

Explain different discipline for same offense

Generally, when one employee is disciplined for breaking a rule, other employees should face similar discipline for breaking the same rule. Otherwise, a worker may sue, claiming discrimination was to blame for the harsher discipline. If he can show that worker who received more favorable treatment didn't belong to the same protected classification, he has a potentially viable lawsuit.

This is where details matter. You can defeat the "more favorable" claim by showing that even if the two workers broke the same rule, there was a distinct difference in what they did.

In this recent case, the issue was tardiness. The employer had records indicating that the punished worker broke the attendance rules far more often than anyone else did.

Recent case: Ascension car-pooled to work with a group of employees who rarely managed to arrive by their employer's stated start time of 8:00 a.m. Then Ascension applied for and got a promotion.

However, he was warned that his new job required much more punctuality, since there were daily 8:00 a.m. meetings. He quit the car pool so he wouldn't be late.

However, it didn't make much difference, as he continued to arrive well past the start time, missing important meetings. Ascension received numerous warnings but still rarely arrived on time, and he was fired.

Ascension sued, alleging national origin and race discrimination. He claimed that other workers, including his former car-pool riders, also missed work. He provided a long list of non-Hispanic workers who had punctuality problems.

But the employer was ready with proof that while others also didn't have great on-time records, it was Ascension who was absent most frequently. That was enough for the court to toss out the claim. (*Abrigo v. Hill Country Telephone*, WD TX, 2018)