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## Constructive Dismissal <sup>[1]</sup>

[Claim Compensation for Constructive Dismissal. Talk to our Employment Team..](#)



## What is Constructive Dismissal?

Constructive dismissal occurs when an employee resigns from his/her employment as a result of a fundamental breach of their employment contract by their employer.

### Examples of / Grounds for constructive dismissal

- Lack of support from the employer during difficult work situations
- Excessive disciplining of employees
- Changing an employee's job content or terms
- Harassment/bullying or if your employer refuses to pay a bonus due to you

If such a breach of contract occurs and you wish to resign as a result of it then as the employee, you must resign without unreasonable delay. If you wait too long before resigning, a tribunal could see this as accepting the breach and any subsequent claim you pursue could fail.

## Steps you should take before making a constructive dismissal claim

It is also strongly advisable before resigning and claiming constructive dismissal, that you first submit a grievance to your employer about the breach(es) and wait for a response. If you do not do this it could be deemed a breach of the ACAS Code of Practice and your compensation if the claim is successful could be reduced by up to 25%.

If the Employer does not deal with your grievance properly or at all they could be in breach of the ACAS Code and your compensation could increase by up to 25%.

## **Considerations prior to making a claim for compensation**

In order to succeed in a claim for constructive dismissal, you, as the employee must ensure you consider the following criteria and act accordingly:

- Has your employer performed a clear fundamental breach of contract?
- Have you as the employee raised a grievance and or resigned in consequence of that breach and not another reason?
- Have you delayed too long before resigning?

You must also have 2 year's continuous service\* with the employer, as with Unfair Dismissal claims.

If you do submit a claim to a Tribunal, the employer will have the opportunity to respond to the claim within 28 days of receipt of the claim form from the Employment Tribunal.

\* The service period that has to be gained in order to be able to claim unfair dismissal increased from one year to two years on 6th April 2012. Any employee commencing employment on or after that date will have to work for their employer for two years continuously before they will have the right to claim. Any employee already in employment before 6th April 2012 will only need to obtain one year's service to claim.

## **General Tribunal Process**

If a claim progresses to a final hearing, the employee will need to establish that there was a fundamental breach of contract entitling him/her to resign (in a timely fashion). The employer will need to argue two things - that there was no breach at all and if the Tribunal disagrees with this, that any breach was not fundamental and the employer acted fairly and reasonably in the circumstances.

As with unfair dismissal cases, the Tribunal looks at different issues such as procedures followed before (and possibly after) the resignation, the size of the employer and its resources and the ACAS Code of Practice. It also considers the "band of reasonable responses" test, which looks at whether the behaviour of the employer fell within a band of reasonable responses of a reasonable employer in a similar situation.

### **Outcomes**

If after analysing all the facts and applying the relevant law the Tribunal thinks that the employee was justified in resigning over the breach in question, the dismissal will be unfair in law and the employee will be entitled to compensation.

However, if the Tribunal decides that there was no breach, that the breach was not severe enough and/or that the employer acted reasonably in committing the breach, the dismissal will be fair and the employee will have lost his/her claim.

## **Successful claim**

If successful a claim for Constructive Dismissal will lead to compensation being awarded by the Employment Tribunal. The maximum award for unfair dismissal is currently £72,300 as of 1st February 2012.

An uplift or a decrease in the compensation may also be awarded in accordance with the ACAS Code of Practice depending on the circumstances of the case.

Please note that the above information is for guidance only. Making a decision to leave your current job is a hard one in any situation and it's made even harder when considering a claim for constructive dismissal, so the decision to resign shouldn't be taken lightly.

For comprehensive and tailored advice on Constructive Dismissal Law and how it could apply to a given situation, [contact](#) <sup>[2]</sup> the Employment Law Team today.

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### **Links**

[1] <https://www.sydneyMitchell.co.uk/services-individuals/employment-law/dismissal/constructive-dismissal>

[2] <https://www.sydneyMitchell.co.uk/contact>