

CONSTRUCTIVE DISMISSAL

Please Note:
The Employment Rights Act 2025 is now law but the changes are planned to roll out gradually throughout 2026 and 2027. Changes will be incorporated into our documents and contracts as and when they are implemented and more detail is available. The documents reflect the law as it currently stands.

Sometimes an employee's relationship with their employer breaks down and cannot be repaired. We speak to many employees who feel this has happened to them and are wanting to know what they can do if the situation cannot be resolved. Some callers have heard the words 'constructive dismissal' and want to know about it and if it applies to them. Here we try to demystify the phrase and explain what it really means.

What is constructive dismissal?

For an employee to claim constructive dismissal they must be able to show that their employer has fundamentally breached their employment contract and they have resigned as a result of that breach. They also need to show they have not acted in a way that confirmed the breach i.e. by continuing in the role after the breach occurred.

There have been significant changes in employment law introduced in 2026 and 2027. From 1 January 2027 the qualifying period of employment required to bring a constructive dismissal claim reduces from 2 years to 6 months. This means that anyone employed in 2026 (before 30 June) will have acquired the necessary qualifying service by 1 January 2027 and will therefore have the right to bring a claim. If employed after 1 July 2026 the right will arise once 6 months continuous service is completed.

It is a key part of any constructive dismissal issue that you must leave your employment. For many people this is not financially possible when the outcome of

any potential claim is often uncertain, expensive and can take significant time to resolve. You must act quickly and when you leave may determine whether you have affirmed your employer's breach.

What type of action can amount to constructive dismissal?

There is no exhaustive list of what will amount to constructive dismissal but the following examples are an indication of actions that may fall into this category:

- failure to pay salary or contractual benefits
- a significant change to your role, either taking away a significant part or requesting you undertake significant work for which you are not qualified or experienced
- failure to provide a safe working environment
- imposing a disciplinary sanction that is disproportionate to a misconduct

Constructive dismissal claims not only relate to a breach of an express term of a contract, such as pay, but can also relate to breach of an implied term. This is often referred to as 'mutual trust and confidence' and can include matters such as how you are treated generally and your employer's overall attitude towards you. For example, if they are aggressive or conduct themselves in a way that means you suffer harassment in the workplace, this could be behaviour that causes a breach of the implied terms of your contract.

What action should an employee take?

If you believe your employer has behaved unreasonably, your first action is usually to raise the matter with them, either informally or more formally as part of the grievance procedure. Any grievance should be lodged in accordance with the ACAS Code, or the stated contractual process detailed in your staff handbook.

If you fail to follow this process, and there is a subsequent tribunal claim, any compensation may be reduced by up to 25 per cent of the award.

If the grievance does not resolve the situation you should notify your employer as soon as possible. See here for more information on resolving workplace disputes.

Constructive dismissal claim

Key Points to Know

To bring a claim for constructive dismissal in an employment tribunal, you must have the required qualifying service. From **1 January 2027**, changes to employment law reduce the qualifying service period from **2 years to 6 months**. In practice:

- If you are employed **on or before 30 June 2026**, you will meet the 6-month requirement by 1 January 2027
- If you start work **after 30 June 2026**, you will qualify once you have completed **6 months' service**

Time Limits for Bringing a Claim

You must usually bring a claim for unfair (including constructive) dismissal within **3 months of your**

employment ending. Before submitting a tribunal claim, you are required to notify **Acas** and take part in early conciliation, which aims to resolve disputes without going to tribunal.

- The time spent in **early conciliation** does not normally count towards the 3-month time limit
- Acas typically has up to **12 weeks** to help both parties reach a resolution

If the issue is not resolved, Acas will issue a **conciliation certificate**, which you need in order to proceed with a tribunal claim.

Important Considerations

Constructive dismissal claims can be risky, as they require you to resign from your job before bringing a claim. It is strongly recommended that you seek advice from a qualified employment solicitor before taking any action.

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