

Insubordination? That's a legit firing offense!

If there's one reason for firing an employee that's likely to stand up in court, it's insubordination.

Employers that carefully document an employee's refusal to follow directions or listen to a supervisor's reasonable instructions or rules are likely to win a lawsuit.

Recent case: Samuel, who is white, worked for a security firm that provided protection at an airport. The trouble began when Samuel told his supervisor he didn't want to work outside, allegedly because Hispanic and other nonwhite workers got preferential assignments inside.

But Samuel didn't just protest—he tried to leave the premises by breaching a perimeter security door into a restricted area, thus sounding an alarm and causing building security, the Department of Homeland Security and the Port Authority Police to respond.

When Samuel sued, he didn't contest the facts, but claimed he was justified because he believed he was being discriminated against when ordered to work outside. In effect, he was arguing that his supervisor made him so angry he just couldn't help himself and wasn't responsible for his insubordination.

The court didn't buy the argument. It concluded that the employer was free to fire Samuel for insubordination. His motivation wasn't relevant—what counted were his actions. Samuel also tried to argue that because the decision-makers were Hispanic, their decision was tainted. The court rejected that argument, too. Because the decision-makers focused on behavior, their race wasn't relevant. The case was dismissed. (*Tuccio v. FJC Security Services*, No. 12-CV-5506, ED NY, 2014)

Final note: Of course, you also have to make sure that everyone who is similarly insubordinate receives the same punishment. You can't overlook behavior in employees belonging to one protected category, but throw the book at others outside that protected class.