

Your Questions Answered

This Frequently Asked Question sheet provides an introduction to Constructive Dismissal.

For free, tailored advice on any of the issues discussed in this FAQ or any other aspect of employment law, please call (028) 9024 4401 and ask to speak to an employment adviser.

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In Employment Law, what is a dismissal?

There are three circumstances under which an employee can be dismissed:

- their employment contract is terminated by their employer
- s/he is employed under a fixed term contract which expires without renewal
- s/he terminates her/his own contract but can show that the employer's conduct entitled them to do so (this is considered **constructive dismissal**).

Constructive dismissal is a very high-risk approach to take and we would strongly advise seeking specialist legal advice before pursuing it. An employee who resigns may be deemed not to have been dismissed but to have left voluntarily if a tribunal finds there was not a constructive dismissal.

What is constructive dismissal?

There are circumstances where an employee can resign and claim unfair dismissal on grounds of the employer's conduct – this is known as **constructive dismissal**. An employee wishing to claim constructive dismissal must fulfil the normal qualifying criteria (length of service and employee status).

S/he must also show that the resignation was in response to a repudiatory breach of contract by the employer and that s/he has not waived the breach.

A '**repudiatory breach**' of contract may either be breach of an express term (such as pay) or of an implied term (the duty of trust and confidence). To qualify as a repudiatory breach of contract, the breach must be of such a **fundamental** nature that it undermines the contract.

The breach may be anticipatory rather than actual provided that the employer has indicated a clear intention not to fulfil the terms of the contract in the future. **An example might be where an employer clearly notifies an employee that s/he going to demote her/him with effect from the following week.**

"Waiver" of the breach of contract may happen if an employee delays in resigning following the breach or does anything else to affirm the contract. Whether or not a

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delay in resigning will constitute a waiver will depend on the circumstances of the case.

A constructive dismissal is not necessarily unfair. There may be limited circumstances

Constructive Dismissal – What do I need to know?

where an employer might be able to show that there was in fact a fair reason for the dismissal.

Proving to an industrial tribunal that the criteria for constructive dismissal have been met can be **very difficult**. Advice should always be sought where an employee is contemplating resigning with the intention of claiming constructive dismissal.

What is the time limit to make your case to the Industrial Tribunal?

The time limit is 3 months from the employee's date of resignation.

It is always worth setting out in your resignation why you believe the employer has breached your contract or the actions of the employer has resulted in a breach of contract.

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