

The Case of Constructive Dismissal

Constructive Dismissal claims are increasingly common but the onus is on the employee to show that it was reasonable to terminate his or her contract, writes Solicitor Grainne McMahon.

People are often left with no alternative but to resign from their jobs because the behaviour of their employer was so unreasonable that they felt that they could not work there anymore. This is known as Constructive Dismissal and is one of the most common employment claims taken by employees against former employers. However, a constructive dismissal case can be difficult to win, because there is a high onus of proof on the employee to prove that the resignation was justified. This is the opposite to unfair dismissal cases where the burden of proof shifts to the employer – in unfair dismissal cases, the employer must prove that the dismissal was fair and justified.

Section 1 (b) of the Unfair Dismissals Act 1977 covers constructive dismissal. The law stipulates that you must have at least 12 months' continuous service to bring a case and the Statute of Limitations to take your case is six months from the date of termination of employment. In plain English, you must start your claim within 6 months of the date that you stopped being an employee. This 6 month deadline may be extended to 12 months if there were exceptional circumstances which prevented you from starting the claim within 6 months.

Issues that would allow you to bring a constructive dismissal claim include if your employer has acted unreasonably in all the circumstances or the conduct of your employer demonstrates that he or she no longer intends to be bound by one or more of the essential terms of the contract or indeed if his or her behaviour could be considered to be an actual breach of the contract or enough to warrant your resignation.

Unwarranted warnings, change of job roles, significant negative changes in the work place, bullying and harassment can be examples of circumstances giving rise to constructive dismissal. Such cases are made to the Workplace Relations Commission.

If you experience any of the above, it is important to take legal advice before resigning your position and crucially, to exhaust all internal grievance and complaint procedures which strengthen any constructive dismissal case. A body such as the Employment Appeals Tribunal will require that you prove that your resignation was justified in all the circumstances- a resignation is the ultimate last resort and you must show this.

For more information, contact an employment solicitor who can advise you all of the above.



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