



CONSTRUCTIVE DISMISSAL

A constructive dismissal occurs when an employee feels that his position has become so untenable that he has no other alternative but to resign. However, unlike unfair dismissal cases, an employee has to prove to the ET that there has been a dismissal and in order to do this, he has to show the following: -

1. That his employer has fundamentally breached a term / s of his contract of employment. This is known as a repudiatory breach and must go to the 'root of the contract'.
2. That he has left because of the breach. It is also advisable for the employee to make it clear to his employer at the time of resignation that he believes he has been constructively dismissed.
3. That he has not waived the breach. It is important that the employee acts promptly when his contract has been breached, because if he delays, he may be deemed to have accepted the breach, even if that was not his intention.

Examples of breaches that have given rise to claims of constructive dismissal are:-

1. Reduction in pay
2. Changes in the nature of a job
3. Employers' behaviour that destroys the relationship of trust and confidence.

Once an employee has established that there was a dismissal, the ET will go on to consider whether the employer acted reasonably in the same way as an unfair dismissal claim. Like an unfair dismissal claim, an employee must lodge his complaint with the ET within three months of the effective date of termination. A constructive dismissal is not necessarily an unfair dismissal however.

Since the Employment Act 2002 (Dispute Resolution) Regulations 2004 came into force, an employee is also required to raise a formal grievance before making a complaint of constructive dismissal. The employee must also allow 28 days before bringing a claim in order to try and resolve the dispute.

Constructive dismissal can be a complex area and it is wise to seek legal advice ideally before tendering resignation.

Contact us on the number below and one of specialist advisors will be pleased to assist. You can visit us on the web at mybusinesslaw.co.uk

Should you require further information about how our Employment Law team can help you - just call 0800 040 33 99 – and one of specialist advisors will be pleased to assist. You can visit us on the web at the above address

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