

BLOGS

Archives; Discipline; Discrimination; Hiring & Firing

Do Employees Have the Right to Be Insubordinate?

Insubordination is a term that shows up frequently in documentation and discussions about why an employee was, or should be, disciplined or terminated. According to the [dictionary definition](#), insubordinate means not obeying authority or refusing to follow orders. Following direction from ones boss is a pretty important part of any job, so insubordination certainly sounds like it should be a terminable offense. However, it is risky for employers to accept a charge of insubordination at face value without analyzing the nature of the conflict that is driving it. Labor law protects a surprisingly high degree of insubordination if it is concerted.

Any adverse action can potentially lead to a charge that the action was taken for a discriminatory or retaliatory reason. In defending an action, the employer is required to proffer a legitimate business reason for taking the adverse action, and they may have to further defend against an employees claim that the employers business reason is really just a pretext for an unlawful reason. Insubordination as the sole justification for an adverse action is especially tricky to defend because it can mean almost anything and may be framed in wholly subjective terms. By definition, all insubordination means is that the employee disagreed with her supervisor and/or refused to do something she was told to do. What if the thing about which the employee and supervisor disagreed is the supervisors willingness to tolerate sexual or racist banter? What if the thing the employee is refusing to do is something she believes is unethical or unlawful? Or what if the employee wont back down on an issue that he or she has a right to press?

In dealing with employee conduct that it considers insubordinate, an employer should ask itself the following questions:

- With what did the employee disagree?
- What specifically did the employee refuse to do?

A communication breakdown or personality conflict between supervisor and employee may well merit a disciplinary action. It is true that some people really are difficult to work with and are toxic to a workplace. They may refuse to take instruction or go out of their way to be disagreeable. They may discourage innovation or resist needed change. But they may also be standing up against a practice the employer agrees is problematic, or exercising a protected right. And an employer may also discover that the real problem is with the supervisors ability to lead or communicate. Taking hasty action without the facts will likely cause more problems legal or otherwise than may be solved.