facts of the case otherwise advise.

**Senior Executive Service (SES) Suspensions:** By federal regulation, members of the SES may not receive a disciplinary suspension of less than 15 days. Accordingly, where the Guidelines indicate a suspension of less than 15 days for an offense, that sanction cannot be imposed on an SES employee. When an

assessment of a case with reference to the Guidelines concludes that a non-SES employee would have received a punishment of more than a three-day suspension, but less than a 15-day suspension, an SES employee will receive a minimum of a 15-day suspension. If a non-SES employee would have received a three-day suspension in a given case, an SES employee may receive either a letter of censure or a minimum of a 15-day suspension, as determined by weighing the facts and circumstances of the case against the heightened behavioral and managerial expectations associated with SES personnel.

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## Penalty Guidelines

### 1. INVESTIGATIVE MISCONDUCT

Code	Offense	Mitigated Range	Normal Penalty	Aggravated Range
1.1	Asset/CW/Informant (Source) - Failure to Report Criminal Activity	LOC - 5 Days  (no actual knowledge, but should have known or suspected criminal activity)	7 Days	10 Days - Dismissal  (compromise of case; or, seriousness of criminal activity)
1.2	Asset/CW/Informant (Source) - Improper Financial Relationship	LOC - 5 Days  (no personal gain; or, good faith attempt to help source)	7 Days	10 Days - Dismissal  (financial benefit to employee)
1.3	Asset/CW/Informant (Source) - Improper Intervention on Behalf Of	LOC - 5 Days  (no personal gain; or, good faith attempt to help source)	7 Days	10 Days - Dismissal
1.4	Asset/CW/Informant (Source) - Improper Personal Relationship	LOC - 5 Days	7 Days	10 Days - Dismissal  (non-disclosure to AUSA)
1.5	Asset/CW/Informant (Source) - Violation of Operational Guidelines and Policies, Other	OR - 3 Days  (no personal gain; or, good faith attempt to help source)	5 Days	7 - 30 Days  (jeopardizing safety of others)
1.6	Investigative Deficiency - Improper Handling of Document(s) or Property in the Care, Custody, or Control of the Government	OR - 3 Days  (others contributed to improper handling)	5 Days	7 - 30 Days  (significant loss of document(s)/property)

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1.7	Investigative Deficiency - Misconduct Related to Judicial Proceedings	LOC - 5 Days (act in good/reasonable faith)	7 Days	10 Days - Dismissal (judicial criticism)
1.8	Investigative Deficiency - Violations of Operational Guidelines and Policies, Other	OR - 3 Days	5 Days	7 - 30 Days (jeopardizing safety of others)

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2. INTEGRITY/ETHICAL MISCONDUCT				
Code	Offense	Mitigated Range	Normal Penalty	Aggravated Range
2.1	False/Misleading Information - Employment/Security Document(s)	LOC - 5 Days (minor issues)	7 Days	10 Days - Dismissal (drugs or otherwise material to hiring)
2.2	False/Misleading Information - Fiscal Matter(s)	LOC - 7 Days (minor issues; little benefit to employee)	10 Days	15 Days - Dismissal (voucher fraud merits dismissal; serious T&A abuse)
2.3	False/Misleading Information - Investigative Activity	LOC - 21 Days (unintentional; minor issues; no material effect on agency/mission)	30 Days	45 Days - Dismissal (intentional and significant issues or material impact on investigations/case)
2.4	False/Misleading Information - Other Official Matter(s)	LOC - 5 Days (unintentional or immaterial)	7 Days	10 Days - Dismissal (intentional and particularly material; released to another govt. agency or Congress)
2.5	Lack of Candor/Lying - No Oath	OR - 5 Days (relatively insignificant matters)	7 Days	10 Days - Dismissal
2.6	Lack of Candor/Lying - Under Oath	N/A	Dismissal	N/A
2.7	Misuse of Position - Abuse of Authority	OR - 3 Days (doing so to prevent harm of another; or, to ensure safety of public/others)	5 Days	7 - 30 Days (uncooperative; confrontational; display of weapon; safety hazard; threat/aggressive behavior; or, a security issues)

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2.8	Misuse of Position - Exploiting FBI Employment	OR - 3 Days (doing so to prevent harm of another; or, to ensure safety of public/others)	5 Days	7 - 30 Days (financial gain; threatening or aggressive behavior; or, a security issue)
2.9	Misuse of Position - Impersonating an Agent	LOC - 5 Days (doing so to prevent harm of another; or, to ensure safety of public/others)	7 Days	10 Days - Dismissal (financial gain; threatening or aggressive behavior; security issue; violation of law; or, engaging in investigative activity)
2.10	OPR Matter - Failure to Cooperate	None	Dismissal* *(Failure to take SOB polygraph = 5 Days)	None
2.11	OPR Matter - Obstruction	3 - 7 Days (insignificant comments to persons not associated w/ OPR; or, no attempt to influence)	10 Days	15 Days - Dismissal (threatening or aggressive behavior)
2.12	Violations of Ethical Guidelines	OR - 3 Days (no personal gain; or, genuine attempt to assist another in good faith)	5 Days	7 - 30 Days (financial gain; duration; direct/obvious conflict; or, impact on agency/mission)

