

INSUBORDINATION IN THE WORKPLACE: WHAT YOU NEED TO KNOW

Introduction

It is a well-established principle, that employees must obey the lawful and reasonable instructions of their respective employers. Refusal to follow such instructions may constitute insubordination. While in some cases insubordination may constitute misconduct, the scope and role of insubordination can sometimes be unclear.

What is insubordination

As a starting point, a distinction must be made between insubordination and mere insolence. Our courts have defined insubordination as follows:

*“a wilful and serious refusal by an employee to obey a lawful and reasonable instruction or where the conduct of an employee poses a deliberate (wilful) and serious challenge to the employer’s authority”*¹

The distinction is an important one due to the fact that insubordination is a more serious and deliberate offence as opposed to insolence or rudeness. From the above, it is clear that insubordination in its simplest form is a refusal to follow lawful and reasonable instructions by an employer. Insubordination may manifest itself either directly or indirectly. An example of direct subordination would be where employer A instructs employee B to perform a task and B states “I will not” or I refuse”. An example of indirect insubordination would be where an employee is clearly instructed to do something but ignores the instruction by deliberately omitting its execution.

Insolence on the other hand is defined as rudeness, insolence or cheek by an employee towards their employer. However, mere rudeness by an employee does not necessarily presuppose a direct and deliberate challenge to authority or even a refusal, and at times can often be an emotional reaction. While an employee’s actions may be insolent, they may not be insubordinate per se.

For conduct to constitute insubordination, there must be a wilful and calculated intention by the employee to ignore or challenge the lawful instruction of the employer.²

¹ CWIU and another v SA Polymer Holdings Pty (Ltd) t/a Megapack (1996).

² CWIU and another v SA Polymer Holdings Pty (Ltd) t/a Megapack (1996)

Elements of insubordination

For conduct to constitute insubordination, a number of elements must be present;³

1. It must be clear and evident that an order was in fact given;
2. Such an order being given may not be unlawful;
3. The reasonableness of the order must have been beyond reproach.

From the above it is clear that firstly the employee must be made aware of the order or instruction to carry out a task and must knowingly refuse to do so. This order can be from any senior colleague in the workplace with authority to instruct the employee and need not be a specific person. Such an order may also be in the form of a warning and can be either written or verbal.

Secondly, it is clear that an instruction cannot be unlawful. For example, an employee cannot be asked to steal or commit a crime.

Perhaps most importantly, the instruction must be reasonable. This means that the instruction should fall within the normal course and scope of the employee's duties. An example of unreasonableness would be where a debtor clerk is asked to audit the company – it is unreasonable because it is clearly beyond what is expected of a debtor clerk, and they may not feel qualified for the task. In such cases an employee may refuse. However, although a task may not be directly related to an employee's duties, it may be ancillary and necessary for the employer's operational requirements⁴. In such a case an employee's refusal would likely not be reasonable.

Does insubordination warrant dismissal

Ordinarily, insubordination would not warrant immediate dismissal particularly on a first offence. Generally, insubordination will only warrant dismissal where the defiance is gross. This means it must be deliberate, persistent and serious.⁵

A number of factors must be considered in insubordination such as the employer's conduct, prior to the act – for example where provocation might play a role - the wilfulness of the defiance and the

³ <https://www.labourguide.co.za/1866-insubordinate-or-insolent-behaviour-will-get>

⁴ Motor Industry Staff Association v Silverton Panelbeaters and Spraypainters (Pty) Ltd (2013) 34 ILJ 1440 (LAC) Para 39.

⁵ NUMSA & Another v Kromberg & Schubert (Pty) Ltd (2008) 29 ILJ 1343 (BCA) Para

reasonableness of the instruction. The key test used by our courts, however, has been to see whether the insubordination has led to the deterioration of the employment relationship⁶.

If the trust in the employment relationship has been clearly breached, dismissal based on insubordination is likely to be warranted. For example, where an employee in a high-risk environment refuses to carry out or ignores an instruction which subsequently endangers the lives of other co-workers, the trust relationship would clearly be damaged significantly.

Conclusion

In conclusion, it can often be difficult to distinguish insubordination from insolence or bad behaviour. More so, the circumstances of each instance, as well as the employment relationship and industry will also play a decisive role. Generally, insubordination must be a clear and unreasonable refusal to follow instructions.

Here at SchoemanLaw, we can assist you with all your Labour Law related needs.

⁶ Theewaterskloof Municipality v South African Local Government Bargaining Council (Western Cape) and Others (C966/2008) [2010] ZALC 69; (2010) 31 ILJ 2475 (LC)