

Of course, there are times when there is little question about whether an employee is being insubordinate. Employees may disagree with a policy that the company implements and refuse to comply. Or they may take issue with a change in job procedures and continue to do things their way. When employees are insubordinate (and their disobedience doesn't fall under one of the two exceptions to the rule), what should you advise managers to do?

Explain orders and directives. Whenever possible, employees should be told the reasons behind what they're being told to do. Explaining why something is necessary makes employees feel more respected—and reduces the chance that they'll balk at an assignment.

Stay calm. Supervisors should never raise their voices when workers question assignments. They should first listen to employees' objections—they may raise some good points that should be considered. In any case, the more control supervisors exhibit, the more effort employees will make to restrain their own tempers.

Clarify the nature of "an order"—and the consequences of disobedience. When necessary, managers should point out that employees are required to obey any valid order issued by a superior. They should make clear that if the employee doesn't comply, they will be forced to take appropriate steps under your organization's progressive discipline plan.

Check your employee handbook. The employee handbook should state that insubordination and/or unprofessional behavior may be grounds for discipline. It also helps if the job description states that getting along with others is an essential job function.

Determine if the employee may require an accommodation. The employee's attitude may be a manifestation of a larger problem, such as a serious health condition or a psychiatric disability. After pointing out concrete "bad attitude" examples to the employee, ask him or her if there is anything going on that may require an accommodation by the employer. If the employee asks for an accommodation, the employer must then determine whether the requested accommodation is reasonable or if it poses an undue hardship. If the employee says there is nothing wrong and she or he does not need an accommodation, the employer should document the discussion and refer to employee policies to see if some form of discipline or further employee counseling is necessary.

Apply progressive discipline. Supervisors should respond each time an employee is insubordinate, rather than letting incidents build up and then overreacting. If an employee is acting in an insubordinate way and can't give any arguments that change the manager's mind, the manager should apply a disciplinary measure appropriate to the circumstances. The idea is to give the employee a clear message as well as the opportunity to turn his or her behavior around. Of course, the manager should document the discipline decision and reasons behind it. You may also ask all managers in this situation to contact Human Resources.

Think before you fire. If an employee continues to be insubordinate in spite of progressive discipline, the employee may need to be terminated. Obviously, you'll want to work closely with the employee's supervisor if the situation is even approaching this point. You should examine:

- Whether the employee understood the order and willfully disobeyed it.
- Whether the supervisor provoked the incident through his or her own misconduct.
- Whether the refusal to disobey the order was justified.
- Whether the employee was entitled to and received progressive discipline.
- Whether all employees in your organization have been dealt with consistently.

If, after considering these questions, you and the supervisor determine that the discharge is justified, don't waste time. Terminate the employee, and replace him or her with someone who will treat the manager/employee relationship with respect.

FAQ

Q. Is it legal to make copies of the documents an employee presents with Form I-9?

A. Although it is not illegal to copy the documents, the form does not require that the copies be retained. What is required is that the employer certify that it saw the original documents and that they appear genuine. Not retaining them minimizes paperwork and reduces the possibility that an employee's personal information is compromised.

Managing The Difficult Employee (*Is It Insubordination?*)

One of the most frustrating personnel situations occurs when an employee performs his/her job duties satisfactorily but just has a "bad attitude." Common manifestations of this bad attitude include:

- The employee will not perform any work unless it is specifically documented in his/her job description.
- The employee continually verbally denigrates his/her supervisor to other co-workers.
- The employee is a chronic complainer who has a new daily complaint about some aspect of the job.

According to Dr. Bruce Sanders, an organizational psychologist, the best way to deal with an employee with an attitude problem is to point out to the employee in a nonconfrontational way that the behavior and/or comments are disruptive or constitute insubordinate behavior. "Try to make the employee take ownership of the behavior, if possible," says Sanders. Of course, it is always good to document any communication you have with the employee to create a paper trail that the employer acted in good faith by counseling the employee before taking any adverse employment action.

