

Sign here . . . or else

by Boyd A. Byers

What do you do when an employee refuses to follow a simple, reasonable, and important workplace instruction? Do you discipline him for insubordination? Or do you cheerfully give him a free pass?

Acknowledge is power

Employers typically ask employees to sign disciplinary or performance warnings. That's a good practice. It lets the employee know the matter is significant and the behavior must change. It also gives you proof the employee has in fact received the warning.

But employees often refuse to sign disciplinary warnings — and employers frequently let them off the hook. In fact, it's a common practice in the HR world to just accept the employee's noncompliance, write "employee refused to sign" on the signature line, and send the employee back to work without consequence.

As a lawyer who represents employers, I find that practice troubling. It sends a message that the disciplinary action really isn't that important. It lets employees think they don't have to follow management's directives. It marginalizes HR. And it can create evidentiary problems if the employee sues you.

I recently defended two discharge cases in which each company had issued an employee a prior disciplinary warning, but the employee refused to sign it, so management wrote "employee refused to sign." The employee in each case then testified in deposition that the warning had never been given to him. That's the type of fact dispute that sometimes allows an employee to keep the case from getting thrown out before trial. If the company had required the employee to sign the warning, he wouldn't have been able to lie about it or fail to remember it later. (Fortunately, we were still able to get both cases dismissed.)

Sign or resign

If you're going to go to the trouble of documenting corrective action — and you should — provide the written document to the employee so she knows what is expected of her and what the consequences of further misconduct will be. Require the employee to acknowledge receipt so there can be no question that she got it.

If the employee refuses to sign, explain that her signature is simply an acknowledgment of receipt and doesn't mean she admits to the misconduct or agrees with the discipline. In most cases, the employee will sign once she understands that.

If the employee still refuses to sign, let her know that while it's her choice whether to sign the warning, it's the company's choice whether to continue to employ her. Tell her

acknowledging receipt is a condition of continued employment and refusal to do so is an act of insubordination that, independent of the earlier misconduct, will result in discharge.

What if the employee still refuses to sign? Then good riddance! In my experience, an employee's refusal to acknowledge receipt of a disciplinary warning is often a sign of more deep-rooted workplace problems. So cutting ties may be in everyone's best interests.

To make the process easier, make sure your corrective action form clearly says the employee's signature is an acknowledgment of receipt, not an admission of misconduct or agreement with the discipline. You may even want to add to your discipline policy a statement that employees will be required to acknowledge receipt, through their signature, of all corrective action warnings given to them. Of course, if employees are subject to a union contract, you need to consult the contract and get legal advice before implementing any new rules or practices or taking disciplinary action.

He said it

A signature always reveals a man's character — and sometimes even his name.

— Evan Esar