

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 claims that they did so in response to their employer's conduct towards them which was so unreasonable as to amount to a fundamental breach of their contract of employment which entitled them to resign. The employee would have to show that the employer was guilty of conduct that showed the employer did not intend to be bound by the contract. This can be by breaching an express term of the contract of employment (for example unilaterally reducing the employee's pay) or breach of an implied term. The most common implied term relied upon in this context is one which says that the employer will not conduct itself in such a way as is designed or likely to destroy or seriously damage the relationship of trust and confidence which should exist between an employer and an employee.

The employee then accepts that breach of contract by the employer 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. Equally as the argument is that the employer has destroyed the contract between the parties the employee is therefore released from their obligations under the contract as well, including the obligation to provide a certain period of notice of termination. It can damage an employee's case if they were to resign giving notice, rather than terminating with immediate effect.

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 fundamental breach of an employee's contract of employment if they unilaterally reduce an employee's pay. Discriminating against an employee on unlawful grounds is also likely to constitute a fundamental breach which would entitle an employee to resign and bring a constructive dismissal claim. 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 in such circumstances.

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 to protect against such a claim, but an employer should take such issues seriously. Investigating and taking remedial action to prevent such occurrences in the future may well be viewed favourably by an employment tribunal in any subsequent proceedings. It may be that the employer engages with the employee either directly or via the Acas Early Conciliation process in order to investigate whether it may be possible to resolve matters amicably and avoid a complaint to a Tribunal.

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