

Dear HR Knowledge, what is constructive discharge?

Constructive discharge, also known as constructive termination, is when an employee feels pressured or forced to quit their position because the employer has made working conditions unbearable. The conditions might include a hostile work environment, harassment, a significant reduction in pay or hours, mistreatment, etc. According to the Supreme Court, constructive discharge occurs when “working conditions become so intolerable that a reasonable person in the employee’s position would have felt compelled to resign.”

Courts have upheld constructive discharge claims in many employment discrimination cases, including discrimination based on pregnancy, religion, race, and sex, and in whistleblower retaliation cases. An employee could resign because of constructive discharge over one incident or a collection of incidents.

If an employee feels they were forced out of their job, they could decide to sue for lost wages and damages. In general, to prove that the employer forced the employee to resign, an employee must show that the employer intended to create or maintain intolerable working conditions. The employee must have informed management of these conditions before their resignation, to give the company an opportunity to remedy the situation. Claims of constructive discharge are often coupled with claims of “hostile environment” sexual harassment. According to the Equal Employment Opportunity Commission (EEOC), “if constructive discharge due to a hostile environment is proven, the claim will also become one of ‘quid pro quo’ harassment.” The employer would be held liable if a reasonable person would have been compelled to quit.

What steps can an employer take to protect the company from such claims?

- Implement anti-harassment and anti-discrimination policies, and train managers with reasonable frequency.
- Implement an open-door policy, which encourages employees to report workplace conduct that they believe is inappropriate. By adopting an open-door policy, employers can address, and remedy, workplace concerns before they become lawsuits. In addition, if an employee fails to utilize an employer’s open-door policy, it can be strong evidence in a subsequent lawsuit that the employer was not on notice of the employee’s belief that he was the victim of intolerable working conditions
- Promptly investigate employee complaints, documenting every action and conversation.
- Address performance issues, documenting every action and conversation.



- Conduct exit interviews.
- Obtain a release. In appropriate circumstances, providing a severance in exchange for an employee signing a document releasing the right to any claims is a good idea to avoid the costly and time-consuming process of defending a lawsuit.

The current cultural climate has generated a spate of new harassment claims and the courts will likely be filled for years to come with harassment/constructive discharge cases. [Contact](#) HR Knowledge with questions, or to schedule your [Respectful Workplace Training](#), which provides managers with the tools to prevent or respond to inappropriate workplace issues and makes employees aware of how they directly contribute to a respectful workplace and unacceptable behaviors to avoid.

About HR Knowledge

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