

Constructive Dismissal

What is Constructive Dismissal?

Constructive Dismissal occurs when an employee terminates their employment, as a result of their employer's conduct towards them. Although the employee has resigned the effects are the same as if they were dismissed and they may therefore be able to bring a claim.

There are also certain issues which must be considered before making a claim. For example:

- The employer may be in a position to prove that their action was justified or reasonable. For example, the employee may have breached the terms of their contract of employment.
- The employee may have to indicate why the usual grievance procedures were not followed.
- To pursue a claim for Constructive Dismissal an employee must usually leave their employment within a reasonable time of the actions complained of.
- The employer's breach must be of more than a minor nature, or the contract could be construed as having been affirmed.

Examples of action which may give rise to a claim for Constructive Dismissal

- The employee must also be able to meet the qualifying criteria for unfair dismissal before they can bring a constructive dismissal claim unless a statutory exception applies. The employee should give this some considerable thought before resigning. Advice should be ideally sought.
- a reduction of pay without the employee's consent

- change to hours of work without authority to do so
- demotion for no justifiable reason
- other fundamental changes to the nature of the employee's job
- bullying, harassment or violence by the employer or work colleagues
- making the employee work in dangerous conditions

The employer's breach of contract may be one serious incident or the last in a series of less important incidents that are serious when taken together.

The above information is not intended to be a complete or definitive statement of the law. For more information or advice please contact our Employment Law team.

A Tribunal is likely to consider changes that were necessary for the survival of a business as justifiable and therefore fair but will be wary of those which are simply intended to increase profitability at the expense of the employee.

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