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3. PROPERTY RELATED MISCONDUCT				
Code	Offense	Mitigated Range	Normal Penalty	Aggravated Range
3.1	Damage, Destruction, or Improper Disposal of Government Property	OR - 3 Days  (minimal/insignificant value of property)	5 Days	7 - 14 Days  (significant value of property; or, converted to personal use)
3.2	Loss of Badge and/or Credentials	None	LOC	3 - 10 Days  (repeated loss)
3.3	Loss of Government Property or Document(s) of a Sensitive/Valuable Nature	OR - 3 Days  (minimal/insignificant value; minimal impact on agency/mission; or, prompt reporting)	5 Days	7 - 14 Days  (significant value of property; or, compromise of investigation)
3.4	Loss of Weapon	None	5 Days	7 - 14 Days  (repeated loss; or, other violation of law, rule or regulation)
3.5	Misuse of FBI Database(s)/Unauthorized Access	OR - 3 Days  (non-sensitive information)	5 Days	7 - 14 Days  (duration/frequency; or, type of information obtained/accessed)
3.6	Misuse of Government Computer(s)	OR - 3 Days  (minimal use)	5 Days	7 - 14 Days  (duration/frequency; or, type of information obtained/accessed)

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3.7	Misuse of Government Credit Card (Theft) - Gasoline or Automotive-Related Expenses	15 - 30 Days (expeditious self-reporting of unintentional/emergency use)	Dismissal	None
3.8	Misuse of Government Credit Card - Personal Use	LOC - 5 Days (expeditious self-reporting of unintentional/emergency use; or, minimal dollar amount charged)	7 Days	10 Days - Dismissal (duration; frequency; or, high dollar amount of charges)
3.9	Misuse of Government Vehicle or Aircraft, Non-Title 31	OR - 3 Days	5 Days	7 - 14 Days (frequency; duration; accident; injury/harm to persons/property; or, citation/arrest)
3.10	Misuse of Government Vehicle or Aircraft, Title 31	None	30 Days	45 Days - Dismissal (frequency; duration; accident, injury/harm to persons/property; or, citation/arrest)
3.11	Misuse of Government Property, Other	OR (emergency)	LOC	3 - 10 Days (frequency; duration; or, high value amount)

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#### 4. ILLEGAL/CRIMINAL CONDUCT

Code	Offense	Mitigated Range	Normal Penalty	Aggravated Range
4.1	Assault/Battery	LOC - 5 Days	7 Days	10 Days - Dismissal  (child abuse; extent of injuries; or, alcohol-related)
4.2	Drugs - Use or Possession	None	Dismissal	None
4.3	DUI/DWI - Government Vehicle	None	45 Days	Dismissal  (serious injury; death; or, second occurrence)
4.4	DUI/DWI - Privately Owned Vehicle	None	30 Days	45 Days - Dismissal  (accident; injury; or death; second occurrence = dismissal)
4.5	Fraud/Theft	15 - 30 Days	Dismissal	None
4.6	Indecent/Lascivious Acts	3 - 7 Days	10 Days	15 Days - Dismissal  (child victim)
4.7	Other Felonies	3 - 7 Days  (provocation by other(s))	14 Days	30 Days - Dismissal  (arrest/indictment; conviction; injury/harm to persons/property; or, child as victim)
4.8	Other Misdemeanors	OR - 5 Days  (provocation by other(s))	7 Days	10 Days - Dismissal  (arrest/conviction; injury/harm to persons/property; or, child as victim)

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4.9	Unauthorized Disclosure - Classified/Law Enforcement Sensitive/Grand Jury Information	LOC - 7 Days  (unintentional/inadvertent; or, minimal impact on agency/mission)	10 Days	15 Days - Dismissal  (compromise of case; jeopardizes safety of others; sensitivity of information; or, security issues)
4.10	Unauthorized Disclosure - Sensitive Information	LOC - 5 Days  (unintentional/inadvertent; or, minimal impact on agency/mission)	7 Days	10 Days - Dismissal  (compromise of case; jeopardizes safety of others; sensitivity of information; or, security issues)

