
Constructive dismissal

Is your employee telling you that they felt they had no option other than to resign from their employment?

Are you an employee who feels they had no choice but to resign from your employment?

If the answer to either of these questions is yes then the employee could bring a personal grievance claim against their employer for constructive dismissal.

Constructive dismissal includes for example, circumstances where:

- An employer gives the employee the choice of resignation or dismissal.
- An employer follows a course of conduct with the deliberate and dominant purpose of coercing an employee to resign.
- A breach of duty by the employer leads an employee to resign.

To determine whether a resignation has been caused by a breach of duty by an employer the Employment Relations Authority and Employment Court will look at all the circumstances of the resignation.

If it can be shown that the employer breached a duty which caused their employee to resign then the next point the Authority will look at is whether a substantial risk of resignation was reasonably foreseeable by the employer having regard to the seriousness of the breach.

Once that issue has been decided and the Court decides there has been a constructive dismissal the Court will then decide whether it was justifiable. To decide this, the employer must be able to convince the Court that what it did was what a fair and reasonable employer could have done in all the circumstances at the time.

An employer must ensure that at all times they do not breach the principles of natural justice or fail in their obligations to act in accordance with their good faith obligations when dealing with their employees.

Remedies

A successful personal grievance claim for unjustified dismissal brought by an employee may result in the employer being ordered to pay the employee's lost remuneration, compensation for humiliation, loss of dignity and injury to feelings as well as the employee's legal costs.

How can we help?

If you are concerned about this or any other employment related matter then Graeme Withers and Julie Withers of Graeme Withers Law can help you. We are very experienced lawyers. For personal, prompt and professional advice please call us (04) 478 4888; (027) 7155421 or email us info@witherslaw.co.nz

Please visit our website www.witherslaw.co.nz

This note is intended for general information only. It is not intended to be relied on as a substitute for legal advice which focusses on individual circumstances.