

Resign or Be Fired?

You've been asked to do something—or not do something—that doesn't sit right. This explainer has guidance on determining if there are rules or laws at play, and it outlines practical impacts of being fired or choosing to resign.

Professional responsibility or personal morality?

When asked to follow an order that you're not sure about, you might not know offhand whether it violates a rule of professional conduct or is more an issue of personal moral red lines. Both are legitimate. Unfortunately, exactly what crosses the line of a Rule of Professional Conduct can be fuzzy. Below are some Model Rules¹ that might apply to situations litigators face. Are you being asked to:

- ✔ Take a legal position for which you do not have a good faith basis? See [ABA Model Rule 3.1](#).
- ✔ Obtain evidence through illegal means? See [ABA Model Rule 4.4](#).
- ✔ Assist an agency in destroying or concealing documents that may have evidentiary value—or in obstructing another party's access to that material? See [ABA Model Rule 3.4\(a\)](#).
- ✔ Refuse to obey a court order or other "obligation under the rules of a tribunal"? See [ABA Model Rule 3.4\(c\)](#).
- ✔ Make a false statement of law or fact, or offer evidence that you know to be false? See [ABA Model Rule 3.3\(1\)](#).
- ✔ Fail to disclose to a court contrary controlling legal authority? See [ABA Model Rule 3.3\(2\)](#).

Disciplinary penalties for lawyers based on violations of Rules of Professional Conduct [do happen](#) but are relatively uncommon. Courts, however, are somewhat likely to police the behavior of attorneys who appear before them.² And if you see a Rule violation, you may have a reporting obligation. See [ABA Model Rule 8.3](#). If complying with an order violates personal morality but not a rule or law, you may try to persuade others to rescind the order or avoid participating personally,³ but being terminated remains a real risk.

¹ Federal attorneys are licensed in jurisdictions all over the country. Consult the Professional Responsibility Rules of any bar whose rules you must follow (which could be your licensing bar as well as the bar of the place where you practice), as some have additional relevant rules—*i.e.*, California's prohibition on [discrimination](#).

² *Citizens for Resp. & Ethics in Washington v. U.S. Dep't of Just.*, 538 F. Supp. 3d 124, 143 (D.D.C. 2021), *aff'd sub nom. Citizens for Resp. & Ethics in Washington v. United States Dep't of Just.*, 45 F.4th 963 (D.C. Cir. 2022) ("DOJ has been disingenuous to this Court with respect to the existence of a decision-making process that should be shielded by the deliberative process privilege.").

³ For example, you may be able to ask for a [religious accommodation](#)—which [may cover](#) some firmly-held personal beliefs in addition to beliefs stemming from an organized religion. However, it is unclear how a request like this would be treated in this context.

Consequences of being fired versus resigning

If you have decided that you cannot follow a particular order—either because of personal ethics or your view that the order is improper⁴—you are left with two basic choices: **resign** or risk being **fired** for failure to follow the order. Generally, failure to follow orders *is* grounds for termination,⁵ though the order must be lawful—more on that below.

Whether to resign or risk being fired is a deeply personal decision, and individuals may have different views on the expressive value of either option, but below is some information on potential practical consequences of the choice you make.

Does it matter whether you resign or get fired?⁶

Future Employment

- **Getting another federal job? Maybe.** The world can change quickly—it is not clear how a future administration would view getting fired or resigning (or even a finding of unsuitability) in this administration. This explainer can speak to the standards as they exist right now: Neither being fired nor resigning is disqualifying for future federal employment, but either could factor into [suitability determinations](#). At least two forms ask about being fired, though you may also have to report some resignations, depending on the circumstances:
 - The [Declaration for Federal Employment](#) asks about whether you were fired *or* “quit after being told that you would be fired” in the last five years.
 - The [Questionnaire for National Security \(SF-86\)](#) asks if you were fired *or* “quit after being told you would be fired, left by mutual agreement following charges or allegations of misconduct, left by mutual agreement following notice of unsatisfactory performance” in the past seven years.
- **Future security clearances? Maybe.** Being fired is not [specifically listed](#) as disqualifying when applying for a security clearance, though “personal conduct” can raise a security concern, and “unwillingness to comply with rules and regulations” is listed as a consideration that may weigh against a favorable national security eligibility determination.
 - Some [agencies](#) may re-validate (i.e., reactivate) a security clearance if you return to the federal government within a certain time period—typically two years.
- **Getting another non-federal job? Maybe.** Results may vary. Some prospective employers do ask about past firings or reasons for leaving your past job, though these are unique times and there is some public reporting, for example, of a [judge saying](#) certain employees weren’t truly fired for performance reasons.

⁴ Attorneys and non-attorneys alike are subject to rules and regulations beyond the applicable rules of professional conduct—*e.g.*, the Executive Branch’s Standards of Ethical Conduct. See 5 C.F.R. § 2635.101(a).

⁵ *Nagel v. Dep’t of Health and Hum. Servs.*, 707 F.2d 1384, 1387 (Fed. Cir. 1983) (“[F]ailure to perform assigned duties clearly justifies adverse agency action, and the choice of an appropriate ‘penalty’ is a matter of agency discretion.”); *Sepulveda v. Dep’t of Interior*, 38 M.S.P.R. 449, 1988 WL 112808 (1988) (failure to follow supervisor’s instructions, “even if predicated on honestly-held misapprehensions, constitutes serious misconduct that cannot properly be condoned.”).

