



Constructive Dismissal

If an employer's action or inaction makes the situation at work so intolerable for the employee that the employee resigns, it may be considered a constructive dismissal. It can be subject to a personal grievance.

There are three broad categories:

1. The employer gives an employee a choice between resigning or being dismissed;
2. the employer deliberately acts in a way aimed at pressuring (directly or indirectly) the employee to resign;
3. the employer has acted so badly (ie by breaching of the agreement or treating the employee highly unfairly) that the employee feels he or she cannot remain in the job.

It's not necessary for the employer to want the employee to resign. The question is whether:

1. the employer's actions or inactions caused the employee to resign, and
2. this resignation was foreseeable.

A constructive dismissal does not need to be the result of a single event. It may be a result of a series of actions or inactions by the employer. Not all conduct that upsets an employee will be enough to lead to a constructive dismissal.

For example:

1. A person unhappy about being given a lawful and reasonable request to do a task they don't usually do, can't use this as a reason to resign and claim constructive dismissal.
2. A resignation to avoid an upcoming performance management process or disciplinary meeting is unlikely to be grounds for a constructive dismissal claim, unless the process is a clear abuse of the employer's powers or undertaken for an improper purpose.

What to do if you feel that your employer has pressured you to resign

If an employee feels that they're being pressured to resign, then they should raise this with their employer as soon as possible so that there's an opportunity to discuss the issue and try to resolve it.

If the matter cannot be resolved and the employee feels that they had no choice but to resign, the employee may claim they were constructively dismissed by raising a personal grievance.

Workplace bullying

If an employer is responsible for an employee being bullied to the point of resignation, this may be constructive dismissal.

Remedies

An employee who believes they have been constructively dismissed may raise a personal grievance for unjustified dismissal and claim for eg lost remuneration and for humiliation, loss of dignity, and injury to feelings.

The grievance must be raised within 90 days beginning on the date on which the action causing the grievance happened or first came to the employee's attention. Because many constructive dismissal cases involve the cumulative effect of actions happening over long periods of time, this 90 day limitation period can be very important. If left too late, the employee may find that they are unable to take action.

Examples of constructive dismissal

Some examples of situations of constructive dismissals include:

1. a person who had been maliciously assigned unpleasant or unproductive work;
2. an employer failed to take action for an employee who was repeatedly attacked by dogs while trying to perform their duties;
3. an employee worked excessive hours under a lot of stress;
4. an employer repeatedly failed to pay the employee's wages;
5. employers moved an employee from a permanent contract to a casual one and the employee could no longer provide for themselves;
6. the employer drastically reduced the employee's hours without getting the employee's agreement first.

Some examples of situations where the Employment Relations Authority or Employment Court have said that a constructive dismissal did not take place include:

1. the employer reasonably believed that the employee was not in a fit emotional state to do their job and the employee agreed to resign, but later changed their mind;
2. the employer gave the employee reasonable instruction within the scope of their employment, eg teaching subjects that the employee was not familiar with;
3. an employee was suffering from work-related stress, but did not tell their employer and the employer did not have a chance to try to manage the stress;
4. an employer with whom the employee had negative history spoke to the employee, resulting in them resigning and leaving despite the employer's attempts to get them to stay.

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