

## THE DIFFERENCE BETWEEN INSUBORDINATION AND INSOLENCE, AND THE SERIOUSNESS THEREOF.

In the workplace, Employers are faced with an array of issues concerning the misconduct of their Employees. The difficulty which Employers face is being able to correctly identify the type of misconduct which an Employee has committed, and this is found to be especially true when identifying between Insubordination and Insolence.

Insubordination and Insolence are two offences which are closely related, but should not be grouped or used together as entailing the same offence. Insubordination is defined as the refusal to accept the authority of an Employer or someone who is placed in a position of authority. An example of Insubordination is where an Employer instructs an Employee to perform a certain task whereby the said Employee either fails to perform or refuses without good reason to do so provided that such task is reasonable and lawful.

In the case of Insolence, such offence has been characterised as conduct which is disrespectful and rude towards an Employer or person of authority. An Employee is found to be guilty of Insolence when language of a disrespectful and abusive nature is used, such as cursing and making of derogatory remarks.

The similarity between the two charges and the confusion that stems from using both charges interchangeably is that they both entail a form of repudiation of authority.

The seriousness of both charges are based on a matter of degree, taking into account the surrounding circumstances as well as the implications thereof. Gross Insubordination is identified as a dismissible offence in terms of the Labour Relations Act 66 of 1995 (LRA) under schedule 8 of the Code of Good Practice: Dismissal.

In both cases, the charges can warrant dismissal where an Employee who has committed the offences had done so deliberately or repeatedly and whether the implications resulting from the misconduct can be considered serious and damaging.

Identifying whether dismissal is an appropriate sanction, Employers are cautioned to follow a careful and thorough investigation as in the recent case of **Jorgensen v I Kat Computing (Pty) Ltd and Others (DA10/16) [2017]** an Employee had been dismissed for Insubordination relating to the refusal to attend a disciplinary hearing due to the Employer refusing to pay the said Employee their full salary. The Court held that the instruction of attending a disciplinary hearing is the choice of the Employee and therefore found that the Employee's refusal had not been insubordinate. Therefore Employers should ensure that when instructions have not been followed that they were reasonable and lawful.

*This article is a general information sheet and should not be used or relied on as legal or other professional advice. No liability can be accepted for any errors or omissions nor for any loss or damage arising from reliance upon any information herein. Contact Strata-g Labour Solutions for specific and detailed advice.*



labour ■ excellence

**Newsletter**

**Date: 11 May 2018**

**CHRISTOPHER DE PONTE**

**LEGAL ADVISOR**