

Insubordination: How to handle it legally



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 reviews in case you need to show them in court.

Insubordination defined

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 or she fails to follow orders:

1. The employee understood the instructions
2. The order was in line with the employee's duties
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 or her religious beliefs are being compromised, refusal of the order would not be considered insubordination.

Insubordination? Maybe not

An employee who doesn't do what is asked of him or 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:

- **Was the order clearly expressed to the employee as a direct command?** Check whether the order was phrased so that the employee knew he or 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 or 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 or 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 or she would be putting his or 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.

Handling insubordination: 5 tips

1. **Examine past record.** Are there any other instances of insubordination or bad behavior? Has the employee been disciplined in the past? How and for what?
2. **Get the facts.** Did the employee recognize that he or 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.
3. **How have you dealt with other insubordinate employees?** The discipline must be consistent with both your policy and past practice.
4. **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.
5. **Base the confrontation with the worker only on his or 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.