Constructive dismissal

If an employee feels they have no choice but to resign because of something their employer has done, they might be able to claim for 'constructive dismissal'.

The legal term is 'constructive unfair dismissal'.

5. What constructive dismissal is

An employee can make a constructive dismissal claim if they resign because they think their employer has seriously breached their employment contract.

Examples could include:

- regularly not being paid the agreed amount without a good reason
- being bullied or discriminated against
- raising a grievance that the employer refuses to look into
- making unreasonable changes to working patterns or place of work without agreement

It could be because of one serious incident or a series of things.

If you're in this situation

Resigning is a big step to take, and a constructive dismissal claim can be difficult to win at an employment tribunal.

It's important to try to sort out any issues with your employer first. You can raise a problem informally or raise a formal grievance. Find out how to raise a problem at work.

If you're going to resign, you should get legal advice first.

Settlement agreements

A settlement agreement is sometimes used to end an employment relationship in a way the employer and employee both agree with.

If you sign a settlement agreement, you cannot make a constructive dismissal claim to an employment tribunal.

Find out more about settlement agreements

If you resign

In your resignation letter you should explain clearly your reasons for leaving.

If there's been a serious breach of contract you may want to leave your job straight away instead of working your notice period.
Doing this could be a breach of your employment contract but it can be justified sometimes. You should get legal advice.

Making a constructive dismissal claim

You usually have the right to make a constructive dismissal claim to an employment tribunal if:

• you have ‘employee’ employment status
• you’ve worked for your employer for 2 years

You must make the claim within 3 months less one day of when you resigned.

The employee must tell Acas first that they want to make a claim. They will be offered the option of ‘early conciliation’.

Find out more about early conciliation and making a claim to an employment tribunal.

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