

If discipline must differ, be sure to note extenuating circumstances that required it

Generally, employers should be careful to discipline workers in a consistent manner. Employees who break the same rule should earn the same punishment.

However, employers can sometimes justify differences in discipline if they can offer detailed explanations why.

Recent case: Debra, an at-will employee, was fired after 15 years on the job at the public works department of Montgomery Township. She had allegedly stolen and thrown away a supervisor's iPhone and then refused to admit it.

Debra sued, alleging that four other township employees who happened to be men were not fired after they were accused of stealing firearms.

But the township explained that the four were police officers working for a different supervisor and subject to different disciplinary rules because they were union employees with different protections.

The court said that explained the difference and dismissed Debra's lawsuit. (*Lamb v. Montgomery Township, et al.*, 3rd Cir., 2018)

Final note: It may not seem fair that an at-will employee could lose her job over the alleged theft of a cell phone while police officers with union protection did not lose theirs over seemingly more serious theft accusations. However, the case reflects the reality of workplaces today: Some workers simply have more protection from discipline than others.

When the reason for differing discipline is beyond the employer's control, such as the terms of a collective bargaining agreement, courts may reluctantly allow inconsistency because of outside constraints on the employer's authority.