BusinessManagement DAILY

OCTOBER 3, 2012

Handling insubordination: manager guidelines

Insubordination can result when difficult employees intentionally disregard a direct order from a manager, or inadvertently cross the discipline line when company policy is involved. Knowing how to handle employee insubordination can go a long way toward avoiding legal consequences when discipline or discharge is necessary.

If termination does become necessary, make sure you have documented employee performance reviews, in case you need to show them in court. Questions may arise on whether there are any official definitions or legal guidelines on what constitutes insubordination; or what legal protections employees enjoy when safety or bias concerns surround the employee misconduct.

FAQs about insubordination

1. Are there any official definitions or legal guidelines on what constitutes insubordination?

There are no statutes that explicitly define insubordination, but here's a good guideline:

Insubordination occurs when an employee refuses a reasonable order from a supervisor or manager. However, a company may be held responsible for a failure in communication that results in insubordination. If the following three elements exist, an employee may be disciplined for insubordination if he/she fails to follow orders: 1) the employee understood the instructions; 2) the order was in line with the employee's duties; and 3) there was no good reason for the employee to refuse the order.

If those conditions are met, generally, courts are in agreement that employees should comply first, argue later. But, for example, if the employee reasonably believes his/her religious beliefs are being compromised, refusal of the order would not be considered insubordination.

2. An employer asks an employee to perform a duty that is not in her job description, and she responds, "It's not my job." Is this considered insubordination?

Yes. The employee was given a direct order, and she refused to follow it — that is one of the most common acts of insubordination. Under certain circumstances, refusing to follow a direct order would not be considered insubordination, but this is not one of them. At-will employees do not have a right to refuse to perform job duties assigned to them just because the duty is not something they normally do, it is not in their job description, or the employee thinks performing the duty is unpleasant or is "beneath" them.

3. What are some reasons why an employee who refuses to follow a direct order should not be considered insubordinate?

An employee who doesn’t do what is asked of him/her is not necessarily an insubordinate employee. Before disciplining an employee for insubordination, delve a little deeper into the employee’s resistance. Ask the following:

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• Was the order clearly expressed to the employee as a direct command? Check whether the order was phrased so that the employee knew he/she was supposed to perform a task, or whether there was any ambiguity. There is a big difference between stating "I want you to..." versus asking "Can you..." With the latter phrasing, the employee may assume he/she has the option of not performing the task or not doing it immediately.

• Did the employee break a workplace rule? If you can show that the employee knew about the rule beforehand, then you can probably show that he/she consciously disobeyed the order, and therefore, acted in an insubordinate manner.

• Were there extenuating circumstances? The employee might have a good reason for saying no. For example, he/she may not have the required skills or time to effectively carry out the task.

• Did the employee challenge the order? A challenge shows that he/she understood the order, but intentionally refused to do it.

• Did the employee believe that by performing the task he/she would be putting his/her own safety, or the safety of another, at risk? A caveat to the previous point is that, in general, an employee cannot be considered insubordinate for failing to comply with a request related to unsafe or illegal acts.

4. During the busiest period of the year, a veteran employee asks for time off to attend her nephew's graduation. After being turned down, she calls in sick on graduation day. How should this situation be handled?

You must consider a number of factors before taking any action. Although circumstantial evidence indicates that she took an unauthorized day off, there is a possibility that she may have been sick. But you must take some action or your authority will be seriously undermined. Other employees who have been forced to follow the rule will be watching carefully to see what happens. If the answer is "nothing," you can count on a number of other convenient "illnesses."

Here are a few tips on how to address insubordination:

• Examine past record. Are there any other instances of insubordination or questionable behavior? Has the employee been disciplined in the past? How and for what? How are his/her performance appraisals and discipline records?

• Get the facts. Did the employee recognize that he/she was breaking a rule? Is there a possibility that the rule wasn't broken? (Might she really have been sick?) Don't try to make a disciplinary decision until you know all the circumstances.

