

2 employees, 1 offense? Discipline equally

When two employees are involved in the same misconduct, be sure to discipline both. If you only punish one, she may have a discrimination claim unless you can point to a good business reason why both weren't considered equally culpable.

For example, you could determine that one co-worker should face more severe punishment because of a prior disciplinary history. However, if the two have similar disciplinary histories, the punishments should be equal.

Recent case: Lawanda, who is black, worked as part of an ambulance crew. Her employer required immediately reporting any accidents involving the ambulance and other vehicles. While on duty, Lawanda was driving and her partner was in the passenger seat when she struck a car in the parking lot. Fortunately, there was no damage.

Neither Lawanda nor her partner reported the accident.

Lawanda was disciplined after her supervisor found out she hadn't made a report. However, Lawanda's partner was not disciplined. Lawanda sued, alleging race discrimination.

The court agreed she had a case. It reasoned that since both were on duty, and the rule didn't specify that only the driver needed to report accidents, she may have been singled out. She can try to convince a jury she was treated differently because of her race. (*Anderson v. City and County of San Francisco*, No. 13-CV-05555, ND CA, 2016)

Final note: Of course, employers have the right to exercise discretion when it comes to punishment. But they must be prepared to justify that discretion. Make sure you explain why a co-worker wasn't disciplined or was punished less severely.

For example, if two employees get into an argument, you may be able to justify punishing the aggressor more severely than the other worker. You can also distinguish the two co-workers by considering their disciplinary history. A first-time offense may legitimately merit less punishment than the second or subsequent offense.