Responding to Insubordination

Even if your organization is committed to employee involvement, there will be times when managers have to direct employees to do something—follow a safety rule, perform a certain task immediately, or try a new way of doing a job. Occasionally, there may be an employee who blatantly disregards an order. When that happens, the manager should not just let it go. Insubordination—willful disobedience to authority—is a very serious issue. It undermines supervisory authority and can impair the organization's effectiveness. Arbitrators and other authorities have generally ruled that employees should "work now and grieve later" if they feel an order is unfair. But there are two exceptions to this rule. Employees can disobey their superior's orders:

- If the orders pose a threat to the employees' health or safety. Under those circumstances, OSHA gives employees the right to refuse to work. Employees can't be disciplined for disobeying that kind of order.
- If the orders don't relate to the employees' job duties. Employees don't have to follow orders that "extend beyond the scope of management's authority" to direct work or to control or maintain order in the workforce. For example, if an employee parks in a publicly owned parking lot, he or she wouldn't have to follow a supervisor's parking directives.

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From The Editor...

The lead article in this edition addresses a thorny issue about which we have been receiving a number of inquiries: the challenge of dealing with difficult employees who do not want to follow an employer's policies and directives. The article will help you respond to this kind of employee and also help you determine when the employee's actions cross the line and become insubordination. Another article, this one excerpted from the Nonprofit Risk Management Center, deals with "how to best tackle stress in the workplace." Workplace stress is always present, but many of our members seem to be facing an upsurge of it during these tough economic times.

If you have questions regarding these articles or any other HR issues that you have been dealing with, please call us at our toll-free hotline, 800-358-2163 or email hrrservices@501c.com. HR Services is an important benefit available to your organization.

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A Reminder:

The purpose of this update is to review the latest developments in human resource matters. The information contained herein has been abridged from numerous sources and should not be construed as legal advice or opinion, and is not a substitute for the advice of counsel.

Tackling Stress Improves Morale, Productivity and Safety

This is excerpted from the Nonprofit Risk Management Center's, free online resources titled, Workplace Safety Is No Accident – An Employer's Online Toolkit to Protect Employees and Volunteers.

Rising workplace stress is a large albatross hanging around the necks of employees and employers. According to studies of the subject by the U.S. Department of Labor, the American Psychological Association, Yankelovich MONITOR, and CCH Inc., in recent years there has been a 20.3 percent increase in job absences caused by anxiety, stress and neurotic disorders. Stress affects morale, productivity and safety.

Developing a healthy workplace can pay off in reversing this trend. Inviting employees to have a say about their work environment in an honest and open fashion can change the workplace culture and reduce stress. Other successful management practices include improving communication, increasing staff members' decision making, offering flexible job scheduling, encouraging breaks, working with a team toward a common goal, and leadership and professional development opportunities.

Providing such services as language classes, child care, onsite flu shots or health screening, and tuition reimbursement programs also helps balance work-life issues thus reducing stress.

Workplace Stress Defined

Workplace stress can be defined as the harmful physical and emotional responses that occur when the requirements of the job do not match the capabilities, resources, or needs of the employee or volunteer. Workplace stress results from the interaction of the staff member and the conditions of work. Views differ, however, on the importance of the individual characteristics versus working conditions as the primary cause of job stress. Differences in such individual characteristics as personality and coping style are most important in predicting whether certain job conditions will result in stress – in other words, what is stressful for one person may not be a problem for someone else. Other factors to consider in workplace stress include the design of tasks, autocratic management style, work roles, job insecurity or environmental factors such as noisy or dangerous working conditions.

Hazards Associated With Workplace Stress

Workplace stress can have physiological effects on employees and volunteers. These include headaches, sleep disturbances, difficulty concentrating, digestive problems and depression. The effects of job stress on chronic diseases are more difficult to see because chronic diseases take a long time to develop and can be influenced by many factors other than stress. Nonetheless, evidence is rapidly accumulating to suggest that stress plays an important role in several types of chronic health problems – especially cardiovascular disease, musculoskeletal disorders, and psychological disorders. Lack of concentration or stress can also lead to workplace injuries.

