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EMPLOYMENT LAW DEPARTMENT

What is Constructive Dismissal?

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1. When can an employee claim to have been constructively dismissed?

A constructive dismissal occurs where an employer doesn't actually dismiss the employee but instead the employee resigns and can show that they were entitled to resign because of their employer's conduct. The employee would have to show that the employer was guilty of conduct that amounted to a significant breach of their Contract of Employment or guilty of some other sort of conduct that showed the employer did not intend to be bound by the Contract. The employee then accepts that breach by resigning but they must not delay too long in accepting the breach because they could be argued to have accepted the behaviour if they do. The breach of contract relied upon by the employee must be significant; something that goes to the very heart of the employment relationship, for example a breach of trust and confidence. An employee can resign in response to a series of breaches of contract which they say together amount to a breach of the implied term of trust and confidence.

2. What are some examples that might amount to a breach entitling an employee to resign and claim constructive dismissal?

An employer will usually be in breach if they unilaterally reduce an employee's pay. Discriminating against an employee will also constitute a fundamental breach entitling an employee to resign. Changing contractual duties and inept handling of a disciplinary or grievance matter may also be a breach, depending upon the circumstances, as would an intolerable working environment where an employee is subject to abusive behaviour and bad language on a regular basis. Employers must also be aware that a constructive dismissal claim can be based on the behaviour of a fellow employee and a Tribunal could find the employer vicariously liable.

3. What should an employer do when an employee resigns to protect against a constructive dismissal claim?

If the employee has already resigned then there may be little that can be done, but an employer could look at the circumstances surrounding the dismissal and, if it appears that the employee could argue they have been forced out of the company because of unreasonable behaviour directed towards them, the employer could consider entering into a discussion with them in order to resolve matters amicably and avoid a complaint to a Tribunal.

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