

## INSUBORDINATION

This article looks into the issue of insubordination which sometimes appears not only to be a problem at the workplace, but a challenge to deal with. Every workplace has conduct and behaviour regulating prescripts which every employee (and management alike) must abide by. Resolution 1 of 2003 and the Chapter 7 of the SMS Handbook list acts of misconduct at **ANNEXURE A** thereof and precede by indicating that “this list is not exhaustive”, meaning that an employee may be disciplined for an act of misconduct not covered in the list referred to therein if he or she is aware or ought to have been aware that it constituted misconduct. Similarly, the Labour Relations Act 66 of 1995 as amended at item 3(4) of Schedule 8 cites, among others, gross insubordination as an example of serious misconduct.

Insubordination, in *CCAWUSA and Another v Wooltru Ltd t/a Woolworths (Randburg)*(1989) 10 ILJ 311, was described as requiring either disobedience (refusal to obey reasonable order/command/request) or a challenge to (also resistance to/defiance of) authority, furthermore, it must be deliberate (wilful) and serious. Insubordination is therefore distinct from disrespect in that disrespect involves the employee’s conduct at the workplace which undermines his or her immediate supervisor/manager including fellow employees and can be in direct conflict with the rules and processes at the workplace. However, they commonly both constitute misconduct thus warrant instituting disciplinary proceedings against the alleged offender.

Further, item 3(4) of Schedule 8 of the Labour Relations Act 66 of 1995 provides that generally it is not appropriate to dismiss an employee for a first offence, except if the misconduct is serious and of such gravity that it makes a continued employment relationship intolerable subject to the rule that each case should be judged on its merits.

The issue of insubordination has on occasions been dealt with through the disciplinary measures at workplaces the outcome of which has in some instances been brought for review by either the Commission for Conciliation, Mediation and Arbitration (CCMA) or the Labour Court. These Forums have consequently developed principles applicable to insubordination. For instance, in *Lynx Geosystem (Pty) Ltd v SSMA*, it was indicated among others that, insubordination is a serious offence because it presupposes a calculated breach by the employee of the duty to obey the employer’s instructions, ... it must be serious, persistent and deliberate, and that the employer should adduce proof that the employee was in fact guilty of defying an instruction.

Similarly, in *Ntsibande v Union Carriage & Wagon Co (Pty) Ltd* (1993) 14 ILJ 1566 (IC) it was indicated that as a general principle ... the breach of rules laid down by the employer or the refusal to obey an employer’s lawful and reasonable order is to be

viewed in a serious light and may in given circumstances even justify ... dismissal. However, certain prerequisites are required. Firstly, it should be evident that an order which may even be in the form of a warning must in fact have been given. ... Secondly, it is required that the order must be lawful; an employee is therefore not expected to obey an unlawful order such as to work illegal overtime. Thirdly, the reasonableness of an order should be beyond reproach and will be enquired into - in cases that have been brought before the court, the order or request has sometimes been found to be reasonable and at other times to be unreasonable. In addition, it is required ... that the refusal to obey the order must have been serious enough to warrant dismissal.

A general rule is that for insubordination to constitute misconduct that justifies dismissal, it has to be shown that the employee deliberately refused to obey a reasonable and lawful order by the employer. Insubordination and disrespect (which includes unreasonable non-observance of protocol within the department); like any form of misconduct, are viewed in a serious light since they can inhibit performance at the workplace. It is therefore imperative that committing act/s of insubordination and/or disrespect must be avoided so as to avoid disciplinary proceedings.

***An opinion from the Labour desk  
(1<sup>st</sup> quarter article: 01/04/2013 – 30/06/2013)***