

CONSTRUCTIVE DISMISSAL

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.

To bring a claim, an employee has to have at least two years' continuous service. It does not apply to anyone employed for less than that time.

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

In order to present a claim to an employment tribunal for constructive dismissal you must do so within three months of your resignation date.

Before any matter can proceed to a tribunal you will need to notify Acas and the matter will form part of the early conciliation process which is designed to resolve the dispute. Generally, the period of time that the matter is with Acas will not count in calculating the three-month period. This time can be up to one month and when that is completed (and where it remains unresolved) Acas will issue a conciliation certificate, which will allow you to proceed with a tribunal claim.

Generally any potential constructive dismissal is a risk as it does require you to leave your employment. It is recommended you take advice from a practising solicitor before making any decision.

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