

<b>DOCUMENT NAME:</b>	Constructive Dismissal Factsheet
<b>LINKED DOCUMENTS:</b>	This factsheet is part of a suite of factsheets, including a separate factsheet on unfair dismissal.
<b>HEALTH WARNING/USAGE RESTRICTIONS:</b>	This factsheet sets out the basics/law on constructive unfair dismissal.

### Disclaimer

This document has been prepared on the basis of what is required by law at December 2025 what is good practice, and our understanding of common issues. This document is not intended to be a comprehensive guide, may not be suitable for your circumstances and should not be considered a substitute for the advice of a lawyer. You agree you use this document at your own risk in these respects.

# Constructive Dismissal

Factsheet

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## 1 Legal terms explained

“**Claimant**” is a person bringing a claim at an Employment Tribunal;

“**Employment Tribunal**” is part of the Ministry of Justice. Employment Tribunals determine the validity of disputed employment cases and award compensation;

“**ET1 form**” is the form required to begin a claim at an Employment Tribunal;

“**Ex-gratia payment**” is a payment an employer makes when under no legal obligation to do so such as a one-off ‘thank you payment’ for outstanding work;

“**Respondent**” is usually an employer defending a claim at an Employment Tribunal;

“**Repudiatory breach of contract**” is a breach that the law regards as sufficiently serious to justify termination of employment by an employee.

## 2 What is constructive dismissal?

Employment law has developed the concept of a constructive dismissal, as distinct from an actual dismissal of an employee by their employer.

A constructive dismissal occurs where the employer does not expressly dismiss the employee but the employee resigns and can show that they were entitled to do so because of their employer’s conduct towards them.

## 3 Circumstances in which an employee may be constructively dismissed

Normally, to claim unfair dismissal an employee must show that they have been dismissed. However, an employee who resigns may be treated as being dismissed if they resign as a result of the employer’s conduct towards them. This is often referred to as a repudiatory breach of contract.

The following rules apply:

- The employee must have a good reason to resign
- The employer’s conduct must be such that the employee is able to resign with or without notice and treat their contract as being at an end and resigns because of that conduct
- The employee must resign promptly

It is for the employee to prove that the employer’s conduct was sufficiently serious to entitle them to resign. If the employee cannot show the breach was sufficiently serious, they will not be treated as having been constructively dismissed.

The employer’s conduct may be one particularly serious breach, but it may also consist of a series of cumulative actions building up over time. This is sometimes referred to as the “last straw”.

Examples of breaches which may entitle an employee to resign and consider themselves constructively dismissed are where the employer:

- Reduces an employee’s pay without their agreement
- Varies an employee’s benefits or duties without their agreement
- Discriminates against the employee
- Bullies, sidelines or otherwise treats the employee unfairly

Many cases are not clear-cut and the employee will have to show that:

- The employer’s conduct breached either an express or implied term of their contract (it is not necessary for the term to be set out in writing)
- The breach is sufficiently serious

- The employee resigned in response to that breach
- The resignation was made within a reasonable time of the breach itself

By way of example, many employees in constructive dismissal claims argue that, as a result of their employer's conduct over a period of time, they no longer have any trust and confidence in their employer.

An employee will only be constructively dismissed if they actually resign as a result of the conduct concerned. If the employee decides to stay on despite the employer's conduct, and then leaves for another reason, this will not amount to a constructive dismissal.

The employee will also not be able to claim if they wait too long before resigning, as the employee may be treated as waiving the breach of contract and agreeing to continue in employment.

## 4 Eligibility to claim

An employee who believes that they have been constructively dismissed may be able to bring a claim for constructive unfair dismissal. To be eligible to claim constructive unfair dismissal, an employee must:

- Be an "employee" not a "worker" (this will exclude independent contractors and most agency staff)
- Not be within an excluded category of employee such as the police, armed forces or certain other public servants
- Have at least two years' continuous service

## 5 Time limit for bringing a claim

The claim must be submitted within three months less one day of the termination date of employment. For example, if the last day of employment was 3 October the claim would have to be submitted to the Tribunal by 2 January. This is known as the 'primary limitation period'.

If the employee resigns on notice, the termination date is the date on which notice expires. If the employee resigns without notice, or the employer asks the employee to leave immediately and a payment in lieu of notice is made, the termination date is the last day of employment (i.e. the last day that the employee worked).

However, before a claim can be issued, the employee must engage in a process known as ACAS Early Conciliation. Employees are required to contact ACAS on or before the 'primary limitation date' to start Early Conciliation. If they fail to do so, the Employment Tribunal will not be able to consider their claim.

Early Conciliation enables the employee and employer to try and resolve the dispute without the need to bring a claim in the Tribunal. If the parties both agree to conciliate, an ACAS conciliator will act as a 'go between' and try and reach agreement. There is no need for the employee to communicate directly with their employer unless they wish to do so.

This process can last up to twelve weeks. If Early Conciliation fails, the employee will be issued with an Early Conciliation Certificate which the employee needs before they can issue a claim in the Employment Tribunal.

Time limits for bringing a claim are paused from the day after the employee submits the Early Conciliation Form until the date the employee receives a Certificate. Generally the employee will have a minimum of one calendar month from the date of the Certificate to issue a claim in the Employment Tribunal.

Details about Early Conciliation are available from ACAS: [www.acas.org.uk](http://www.acas.org.uk)

## 6 Compensation

If the employee succeeds with their claim for constructive unfair dismissal, the Employment Tribunal will determine whether to award a remedy. There are three remedies available and the employee can choose which remedy to ask for.

## 6.1 **Reinstatement**

This permits the employee to return to the same job. However, it is rare for employees to ask to be reinstated to the same job they have left and it can undermine their credibility.

## 6.2 **Re-engagement**

This is where the employee is re-employed within a different role within the same company. Again requests for re-engagement are rare in constructive unfair dismissal claims.

A reinstatement or reengagement order will generally require the employer to make up all the employee's lost salary and benefits for the period between dismissal and the date of reinstatement, taking appropriate account of sums already received including pay in lieu of notice, ex-gratia payments and earnings from any other employment.

## 6.3 **Compensation**

If reinstatement or re-engagement is not ordered, the tribunal will award compensation instead.

In the vast majority of successful unfair dismissal claims, the remedy awarded is compensation.

The employee may receive compensation for:

- Breach of contract
- Unfair dismissal

More information about how compensation is calculated in unfair dismissal claims is available in our factsheet on unfair dismissals.

## 7 **Compensation for breach of contract**

Often when an employee claims constructive dismissal, they leave without working their notice. If so, the employee is entitled to issue a separate Tribunal claim for their notice pay, which is known as a claim for breach of contract. The claim can be included on the same ET1 form.

The compensation for that loss is designed to put the employee in the financial position that they would have been in if they had been(unfairly) dismissed in accordance with their contract. This means that the employee is entitled to receive their net pay and the value of any benefits that they would have received if they had worked throughout their notice period.

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