Insubordination

Firstly, exactly what is "insubordination"?

There does seem to be confusion regarding when an employee must be charged under this heading of "insubordination", or whether the charge should be under a different heading. Insubordination may be described as resistance to or defiance of authority, disobedience, refusal or failure to obey reasonable and lawful instructions, insolence, cheekiness, rudeness, bringing the employer’s name into disrepute, and rebellious or mutinous behavior resulting in an actual work stoppage.

The characteristics present in insubordination would be a willful, verbal refusal of instructions, willful disregard of management authority, disrespect, rudeness, rebelliousness or disobedient gestures, manner or attitude, dismissive gestures, walking away, abusive language, knocking the written instruction or notification of enquiry from the senior manager’s hand, or taking it and discarding it, addressing the senior manager or director or supervisor in a disrespectful manner.

That should be sufficient to identify whether the offence is in fact insubordination or not. Disciplinary sanctions can include written warning, final written warning or even dismissal – depending on the severity of the offence. Every employee not only has the duty to come to work and be on time and so on, but also the duty to obey all reasonable and lawful instructions. In other words, to do as he/she is told, within the parameters of what is accepted as being a reasonable and lawful instruction, because this really is at the heart of "insubordination".

Quite obviously, any instruction that can be carried out without breaking any statute, common law or company policy is regarded as "a lawful instruction". Equally obviously, this would also be the first requirement of a "reasonable" instruction. But for the instruction to be reasonable, there are other elements required. An instruction can quite easily be lawful, but at the same time it can be unreasonable.

For example, it would be quite lawful for you to instruct an employee to tidy up his work area – but it would be unreasonable if you telephoned him at home at midnight to come to work to do this. So – it is a simple matter to determine whether an instruction is lawful or not, but lets look deeper into the aspect of "reasonable"

The instruction must be capable of performance

The employee must have the necessary knowledge, skill, capability and ability to carry out the instruction. Instructing an employee to do something which he clearly cannot do is unfair and unreasonable – its really that simple. Don't tell the junior clerk in the accounts dept to carry out a full year-end audit because you want to save on auditor's fees.

Don't tell your yard cleaner to re-paint the 3 story office block. Don't tell your blind switchboard operator to handle the petty cash. If you were to instruct an employee to do something that he/she is clearly not certified to do or not qualified to do, the instruction is not only unreasonable but also
unlawful.

The instruction must fall within the ambit of the job

It is not always clear whether or not a particular task falls within the parameters of an employee's job description, when not specifically stated therein. For example, is it the job of the Managing Director's Secretary to make his tea for him? Is it part of the female Dispatch Clerk's job to take phone messages for the Operations Manager in his absence and whom she reports to? Is she a Dispatch Clerk or a Secretary?

So it is a question of reasonable and rational judgment that must be applied here. Also to consider is the question of whether the task in question is merely a "once-off" thing, or is it likely to become a permanent element of that employee's job description? Perhaps the best approach in those "once-off" situations is to use a bit of the old psychology – don't instruct – ASK.

It is far better to say "Jim, we have a problem here and we need your help on this one. Could you please assist us by doing etc ............" This makes Jim feel important – his help is needed. Success depends on him – and he will, 99% of the time, leap eagerly forward to show his ability and his willingness to pull the company out of the compost heap.

But to say "Jim, come here and fold this toilet roll" will in 99% of cases, meet with a flat refusal – "it is not in my job description" or "that's Peter's job" – and the bell has been rung for the first round! If, however, the task is now to become a permanent part of the employee's job, then you would have to consult and reach agreement on the matter.

Please note that providing there is no dispute about whether or not the task falls within the parameters of the existing job description, the consultation with the employee is purely to discuss the new task, the reasons for it, how it must be done, what standards must be met and any problems or difficulties the employee may wish to discuss.

The consultation is not a negotiation during which you have to offer an increase in salary or improved benefits because of the extra work or anything like that. Should the employee refuse outright stating that it is outside his job description, you may have to hold further meetings or counseling sessions to persuade or convince the employee otherwise!

The instruction must be reasonable under the circumstances

Don't tell your truck driver to wash his truck when it is pouring with rain. Such an instruction is not only unreasonable – it is plainly stupid!! Don't tell an employee who has just been assaulted to render first aid to the person who assaulted him!!! Don't instruct your Moslem chef at your Hotel to carve the pork for the Bosnian Serb's banquet. Such an instruction would not only be unreasonable and stupid, it would be totally insensitive, unfair and insulting. It would certainly earn you a golden invitation to the CCMA.
WHY DO EMPLOYEES REFUSE TO OBEY INSTRUCTIONS?
HOW DO WE DEAL WITH THIS PROBLEM OF REFUSAL?

There are as many reasons for refusing to obey an instruction as there are instructions. One of the most common reasons for refusal is "it is not in my job description." Deal with it on the basis that providing the required task falls within the parameters of the job description, and providing the instruction is reasonable and lawful, you will be able to demand that the employee does it.

A Job Description, by definition and implication, is a written description of those tasks that the employee is expected to do. However, in practice it is accepted that it is impossible to include in a Job Description a full description of every task that the employee must attend to. It follows as a consequence that some tasks are written into the Job Description by implication – or, if you like, the tasks are not stated by means of the written word, but they are stated "between the lines."

Put differently, the mention of one task implies the inclusion of another task. Therefore, the fact that a specific task is not mentioned in writing in the Job Description, does not give the employee the right to refuse to do it now or in the future.