Dealing with workplace stress should encompass the staff member and the job. The person should have the opportunity to participate in such wellness programs as stress reduction, exercise, and weight maintenance. By ensuring that the workload is in line with each staff member's capabilities and resources, the level of frustration that a person feels can be reduced. Job design is also an important factor. Design jobs to provide meaning, stimulation, and opportunities for employees and volunteers to use their skills. Clearly define staff members' roles and responsibilities. Give them opportunities to participate in decisions and actions affecting their jobs. Try to establish work schedules that are compatible with demands and responsibilities outside the job.

Teach employees and volunteers to relax by taking several deep breaths throughout the day, or taking regular stretch breaks. Stretching is simple enough to do anywhere and takes only a few seconds. Help individuals take charge of their situations by setting aside 10 minutes at the beginning of each day to prioritize and organize their day's tasks and responsibilities. Encourage them to be honest with colleagues, but be constructive and make practical suggestions, and be realistic about what they can change.

An Employer's free Online Toolkit to Protect Employees and Volunteers is available at the Nonprofit Risk Management Center, 202-785-3891, <http://www.nonprofitrisk.org/>

Federal Legislation

Unemployment Insurance. On July 22, 2010, President Obama signed the Unemployment Compensation Extension Act of 2010, which extends the federally funded Emergency Unemployment Compensation program through November 30, 2010.

COBRA Premium Subsidy. Unless the sunset date is extended again by Congress, the COBRA premium subsidy is no longer available to newly terminated individuals. However, individuals who qualified on or before May 31, 2010, may continue to pay reduced premiums for up to 15 months, as long as they are not eligible for another group health plan or Medicare.

State Legislation

Colorado – New Medical Marijuana Law Provides Additional Guidance for Employers. Effective June 7, 2010, the governor signed two new laws (HB 1284 and SB 109) that clarify the regulation of medical marijuana. Although the primary focus of the laws is the curtailment of Colorado's rapidly expanding medical marijuana industry, there are provisions that will assist employers in setting firm limits on employees' use of medical marijuana. Medical marijuana has been legal in Colorado since 2001, when voters passed an amendment to Colorado's constitution. The new laws clarify permissive medical use of marijuana in a way that assists employers.

Illinois – New Law prohibits Use of Credit History in Hiring Decisions. Effective January 1, 2011, Illinois employers will have yet another restriction on their ability to make employment decisions. A new law will prohibit many employers from basing hiring, promotion, and other employment decisions on an employee or job applicant's credit history. The Employee Credit Privacy Act (HB 4658) forbids employers from inquiring about or obtaining a copy of an applicant or employee's credit history or credit report. Illinois joins Washington, Hawaii, Oregon, and Louisiana in prohibiting the use of credit histories in employment decisions.

HR Services Recent Response to a call:

What to do about late time sheets

A frequent question we receive on the Hotline is "Can we hold an employee's paycheck until we receive the person's timesheet?" The answer is always, "No." We know it's frustrating when employees are chronically late turning in their timesheets because it holds up payroll input. Your best option is to input the employee's hours estimating as best you can. You may need to cut another check on pay day to correct any errors. While you can't hold their check, you can and absolutely should discipline employees for continually tardy time sheets.

Contact Us If You Have HR-Related Questions

Please call the HR Services hotline, 1-800-358-2163, or email hrservices@501c.com, if you want more details about the articles in this newsletter. HR Services can answer your human resources questions and provide you with information. We can be a sounding board to help you make important personnel decisions that can help limit your organization's liability. We can also provide you with written guidelines, sample forms, and sample policy language. Whether you need help defining HR policies or you just need a second opinion about an HR issue, please call us.