



Constructive dismissal: Employee guide

Description

Introduction

In this guide I explain the concept of **constructive dismissal** and potential claims that employees could pursue.

What is constructive dismissal?

For **constructive dismissal** there needs to be a fundamental breach of contract by the employer. The breach could be an actual breach or an anticipatory breach.

And the employee needs to resign swiftly as a result of the breach.



Examples of breaches

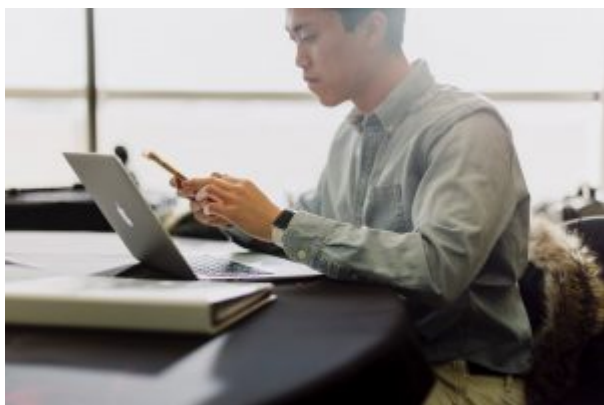
There could be a breach of a key express term in the contract such as, for example, failure to pay the employee their salary, changing the employee's job title from that stated in the contract or reducing

the employee's contractual holiday entitlement without agreement.

There could be a breach of an implied term such as the breach of the implied term of trust and confidence. Examples could include, for example, [bullying](#) by a manager, failing to properly deal with a [grievance](#), [discrimination](#), subjecting the employee to an unjustified [performance](#) improvement plan or excessive workload.

There may be a series of breaches which, cumulatively, amount to a breach of the implied term of trust and confidence with the last breach being the final straw.

Each case though will depend on its own circumstances.



Wrongful dismissal

If an employee establishes that they have been **constructively dismissed** they may have a claim for damages for wrongful dismissal. Damages are assessed on the basis of the employee being put in the financial position that they would have been in had the contract been performed lawfully. This will normally therefore be the net remuneration for the notice period. It could in some cases be for a longer period if, for instance, a contractual disciplinary process had not been followed.

Unfair dismissal

Employees who, generally, have at least two years' continuous service with their employer may also have a claim for **constructive unfair dismissal**. The new employment legislation will reduce the qualifying period from two years to six months. The six month qualifying period will apply for employees with employment end dates on or after 1 January 2027.

In the vast majority of cases where the employee has proved that their employer has fundamentally breached their contract it will be very difficult for the employer to show that they have acted fairly. One example where it might be possible for an employer to show that they acted fairly is where an employer unilaterally reduces someone's hours due to a downturn in business.

The maximum compensatory award for unfair dismissal is, currently, the lower of 52 weeks' pay or £123,543. However, the new employment legislation will abolish the 52 week and financial cap. The removal of the cap will take effect from 1 January 2027.

Constructive dismissal claims are not easy claims to bring and you should always obtain legal advice at the earliest opportunity and before resigning.

There may be other claims to consider too.

This guide is intended for guidance only and should not be relied upon for specific advice.

If you need any advice on **constructive dismissal** or have queries relating to other employment law issues please do not hesitate to [contact](#) me on [020 3797 1264](tel:02037971264).