If the employee, or others doing the same job, have performed the task in the past, and it is lawful and reasonable, then the employee must continue doing it now – even if he/she has suddenly discovered to his/her great delight that it is not written in his Job Description. This should be brought to the employee's attention, and he should be warned that his continued unreasonable refusal may lead to disciplinary action, and you should proceed accordingly.

Job Descriptions do not replace company procedures nor operating procedures. However, if the employee has never before carried out this task, then consult with him/her about this change to the Job Description (if it is to be a permanent as opposed to a once-off thing) and reach some agreement. This would be an informal discussion, where you explain the task, what is required, the standards to be met, and show that it falls reasonably within the existing parameters of the Job Description. Show also that it is lawful and reasonable. Unless the employee can show good and valid reasons to the contrary, then the employee must do it or any continued refusal would constitute misconduct.

Some common excuses are "he is not my boss (or supervisor) therefore he has no right to tell me what to do." Counsel the employee – explain to him who can and who cannot issue instructions, and note the counseling session in his file. Any recurrence will call for a written warning, and a third instance perhaps a final written warning or even dismissal. "It is against my religion." Don't ask a Seventh Day Adventist to work on a Saturday.

If you own a butcher shop, don't ask a Moslem to cut up the pork carcasses. Don't ask a devout Christian to work or be on standby on Christmas Day or Good Friday. Don't ask a devout Jew to work on Yom Kippur. Be reasonable.
Don't ask a "ban the bomb" enthusiast to drive a truck of explosives or the Chairman of the local "Save the Elephant" club to assist with culling a herd of elephant. Having said all that, if the task is now to become a permanent part of the job description because of operational requirements, for example, the refusal to carry out the instruction could cause you serious operational difficulty. You may have no choice but to change the job spec, move the employee to another position, or even terminate his services on the grounds of incapacity – he is unable to perform the function reasonable expected of him.

Note that we are not dealing here with an unreasonable refusal to obey. We are dealing with a refusal based on what the employee perceives to be sound reasons for the refusal. It follows as a consequence that the problem is not one of misconduct or breaking company rules, but is rather a problem of incapacity to do the job because of religious or moral beliefs.

It may be held that this should in fact be sorted out at the interview stage before the employee is even employed – but business requirements change, and the requirement may have only been introduced after employment commenced – by expansion of the business, for example, or perhaps the acquisition of another business.

"I cannot do it because it will require me to work overtime."

For example, a late delivery. The requirement for the delivery only manifests itself at 4 pm, and the customer is on the far West Rand and you are situated in Springs. If the driver carries out the instruction, he will only get back to your premises at say 5.30 pm or even 6 pm. Because of this, it will involve overtime.

Generally speaking, overtime is voluntary and the driver can refuse. However, it may be a crisis situation – your customer has a breakdown and he needs the material or the part to repair his machine and resume production on the night shift. Every employee has the duty to protect his employer's interests, and refusing to do so for no other reason than that it would require him to work overtime is unacceptable – disciplinary action would follow.

If the employee has a good reason – for instance, after 5 pm he cannot get transport home – then you would have to decide. Either arrange transport home for him, or make another arrangement for the delivery. Unreasonable refusal to help in an emergency is an offence – but don't call it an emergency when it isn't. For example, your internal sales clerk forgot to enter the order or your supplier let you down and delivered late. It would be unreasonable of you to expect the driver to perform because you screwed up!!

Each situation requires careful analysis.

F.A.Q
What if the Shop Steward instructs staff not to obey instructions?

If the reason is valid, then so be it. For example, safety standards may be compromised. However, it may be that the Shop Steward is trying to put pressure on the employer to accede to some demand or other – such as wage increases or additional bonuses. This would be an unfair labour practice, and you would deal with this via the Union.

Can the employee refuse to obey because it will affect his off-the-job activities?

Such as soccer practice for instance? Or even perhaps he comes to work with his own car, but has fare-paying passengers who help to cover his running costs. The question here is whether you have the right to tell an employee what to do or what not to do in his own time and off your premises?

Generally, what the employee does in his own time is his own business – however, if it affects your business, then it becomes your affair. The employee has a duty to protect your interests, even outside of the work situation, and he may not take any action or undertake any activity which might cause harm to your business.

Can the employee refuse to obey if the instruction is given in an unreasonable or unacceptable or offensive manner? Such as "Close that door, you stupid idiot" or "add up these figures and try not to make your usual mess of it." In our view, the employee would be entitled to refuse – such an offensive manner affects the element of "reasonableness" in the instruction.

What if the employee refuses "in the heat of the moment" but later carries out the instruction?

Everybody works under pressure at some stage and perhaps become a bit short-tempered for a while. The refusal was not deliberate – it was just something done in the heat of the moment. If the employee later carries out the instruction, then accept that for what it is. Later when he has cooled down a bit, you can chat to him privately about his initial attitude.

Is there a difference between insubordination and refusing to obey and instruction?

No – insubordination means disobedience.

Is questioning an instruction the same as refusing to obey it?

The employee is probably trying to clarify what is required before he does it, or perhaps he even has a better idea – lend your ear to his query. What disciplinary action can be taken in a case of refusing to obey a lawful and reasonable instruction? Refusing to obey a lawful and reasonable instruction is misconduct (insubordination) and the employee must be disciplined in terms of your disciplinary
procedure.