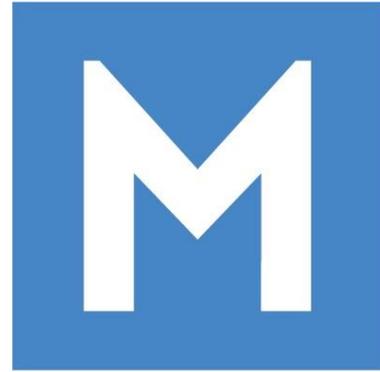




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People



Management

Constructive Dismissal: Explained

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'Just being honest that's all'

Constructive Dismissal: Explained

The Employment Rights Act section 95(1)(c) states:

'the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct'.

If the employee feels that the employer has seriously breached the Contract of Employment then the employee is entitled to resign from their position and to claim constructive dismissal; in other words, the employee terminates the Contract of Employment because the employee feels that the employer has done something seriously wrong.

The breach has to be something really serious and not just a minor omission or matter and ideally a breach of the employment contract (in law this is sometimes called a 'fundamental breach'). The employee has to show that they resigned because of that breach and not for any other reason. The employee would also have to show that they resigned within a reasonable period after the fundamental breach. If the employee does not resign within a reasonable time then the courts could say that the employee accepted the breach.

Examples of fundamental breaches could include any of the following (not an exhaustive list):

- Anything to do with a reduction of pay or other benefits that form part of the employment contract
- Anything to do with Health and Safety at work
- Anything to do with unsafe tools or equipment at work
- Anything to do with illegal activities that the employer may be involved in
- Demotion without consultation and agreement
- Changes in the job role and responsibilities without consultation and agreement
- If grievances and complaints are not addressed appropriately
- If the employer humiliates or degrades an employee in front of others
- If the employer has used abusive language towards an employee or has criticised the employee in front of others in a humiliating or degrading manner
- The employer has accused the employee of misconduct or poor performance but there is no real evidence of this
- The employer just wants to get rid of an employee without good reason or evidence

Burden of Proof

If the case goes to the tribunal the first requirement is for the employee to prove that there has been a breach of contract and because of the breach, the employee felt that they were no longer bound by the terms of the contract. If the employee can show this is then it may be regarded by the courts that the employee felt justifiably that the contract had ended by the employer's conduct.

The employee must convince the tribunal that:

- There has been a fundamental breach of the Contract of Employment by the employer
- This was what caused the employees resignation
- The resignation took place without delay and that it any dealy did not constitute acceptance of the breach

It is recognised in law that if one party to a contract is in breach then it becomes very difficult for the other party to continue in the employment relationship.

Ideally, the departing employee should inform the employer of the nature of the breach of contract, justify the resignation and give the employer the opportunity to rectify the situation. But this is the ideal situation and does not always play out in the real world. The courts have therefore not necessarily insisted on the communication of breach before resignation and have concluded that sometimes the breach by the employer is so serious that the employee was justified to leave without a thorough explanation (Weathersfield Ltd t/a Van & Truck Rentals) where the employee went on to win the case for constructive unfair dismissal.

Where an employee has resigned in circumstances amounting to constructive dismissal they may bring a claim for unfair dismissal. If successful then the courts could award the employee the same remedy as an unfair dismissal claim, which includes the Basic Award, the Compensatory Award, Loss of Pension, Job Seeking Expenses, Loss of Statutory Rights and in some cases Loss of Future Earnings.

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