

To resign or not to resign: when to stop suffering the slings and arrows of outrageous employers

By Craig Rothwell

For those upset employees aware of their legal rights, "I was constructively dismissed" is sometimes the (polite) summary given to friends when they have handed in their resignation as a result of unfair treatment of them by their employer. Now slowly entering everyday usage, 'constructive dismissal' is the legal term to describe the situation when an employee is entitled to hand in their resignation without giving any notice when their employer's behaviour has made it unreasonable for them to continue to work.

As employees can now bring a claim for compensation before an Employment Tribunal for constructive dismissal against their employers under the Employment Act 2000, it is important for both employees and employers to have some understanding of the circumstances in which constructive dismissal can be claimed. For employers, this should be of assistance in allowing them to keep well clear of the situations that lead to them appearing before a Tribunal facing potentially expensive consequences. For employees, it should assist in understanding when, in law, they can say 'enough is enough' on being faced with difficulties at work. They can then take a decision to resign immediately with at least some reassurance that their subsequent loss of earnings may be recovered.

As the Employment Act 2000 is still fairly new and few cases of constructive dismissal have reached the Tribunal to date, the UK Courts still provide the best examples of the circumstances in which constructive dismissal has been able to be claimed. To add the usual proviso of any lawyer though, each individual case has to be decided on its own merits and this is never more true than in employment cases when one battle between employee and employer is never like another.

Generally, an employee is not entitled to claim constructive dismissal merely on an allegation that

their employer has engaged in 'unreasonable behaviour'. The employer's conduct must represent a serious breach of the employment contract. Some of the more usual serious breaches of the contract have been as follows:

1. Severe and unjustified reprimands in front of other employees. If an employer behaves in an bullying and insensitive manner without good reason and the employee feels humiliated, intimidated and degraded to a degree that the 'mutual trust and confidence' between employer and employee has gone, then the Tribunal is likely to agree that a serious breach has occurred.
2. Failure to pay wages. Payment for work done is arguably the most important term in an employment contract and a deliberate failing by an employer will more often than not be treated as a serious breach. (The accidental mistake in missing a weekly payment will not though be treated as serious.)
3. An unjustified demotion or suspension from work. The greater the demotion the more serious the breach. This can be true even if the employee's wages are kept at the same level as the Vice-President demoted to Associate will obviously have 'lost face' before his colleagues and the all important trust and confidence will be likely to have disappeared. Unjustified suspensions from work may also have the same deeply embarrassing effect even if ultimately the employee is not found guilty of any wrongdoing.
4. A change in job content and contractual terms imposed by an employer on an employee. As this can amount to a serious breach, employers should be careful to discuss any such changes with employees and reach agreement on them as a way to avoid any difficulties.

5. An employee suffering discrimination at work whether on the grounds of sex, race, disability or other grounds prohibited by the law. Furthermore, if harassment by a co-worker is brought to the attention of an employer and there is a clear failing to deal with it properly, then this will also inevitably affect the mutual trust and confidence.
6. Requiring an employee to work in an unhealthy environment. Employers should be conscious of their health and safety obligations towards their employees to avoid this potential serious breach.

Hopefully, few of the above situations will arise for the majority of employers and employees. One of the key ways to avoid a total breakdown in the mutual trust and confidence is of course to keep the lines of communication open at all times. For employees and employers alike, a company grievance procedure is also a useful tool to solve difficulties at an early stage and prevent any unnecessary or premature resignations which can be damaging to employer and (particularly) employee both emotionally and financially – the latter being especially the case when lawyers have to be involved to assist in a case of constructive dismissal!

This article contains information of a general nature and should not be relied upon as a substitute for professional legal advice given with respect to a particular factual situation.

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