⁶ This explainer is aimed at the decision whether to resign or be fired; considerations may change if an employee is considering, for example, whether to resign or risk being involuntarily separated as part of a Reduction in Force (“RIF”). This [resource](#) may be relevant to employees in that situation.

Employee Benefits

- **Health insurance through your federal employer? No, with one exception.** It does not matter whether you resigned or were fired; you are entitled to an extra [31 days](#) of health insurance coverage after your date of departure. You can also extend your coverage for up to 18 months by enrolling under a [Temporary Continuation of Coverage](#) (TCC) plan. However, you are not eligible for TCC if you were fired from your job due to [“gross misconduct.”](#)
- **Life Insurance through your federal employer? No.** Whether you are fired or choose to resign, you will lose your life insurance. However, you are entitled to a grace period of [31 days](#) after the separation date to apply for a [conversion](#) to an individual life insurance policy.
- **Accrued sick leave and annual leave? No.** Unused leave is treated the same way, whether you resign or are fired:
 - Annual leave is paid out in a [lump sum](#),
 - Sick leave is not paid out, but you may be able to [reclaim it](#) if you reenter federal service.
- **Federal retirement benefits? No (mostly).** For the vast majority of employees, retirement benefits are unaffected by whatever your reason for separation from federal service (termination or resignation). There are some [very limited exceptions](#).

Unemployment

- **Affect eligibility for unemployment? Yes, probably.** According to the Unemployment Compensation for Federal Employees (UCFE) [fact sheet](#), UCFE is for federal employees “who lost their employment through no fault of their own.” However, though the insurance is administered through a joint state-federal [program](#), actual eligibility criteria (described in some detail in the Department of Labor FAQs [here](#) and [here](#)) can vary from state to state. You can learn more about individual state requirements using this [locator](#), and read some practical advice [here](#).
- If you **resign**, or “voluntarily quit” you may still be eligible in your state for unemployment. Some states recognize “good cause” reasons for [quitting](#), including: relocation, quitting due to dissatisfaction with working conditions, unsafe working conditions (e.g. harassment), retirement, etc. Importantly, if you **resign** because you were going to be fired, some states [may](#) treat that action as a firing under their relevant UI laws and potentially disqualify you from unemployment.

Challenging your separation from government

Broadly speaking, most (but not all⁷) career employees are protected by law against “prohibited personnel practices,” one of which is being fired for refusing to follow an order that would “require the individual to violate a law, rule, or regulation.” 5 U.S.C. § 2302(b)(9)(D).

⁷ Employees in a number of agencies are excluded from the protection at 5 U.S.C. § 2302(b)(9)(D), including: the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, the Office of the Director of National Intelligence, and the National Reconnaissance Office—and, as determined by the President any “executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities, provided that the determination be made prior to a personnel action.” See 5 U.S.C. § 2302(a)(2)(C)(ii)(I)-(II).

- **Does it matter if you resign or are fired? Yes, probably.** If you are **fired**, challenging your removal is likely more straightforward legally, though in theory an employee who **resigned** under duress could argue a “[constructive discharge](#)” theory and still pursue a legal claim.
- **How to challenge a termination or prohibited personnel practice:**
 - Most former federal employees can challenge their termination for failure to follow an illegal order at Merit Systems Protection Board (MSPB), and a key issue in that case would be whether the order was, in fact, illegal. See 5 USC § 7701(c)(2)(B). This [resource](#) describes how to file such an appeal yourself.
 - If you are subjected to a less severe personnel action—i.e., those listed in 5 U.S.C. § 2302(a)(2)—you may go to the [Office of Special Counsel](#), which is ordinarily independent but recently had its head [removed and replaced](#) by the president.

Considering leaving federal service?

- Review ethics [guidance](#) on post-government employment restrictions applicable to all former federal employees. ([DOJ](#), [DOD](#) guidance). There are additional rules for some senior employees. See, e.g., 5 CFR §§ 2641.104, 2641.204.⁸
- Understand your rights as a federal employee through the [Know Your Rights](#) webinar series from the Partnership for Public Service.
- Check out these self-serve career resources: [Federal Employee and Education Assistance Fund](#); [Fedsforward](#); and [Federal Workforce Transition Resources](#); [Fed Resource Directory](#).
- Download a copy of your entire [eOPF folder](#) and any performance reviews (the SF-8 and [SF-50](#) may be particularly important).
- Download paystubs going back a few months and benefits documents from your [EPP](#) file (e.g., FEGLI handbook), as well as any 2025 Active Plan from [USA Performance](#).
- Ensure you are able to log into benefits programs such as [TSP](#), [FSA Feds](#), [Long Term Care Insurance Program](#), and [BENEFEDS](#) from your personal device and that authentication methods don't require you to use your work email or device.

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⁸ The Office of Government Ethics provides guidance each year on the pay threshold that triggers the enhanced restrictions. See, e.g., U.S. Off. of Gov't Ethics, Effect of Pay Adjustments on Ethics Provisions for Calendar Year 2025, Legal Advisory [LA-25-01](#) (Jan. 7, 2025).