## 5. GENERAL MISCONDUCT

Code	Offense	Mitigated Range	Normal Penalty	Aggravated Range
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5.1	Alcohol/Substance Abuse - Under the Influence While On Duty	OR - 3 Days (consumption of alcohol on duty regardless of effect)	5 Days (being under the influence of alcohol/drugs on duty)	7 - 14 Days (training exercise; weapons involved; supervisory position; government involved; brought alcohol to workplace; or, extent of intoxication; or, injury/harm to persons/property)
5.2	Dereliction of Supervisory Responsibility	OR - 3 Days	5 Days	7 - 14 Days (jeopardizes safety of others; injury/harm to persons/property; or, impact on agency/mission)
5.3	Discrimination	3 - 5 Days	7 Days	10 Days - Dismissal (supervisory position; pervasiveness; duration; frequency; severity; multiple victim; violation of statute; or, previously warned)
5.4	Disruptive Behavior	OR	LOC	3 - 10 Days (racial/ethnic slurs; sexual comments; threats; police involvement; or, arrest)
5.5	Failure to Honor Just Debts/Regulatory Obligations	OR - 3 Days (steps to resolve matter)	5 Days	7 - 30 Days (amount of debt; violation of court order; pattern; duration; or, frequency)
5.6	Failure to Perform Prescribed Duties	OR (minimal mission/agency impact)	LOC	3 - 10 Days (extent of dereliction; jeopardize safety of others; duration; frequency; or, consequences of dereliction)

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5.7	Failure to Report - Administrative	OR (insignificant matters)	LOC	3 - 10 Days  (significant security issues; or, impact on agency/mission)
5.8	Failure to Report - Criminal/Serious	LOC - 3 Days	5 Days	7 - 14 Days  (seriousness of incident; significant security issues; or, impact on agency/mission)
5.9	Improper Relationship - Criminal Element	LOC - 5 Days	7 Days	10 Days - Dismissal  (impact on agency/mission; or, compromise of case)
5.10	Improper Relationship - Superior/Subordinate	LOC - 5 Days	7 Days	10 Days - Dismissal  (actual favoritism vice perceived; or, student/instructor relationship)
5.11	Insubordination	LOC - 5 Days  (reasonable belief order was unlawful or in violation of rule, regulation or policy)	7 Days	10 Days - Dismissal  (jeopardize safety to others; injury/harm to persons/property; impact on agency/mission; or, compromise of investigation)
5.12	Military Reserve Matters	OR	LOC	3 - 10 Days  (recalled to active duty; or, impact on agency/mission)
5.13	Misuse of Weapon - Safety Violation	LOC - 5 Days	7 Days	10 Days - Dismissal  (intentionality; level of safety risk; use to intimidate or threaten; or, altered weapon rendering more unsafe)

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5.14	Misuse of Weapon - Accidental Discharge	None	3 Days	5 - 14 Days (injury/harm to persons/property; or, violation of weapons law, regulation or policy)
5.15	Misuse of Weapon - Intentional Discharge	5 - 14 Days	30 Days	45 Days - Dismissal (injury/harm to persons/property; violation of weapons law, regulation or policy)
5.16	Retaliation	3 - 5 Days	7 Days	10 Days - Dismissal (retaliation against whistleblowing or other protected activity)
5.17	Security Violation- Failure to Secure Space, Equipment/Materials	OR - 3 Days (minimal impact on agency/mission; insignificant/immaterial matter; or, expeditious self-reporting)	5 Days	7 - 14 Days (compromise of case; impact on agency/mission; duration/frequency; severity; injury/harm to persons/property; or, jeopardizes the safety of others)
5.18	Security Violation - Other	OR - 3 Days (minimal impact on agency/mission; insignificant/immaterial matter; or, expeditious self-reporting)	5 Days	7 - 14 Days (compromise of case; impact on agency/mission; duration/frequency; severity; or, injury/harm to persons/others)
5.19	Sexual Misconduct - Consensual	LOC - 5 Days	7 Days	10 Days - Dismissal (pervasiveness; or, impact on agency/mission)
5.20	Sexual Misconduct - Non-consensual	LOC - 5 Days	7 Days	10 Days - Dismissal (pervasiveness; impact on agency/mission; or, impact on victim)

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5.21	Unprofessional Conduct - Off Duty	OR - 3 Days (see Common Mitigators in Preamble)	5 Days	7 Days - Dismissal (see Common Aggravators in Preamble)
5.22	Unprofessional Conduct - On Duty	LOC - 5 Days (see Common Mitigators in Preamble)	7 Days	10 Days - Dismissal (see Common Aggravators in Preamble)
5.23	Violation of Miscellaneous Rules/Regulations	OR - 3 Days (see Common Mitigators in Preamble)	5 Days	7 - 30 Days (see Common Aggravators in Preamble)

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