

## Constructive Dismissal

If your employer has done something that seriously breaches your employment contract, you might be able to resign and make a claim to an employment tribunal. This is called constructive dismissal.

### Forced to leave or resign from a job

Constructive dismissal (the full legal term is known as Constructive Unfair Dismissal) is where an employee is **forced to leave or resign their employment** due to the actions (or inactions) of their employer (or other persons/employees for which the employer is liable).

The employee may decide to resign or terminate their contract, **with, or without notice**. If it's with notice, sometimes the employer may argue, that this indicates there was no fundamental breach of contract, as the employee continued to work. If the notice period is relatively short, the employer's argument may be weaker, and vice versa.

simply because the **employee subjectively feels** that such a breach has occurred, no matter how genuinely this view is held (See Omilaju).

For example, a decision to **cut or reduce an employee's wages** (including sick pay), would in most cases amount to a repudiatory breach (Rigby v Ferodo Ltd 1987).

# TRUST

### Trust and Confidence

**Unreasonable or unfair conduct alone or minor breaches of the contract** by an employer is not usually enough to claim constructive dismissal.

The employer must have breached what is often termed as the **implied term of 'trust and confidence'** of the employment contract which goes to the **fundamental heart** of any employment relationship. The breach of 'trust and confidence' (**a repudiatory breach** that is serious and which cannot be remedied), may be a series of events, a one off event or a final event, often referred to as the 'last straw' (Case of Kaur).

The test of whether the terms of the contract have been breached is **an objective one**. There will be no breach

### Affirmation, conduct and effects of any delay

If there is any **delay in resigning** after an event or after 'the last straw', this may mean an employee has **'affirmed' (or accepted)** the breach of contract by the employer, and this may make any claim difficult to prove.

It's therefore important to take advice and act promptly. Although, case law suggests that affirmation is an issue of **conduct**, and **context**, rather than **time**.

## Raising any fundamental breaches of contract in a grievance

Any **grievance** that is made prior to the resignation, about any alleged repudiatory acts, should be consistent with any alleged acts that are later listed in the resignation letter.

If there is any inconsistency, or omission in the grievance or resignation letter of the alleged acts that are said to have caused the resignation, this may affect the credibility of the constructive dismissal claim. A grievance should therefore **specifically and expressly include any alleged breaches** of trust and confidence that the employee intends to rely on.



## The resignation letter – pay careful attention to it

What an employee writes in their **resignation letter is very important**, as this will show the reasons **why** they resigned, **when** they did. This will be considered very carefully by the ET to determine what was the actual **cause for the employee's resignation** and whether that amounted to a breach of the fundamental term of 'trust and confidence'.

Resigning is a big step to take, so be sure of your position. We recommend you take legal advice before resigning. Cases of constructive dismissal are highly fact sensitive and most claims fail.

## In summary, constructive dismissal has several important ingredients:

1. There was a **fundamental breach** of contract on the part of the employer
2. The Tribunal will look at 'conduct **calculated (or likely) to destroy or seriously damage** the trust and confidence between the employer and the employee', and more importantly, the 'employer had **no reasonable or proper cause** for the conduct'
3. The employer's breach **caused the employee to resign** and not some other issue/reason (e.g. a causal link between the employer's breach and the employee's resignation must be established)
4. The employee **did not delay or wait too long before resigning** thus affirming the contract and losing the right to claim constructive unfair dismissal

## Time Limits

There are strict time limits to bring claims to the Employment Tribunal (ET), generally **3 months, less 1 day** from your **effective date of termination (EDT)**.

The EDT could be the **day you resigned**, if you gave **no notice** and resigned immediately, or the **last day** of your notice period. Check your EDT carefully, to ensure you get any deadlines right.

## Further information

For more information, including the full legal test the ET will adopt and relevant case law, contact us for a **FREE 30 MINUTE initial appointment**.

We hope you found this information helpful.  
Employment Rights Network, 2024.

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