

Insolence/Insubordination Quiz



QUESTION

What is the distinction between insubordination and insolence in Canada law?

ANSWER

Although the terms are used interchangeably, the meanings are different. Insubordination is the refusal by an employee to follow a proper employer direction.

Insolence, the weakest category of worker misconduct, is characterized by words and attitudes. In most cases in termination, there will be evidence of both insubordination and insolence.

WHY IS IT RIGHT

INSUBORDINATION VERSUS INSOLENCE

Employee misconduct comes in various forms such as dishonesty, conflict of interest, competing with the employer, breaching trust, disobedience (insubordination), incompetence and insolence. Dishonesty is the worst misconduct: for example, theft, fraud, misappropriation and false statements. Misconduct suitable for firing involves a serious lack of judgment that is incompatible with the employee's duties.

INSUBORDINATION

Insubordination in the workplace refers to an employee's intentional refusal to obey an employer's lawful and reasonable orders. Such a refusal would undermine a supervisor's level of respect and ability to manage and, therefore, is often a reason for disciplinary action, up to and including termination.

There are three factors in determining insubordination:

1. The employer gives the order.
2. The employee acknowledges the order.
3. The employee refuses to carry out the order.

The order itself may take the form of a verbal directive, written instructions, the duties as described in a job description and even an implied set of duties where no formal job description exists. Employee acknowledgments can be verbal, nonverbal (nodding) or even the acceptance of a job offer. An employee's unwillingness to carry

out a directive can manifest itself as a verbal refusal, a nonverbal refusal or an unreasonable delay in completing the work. Being verbally disrespectful is not a requirement here, as simply refusing to punch a time clock when directed to do so will constitute insubordination.

Employer policies prohibiting insubordination often go beyond disobedience to include rude and disrespectful behaviors, best described as insolence. These behaviors can include cursing, verbal or physical intimidation, personal insults, eye rolling or mocking, as well as speaking loudly or argumentatively in front of others. Over time, insolent behaviors can also affect a manager's level of respect and ability to manage, thereby enmeshing insolence and insubordination. Employers can expect employees to show professionalism and respect toward others and may discipline them when they don't.

When addressing insolent or insubordinate behavior, the employer should consider the culture or circumstances in which an incident took place. For example, if cursing is common "shop talk" in the workplace, the employer would need to consider whether the language used by the employee was unusual enough to be considered abusive.

INSOLENCE

Insolence is derisive, contemptuous or abusive language or conduct, perhaps expressed in a confrontational attitude, directed by an employee toward the employer. **In general, several instances of insolence are required to fire someone.** However, a single serious insolent act will justify summary dismissal if the employment relationship has been irreparably destroyed. This is judged by:

1. whether the employee and superior are capable of continuing a working relationship;
2. the incident undermined the supervisor's credibility and ability to supervise effectively in the workplace; or
3. the employer suffered a material financial loss, a loss of reputation or serious prejudice to its business interests as a result of the incident.

Overview

In Canadian employment law, there is a distinction between insubordination and insolence, although the terms are sometimes used interchangeably. Insubordination is the refusal to follow an employer's direction. Insolence, the weakest category of misconduct, is characterized by words and attitudes, which explains why it will be harder to justify termination upon one act of insolence. In most cases there will be evidence of both insubordination and insolence. A single incident of either may be sufficient to justify an employee's summary dismissal but outcomes in these cases are hard to agree upon and predict.

It is hard to lay down hard and fast rules or a catalogue of disobedience that will lead to justifiable firing. The test generally will be whether the disobedience is a clear and intentional rejection of a legal, safe and reasonable work request that, overall, can be characterized as the employee repudiating the job. The test generally will be whether the disobedience is a clear and intentional rejection of a legal, safe and reasonable work request that, overall, can be characterized as the employee repudiating the job. Aggravating factors include where the refusal is accompanied by a bad attitude, public embarrassment, recurring performance refusals or problems, or extra costs or losses to the employer.

Employers are expected to cut employees more slack, not take all insubordination personally, and try to continue to work with the employee who might be stressed or

upset. Firings impair workplace morale and the employer's reputation. Instead of firing the worker, the employer might start with a lesser form of discipline or serve reasonable notice of termination or pay in lieu. Firing should be an option only where the employer has the strongest evidentiary case that the worker has manifestly repudiated that job by the insubordination.

WHY IS EVERYTHING ELSE WRONG

DEALING WITH EMPLOYEE INSUBORDINATION

Most managers and business owners have had the displeasure of dealing with an employee who failed to follow instructions, but even people who are experienced at the task still encounter difficulty with determining how to handle employee insubordination.

EMPLOY TECHNIQUES

It is necessary to address the issue, however, before it has time to manifest into something more serious or something detrimental to your company. **Therefore, it is important to understand the various techniques for handling employee insubordination.**

1. Do not ignore the problem

If an employee is causing problems (even if they don't realize it), it's very important that you address the issue quickly. By ignoring the problem in the hopes that the issue will simply resolve itself, you not only put yourself in the uncomfortable position of resenting the employee for a problem you haven't even told them exists, but you also allow the employee to set a bad example for the other individuals who work at your company.

Therefore, it's best to speak to the employee about the issue as soon as an appropriate time arises. Take them aside in a private location (It's never good to criticize employees in front of their peers.), and begin to outline your concerns.

2. Root of the problem

- When speaking to the employee, be courteous and respectful, but also make sure you get your point across effectively. If they leave your discussion with little understanding about the problem or your proposed solution, then you haven't done your job properly.
- During your conversation, it's important to try to discover the root of the problem. Give the employee the chance to present their side of the story, as it may just surprise you. There is also one important question you should ask yourself during this conversation: Is the problem rooted in knowledge or attitude?
- Oftentimes, an issue that you thought was caused by a negative attitude could actually be the product of poor or inadequate training, something that may not be the fault of the employee. Perhaps they were ill-informed or poorly trained, and as a result, the employee genuinely did not understand that what they were doing was wrong.
- Therefore, before deciding on a solution for the employee's insubordination, you should first determine who is truly at fault: the employee or the company itself.

3. Determine the right course of action

- There are no rules set in stone for how to determine the right course of action for employee insubordination. This means that you'll have to use your best

judgment as a manager and find a solution at your own discretion.

- When doing so, understand that while it's important to adhere to any company policies that may be in place, it's equally important to pass judgment fairly. Rules are important, but so is your intuition.
- For example, is the employee a repeat offender whose problem you determined was rooted in attitude? Or are they normally an efficient and loyal worker whose problem you found was actually rooted in poor training?
- "The punishment must fit the crime," as they say, and if you enact a harsh punishment on an employee who didn't even realize they were making a mistake, you could actually stand to worsen the situation. Employees who feel they were treated unfairly are likely to resent their situation, and their loyalty to your company could suffer as a result.
- Whatever you decide for a course of action, be sure to explain it clearly to the employee. This helps them to understand two things: First, they know what they should do next to rectify the situation, and secondly – and just as importantly – they understand *why* you made the decision that you did. They may not like your decision, but even so, helping them to understand it often serves to lessen any feelings of resentment.
- Although employee insubordination is never a pleasant issue to address, it's important that you do so for the sake of your company. Evaluate the situation using a combination of company policy, the employee's input, and your own judgment as a manager, and then define a solution based on your conclusions. Hopefully, this will help to keep the problem from arising again, which allows you to focus on strengthening your employee team, thereby strengthening your company.