

# ARIZONA

## EMPLOYMENT LAW LETTER

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### **No favorable treatment of 'similarly situated' individuals dooms gender discrimination claim**

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*Title VII of the Civil Rights Act of 1964 forbids discrimination based on certain protected categories (e.g., gender) in any aspect of employment. Discrimination can present itself in the form of "hostile work environment," "disparate treatment," or the "disparate impact" of a particular employment practice. Disparate treatment cases involve claims in which an employee alleges she was treated worse than similarly situated coworkers based on a protected category (female). In other words, she claims her male coworkers are being treated more favorably. Not all different treatment is disparate treatment. How can an employer demonstrate that alleged more favorable treatment of some isn't disparate treatment of another?*

#### ***Setting the scene***

Carrie Tavares worked as a chief supervisor for Asarco, LLC, a copper mine in Arizona. In February 2020, a new mine manager began working at the mine. At the time, Tavares was the only female employee at her level.

In March 2020, the mine manager received a report that Tavares had been sleeping on the job, which prompted an investigation into the allegations. Although the investigation corroborated some of the allegations, the mine manager determined there wasn't enough evidence to discipline her.

On March 31, 2020, Tavares volunteered to work an overtime shift. The mine manager required her to operate a haul truck during overtime shifts, which tracked the operator's productivity, because it would increase production time at the mine. She needed refresher training before operating the haul truck, and no one was available to provide the training for that shift. She got upset. Since she was upset and unable to receive the required training, she was sent home and didn't complete the overtime shift.

Tavares filed a discrimination charge with the Equal Employment Opportunity Commission (EEOC) alleging discrimination based on gender. After receiving a notice of right to sue from the EEOC, she filed a discrimination lawsuit in the Arizona District Court against the mine.

#### ***Disparate treatment allegations***

It was undisputed that Tavares is a member of a protected class (female) and that she was qualified for her position. Therefore, she needed to prove only that she was subjected to an adverse employment action and that similarly situated individuals outside of her protected class were treated more favorably.

Tavares claimed, among other things, that the mine had subjected her to several adverse employment actions, particularly by assigning her to a haul truck to work overtime shifts.

#### ***Adverse employment actions***

An adverse employment action is defined as "one that materially affects the compensation, terms, conditions, or privileges of employment." Assigning more or more burdensome work responsibilities is an adverse

employment action. The denial of opportunities to work overtime may also be an adverse employment action.

The court noted that Tavares raised a genuine issue about whether her assignment to a haul truck was an adverse employment action because operating a haul truck was “more burdensome work” and “it was the only equipment that tracked the operator’s productivity.” Also, the lack of available refresher training for the haul truck effectively denied her the opportunity for overtime. According to the court, she demonstrated this element.

### ***Similarly situated?***

It then became Tavares’ burden to prove that similarly situated men were treated more favorably than she was. She asserted that the other chief supervisors (all male) were assigned to shovels, not haul trucks during overtime shifts. The mine asserted these individuals weren’t similarly situated because none of them had been accused of sleeping on the job and thus didn’t need their productivity tracked.

The court agreed and determined Tavares failed to present any evidence showing that similarly situated men were treated more favorably. Accordingly, judgment was entered in favor of the mine.

### ***Takeaways***

In this case, Tavares failed to present the necessary evidence to save her claims from dismissal. This isn’t always the case, so you should take care to ensure you properly document your reasons for the adverse employment actions taken against your employees. Proper documentation is pivotal in defending against discrimination claims.

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