

Insubordination - What is it? How to Avoid it?

In the current American labor environment, workers have limited rights as employees. We are always working and fighting to increase workers' rights and workers' protections and workplace freedoms. But, until the day comes when we have fully democratic workplaces, management will have more authority than workers. In this system management has the authority to give directives, and workers must follow those directives, or face disciplinary action. Refusal to follow a management directive is one form of insubordination, and, can result in an employee being fired.

Insubordination is one of the major contributing factors in many employee dismissals and is one of the easiest charges for an employer to prove. However, it is a concept that is misunderstood by many employees and as a result they may place themselves in the position of being insubordinate. To avoid this hazard, a thorough understanding of the concept is necessary.

First, it is important to understand that an administrator, principal, or immediate supervisor has some management rights simply because they are the "boss". Any administrator, principal, or immediate supervisor has the right to exert leadership, to direct institutional operations, to enforce rules, policies, reasonable orders and directions so long as they conform to the contract and are clear and unambiguous, not injurious to your health, are legal, are applied uniformly, and are justly administered.

We encourage our members to adhere to the maxim: "**Work, then grieve!**" This is described in more detail below.

What is commonly termed "insubordination" generally falls into one of the following four categories:

- * Disobeying an employer's directive / order
- * Disputing or ridiculing authority
- * Exceeding your authority
- * Using vulgar or profane language towards a supervisor/manager/administrator

The California Code of Regulations (CCR) in Title 22, Section 1256-36(b) provides:

Implicit in the agreement of hire is the concept that an employee is subject to some degree of authority exercised by the employer or the employer's representative. An employee is insubordinate if [they] intentionally disregard[] the employer's interest and wilfully (sic) violates the standard of behavior which the employer may rightfully expect of employees in any of the following ways:

1. Refuses, without justification, to comply with the lawful and reasonable orders of the employer or the employer's representative . . . (Disobeying orders)
2. Commits an act which exceeds the authority either expressly granted by the employer or impliedly created by failure of the employer to object to a particular course of conduct. . . (Exceeding authority)
3. Makes a statement or remark, which is not the result of an error in judgment, under the circumstances which damage or tend to damage the employer's interest. (Disputing or ridiculing authority)
4. Addresses vulgar, profane, insulting, obscene, derogatory, or offensive language of a vile nature toward the employer or the employer's representative when such remarks are unjustified under the circumstances, and not within the normal exchange and customary good-natured banter between the employer or the employer's representative and the employee. (Vulgar or profane language)

Generally, insubordination requires cumulative acts with prior reprimands or warnings. However, a single act without prior reprimands or warnings can be insubordinate if the act is substantially detrimental to the employer's interest.

Refusing to comply with a directive

The Public Employment Relations Board (PERB) has noted: "Insubordination means an intentional refusal to follow directions... To prove insubordination, therefore, an employer must prove willfulness. (Ibid.)"

An employee should comply with directives from supervisors, managers, and/or administrators concerning the service in which they are engaged, except where such obedience is **impossible** or **unlawful**, or **not related to employment**, or **would cause an undue risk of injury or illness to the employee or others**, or **would impose new and unreasonable burdens** upon the employee.

Put another way: Follow directives! Work, then grieve!

Can you ever refuse a directive?

Yes!

You can refuse to follow a directive if:

The directive would be **impossible** for you to follow. For example: an employee could refuse a directive to lift and carry a 100 lb. box of textbooks if it were physically impossible for them to do so.

The directive would be **unlawful** for you to follow. For example: an employee could refuse a directive to ignore a student's claims of abuse at home and an admin's directive to not contact CPS.

The directive is **not related to employment**. For example: an employee could refuse to pick up an administrator's dry cleaning, because doing so is not related to employment in a public-school setting.

The directive **would cause harm (illness or injury) to you**. For example: an employee could refuse a directive to approach a downed power line, or enter a burning building, or sit in a small, closed room supervising a student with COVID, or break up a fight if doing so could cause illness or injury.

The directive **would cause harm to others** (including, but not limited to, students or colleagues). For example: an employee could refuse a directive to spank a child.

The directive **would impose new and unreasonable burdens upon the employee**. For example: an employee could refuse a directive to grade a semester's worth of work that had been turned in to a substitute covering for a vacant position in one night.

You can also refuse to follow a directive if the person giving the directive is not an admin / does not have authority to give you directives. (For example: Your site admin. or supervisor is empowered to give you directives, your office manager does not have that authority.)

Work, then grieve!

What should I do if an admin has given me a directive that violates the contract?

The shorter answer: "Work, then grieve!"

The longer answer: If you have been given a directive, by someone authorized to give you directives, and you feel the directive violates the contract, you should:

1. Tell the admin that you feel their directive is in violation of the contract, and ask them to rescind the directive. (You could say: "I think your directive is a contract violation. Are you sure you want me to do

that? If it is a violation, I will follow the directive now, so as not to be insubordinate, but I will then file a grievance.”)

2. If they persist, and if time allows, ask the admin to provide the directive in writing. (There may be situations where there is not time for the admin to stop and put the directive in writing.)
3. If they refuse to issue the directive in writing, ask the admin directly why they are refusing to put the directive in writing. (Also, even if they refuse to put the directive in writing, and even if they refuse to answer why, you should still “work, then grieve.”)
4. If they refuse to issue the directive in writing, and if there is time, you should affirm the directive in writing, by you writing an email to them, restating the directive they gave you, as you understand it, and asking them, in the body of the email, to respond if they have any corrections or if they are canceling the directive.
5. If they refuse to issue the directive in writing, and after you sought confirmation in writing (if there was time) you should perform the directive.
6. As soon after the interaction as possible you should write a detailed account of what occurred, including who, what, where, when, & how (Who gave the directive? Who else was present as a witness? Where did this occur? When did it occur? What happened? What was the directive? What did you do to push back? How did the interaction progress? How did it end? etc.)