Wrongful, Retaliatory, and Constructive Discharge

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# Introduction

Termination of employment is one of the most contested areas in labor and employment law. While many dismissals occur lawfully, others raise questions about whether the employee’s rights were violated. U.S. law recognizes several categories of unlawful discharge, each carrying different legal consequences: wrongful discharge, retaliatory discharge, and constructive discharge. This paper will define and illustrate each type of discharge, highlight the key differences among them, and examine a real-world case study that demonstrates constructive discharge in practice (Moran, 2017).

# Part A: Definitions and Examples

Wrongful Discharge:

Wrongful discharge occurs when an employer terminates an employee in violation of a statute, public policy, or contractual obligation. Title VII of the Civil Rights Act of 1964 makes it unlawful to fire an employee based on protected characteristics such as race, color, religion, sex, or national origin (Moran, 2017). For example, dismissing a qualified female worker solely because of her gender would constitute wrongful discharge.

Retaliatory Discharge:

Retaliatory discharge arises when an employee is terminated for engaging in legally protected activity, such as filing a discrimination complaint, reporting unsafe conditions, or participating in an EEOC investigation (U.S. Equal Employment Opportunity Commission [EEOC], 2023). For instance, if a worker reported unsafe electrical wiring to OSHA and was terminated the next week, that firing would likely be classified as retaliatory discharge.

Constructive Discharge:

Constructive discharge is legally treated as an involuntary termination, even though the employee technically resigns. It occurs when working conditions are made so intolerable that a reasonable person would feel compelled to quit (Moran, 2017). An example would be an employee who faces daily harassment, derogatory remarks, or unsafe assignments, leaving no choice but to resign.

# Part B: Key Differences

Although wrongful, retaliatory, and constructive discharge all involve unlawful terminations, they differ in their legal foundations and burdens of proof.

1. Source of Claim: Wrongful discharge generally stems from violations of statutes or contracts (Moran, 2017). Retaliatory discharge is narrower, requiring a link between protected employee activity and termination (EEOC, 2023). Constructive discharge focuses not on the employer’s explicit act of firing, but on whether the working conditions were so severe that resignation was the only reasonable option (National Labor Relations Board [NLRB], 2023).

2. Employee’s Burden: In wrongful discharge cases, the employee must demonstrate that the termination violated law or contract. Retaliatory discharge requires showing causation between protected activity and termination (EEOC, 2023). Constructive discharge demands proof that conditions were objectively unbearable to a reasonable person, regardless of employer intent (Moran, 2017).

3. Employer Defenses: Employers often argue legitimate business reasons in wrongful or retaliatory discharge cases (Moran, 2017). In constructive discharge disputes, however, the central issue is the severity of workplace conditions. Even if the employer denies intent, liability can arise if conditions forced the resignation (NLRB, 2023).

# Part C: Interview Case Study

An anonymous municipal employee reported experiencing increasingly hostile treatment after raising concerns about unsafe work assignments. The individual was unexpectedly assigned to spotter duty during traffic signal installation without clear instructions or sufficient support. Following the employee’s complaint, supervisory behavior became more hostile, characterized by passive-aggressive responses and lack of cooperation. Ultimately, the employee resigned.

This case illustrates constructive discharge for two reasons. First, the unsafe spotter assignment created conditions that jeopardized the employee’s safety. Second, the negative treatment after voicing concerns made the environment intolerable. Both factors would lead a reasonable person to conclude that resignation was the only viable option (Moran, 2017).

# Conclusion

Wrongful, retaliatory, and constructive discharge are distinct yet related forms of unlawful termination. Wrongful discharge focuses on violations of law or contract, retaliatory discharge protects employees from punishment for engaging in protected activities, and constructive discharge recognizes that intolerable conditions can force resignation. The municipal case study demonstrates how constructive discharge arises when unsafe assignments and hostile supervisory behavior make continued employment impossible. For both employees and employers, understanding these categories is essential for safeguarding rights and ensuring lawful workplace practices (NLRB, 2023).

# References

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