• How have you dealt with other insubordinate employees? The discipline must be consistent with both your policy and past practice. You have the right to be less severe with a veteran employee with a good record than with a newcomer with a series of bad reports, as long as your policy and practice give you some flexibility.

• Is the policy or rule itself the problem? Could you consider some sort of accommodation that would allow options, such as employees offering to work for each other during busy periods? An insubordinate act by a good employee might be an indication that a change is in order. If a continually troublesome individual commits the insubordinate act, keep these rules of thumb in mind.

• Base the confrontation with the worker only on his/her job performance. Never allow any personal prejudices, comments, observations, or suggestions to get in the way of the counseling/discipline meeting. Make certain that the employee knows exactly what you're saying. Allow no room for confusion or misunderstanding. Make your policies, and their application, consistent and exact.

- Don't make value judgments. Stick to the job description at hand, not what you think of the employee

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personally.
- Don't continually harangue the employee on a certain point. Make your point once and go on.
- Don't make idle or thinly veiled threats. Making threats only serves to make the confrontation less productive and strains relations even more.

5. Are employees who turn down job assignments they consider too dangerous subject to discipline or discharge?

The Occupational Safety and Health Act guarantees workers the right to refuse unsafe work assignments. However, it does not give an employee the right to walk off the job or to otherwise be insubordinate. If an employee takes matters into his/her own hands, despite assurances that the assignment is safe, discipline or discharge may be the appropriate solution for this type of insubordination.

Whenever an employee refuses an assignment on safety grounds, try to pinpoint the reason. Workers have the right to refuse if they have a reasonable cause to fear for their safety. Try to come up with the answers that will remove those fears. Above all, don't try to threaten or coerce an employee to complete an assignment that instills fear.

6. A manager tried to talk to an employee about a mistake the employee had made. The employee explained that he had not made a mistake, but the manager didn't believe him. The employee became frustrated and blew his top; he started yelling and cursing at the manager. After an investigation, it turns out that the employee was correct after all; the manager had the wrong information and the employee had not made a mistake. Was the employee justified in his reaction?

No. Cursing or using abusive language toward a manager is another form of insubordination. That the manager was incorrect does not justify the employee's behavior. However, if the manager had provoked the employee (by cursing or yelling at the employee, for example) or if the employee's language is common in that particular workplace, disciplining the employee for insubordination may not be appropriate.

7. An employee with bipolar disorder becomes angry with her supervisor during a meeting in which he provides some constructive criticism of her work. When she gets up to leave the meeting, he tells her that she cannot leave until he has finished discussing her work. She curses at him and leaves anyway. He fires her, the same punishment given to any employee who is insubordinate. If the employee's behavior was caused by her bipolar disorder, is the termination a violation of the Americans with Disabilities Act?

No. Employees with disabilities may be held to work rules that are job-related and consistent with business necessity, even if their disability caused them to violate the rule. Guidelines issued by the Equal Employment Opportunity Commission state that "ertain conduct standards that exist in all workplaces and cover all types of jobs will always meet this standard, such as prohibitions on violence, threats of violence, stealing, or destruction of property. Similarly, employers may prohibit insubordination towards supervisors and managers..."

Since the employee had not requested an accommodation for her disability prior to the termination decision, the termination can stand. Even if the employee requests a reasonable accommodation for the future (e.g., permission to leave the premises if she feels that the stress may cause her to engage in inappropriate behavior), the ADA does not require employers to rescind a termination decision that was made prior to the accommodation request.

8. Despite being given 2 hours' notice, an employee refuses to work overtime at the end of his shift because he has plans to attend his son's Little League game. Is this insubordination?

Yes. Employers have the right to set their employees' work schedules and to hold accountable those who refuse. While it may seem unfair to make employees miss their children's activities, it would also not be fair to

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the employer if every employee were allowed to refuse to work overtime if they have a good reason.

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