

American Jurisprudence, Second Edition  
Database updated August 2005Public Officers and Employees  
Mitchell Waldman, J. D.

- VIII. Termination, Suspension, or Other Adverse Action As to Office or Employment [§  
§ 152-229]
- F. Removal and Dismissal, in General [§ § 169-201]
2. Grounds for Removal or Dismissal [§ § 173-201]
- b. Particular Grounds [§ § 183-201]

[Topic Summary](#) [Correlation Table](#) [References](#)

## § 190. Insubordination

Dismissal of a state employee has been deemed proper in some instances on the grounds of willful insubordination, as, for example, based on the employee's persistent failure to return to work and falsification of a sick leave application. [FN29] In this regard, where a public employer's request that an employee submit to a medical examination by a doctor of its choice was reasonable, the failure of the employee to honor such request, and after which she was absent from the workplace without authorization for more than three consecutive days, gave the public employer cause to terminate her employment. [FN30]

Yet a public official cannot be discharged for insubordination where the alleged insubordinate conduct was based on refusal to participate in an illegal activity. [FN31] Furthermore, the removal of an employee with a state bureau on ground of, inter alia, insubordination, based on his or her failure to surrender certain bureau documents requested by the bureau's legal counsel during an internal investigation, has been deemed too harsh a penalty for the isolated action involved. [FN32]

**CUMULATIVE SUPPLEMENT:****Cases:**

Substantial evidence supported administrative judge's affirmance of federal agency's decision to dismiss employee, in light of supervisors' testimony that employee used inappropriate language to his supervisor, took confrontational/intimidating stance toward his supervisor, was absent from duty station without authorization, and failed to cooperate with proper authorities. [Smith v. Department of Air Force, 81 Fed. Appx. 350 \(Fed. Cir. 2003\)](#).

**[Top of Section]****[END OF SUPPLEMENT]**

[FN29] [Appeal of Gielen, 139 NH 283, 652 A2d 144.](#)

[FN30] [Southeast Human Serv. Ctr., Dep't of Human Servs. v Eiseman \(ND\) 525 NW2d 664, 3 AD Cas 1740.](#)

[FN31] [Parrish v Civil Service Com., 66 Cal 2d 260, 57 Cal Rptr 623, 425 P2d 223.](#)

[FN32] [Brown v Ohio Bureau of Empl. Servs., 70 Ohio St 3d 1, 635 NE2d 1230, reconsideration den 70 Ohio St 3d 1448, 639 NE2d 116, subsequent app \(Ohio App, Marion Co\) 1995 Ohio App LEXIS 4016, discretionary appeal not allowed 74](#)

[Ohio St 3d 1513, 659 NE2d 1289](#), reconsideration den [75 Ohio St 3d 1414, 661 NE2d 761](#) and (criticized on other grounds in *Wells v Monroe County Bd. of Comm'rs* (Ohio App, Scioto Co) 1995 Ohio App LEXIS 2927) and (criticized on other grounds in *Tough Times Auto Sales v Ohio Motor Vehicle Dealer's Bd.* (Ohio App, Gallia Co) 1995 Ohio App LEXIS 4406) and (criticized on other grounds in *Vogelsong v Ohio State Bd. of Pharm.* (Ohio App, Scioto Co) 1996 Ohio App LEXIS 5927).

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