

Constructive Discharge

Normally, an employee who resigns or quits may not sue for wrongful termination of employment. However, “constructive discharge” is an exception to this rule. Constructive discharge occurs when an employer engages in conduct that effectively forces the employee to resign or retire.

Many employers wishing to prevent a wrongful termination lawsuit will torment their employees to make them quit. In essence, such employers force the tormented employee to terminate herself to avoid further anguish at work. If the employer makes the work environment intolerable, the employee who is forced to quit may bring a lawsuit for “constructive discharge” or “constructive termination” and seek the same remedies in court available to a wrongful termination plaintiff.

You may sue your employer for constructive discharge when it makes working conditions so intolerable that your health suffers, you are no longer able to function in your job, and you are left with no choice but to remove yourself from the work environment to prevent further harm. The test is whether a reasonable person in the employee's shoes and faced with the alleged intolerable working conditions would have felt compelled to resign.

What Events Support a Constructive Firing Claim?

The following events at work can support constructive firing claim:

- demotion
- reduced salary
- reduced job responsibilities
- reassignment to menial or degrading work
- forced to work under a junior or less qualified supervisor
- harassment (yelling, screaming, unduly harsh criticism, termination threats, impossible work demands, false accusations of misconduct or negligent work performance)
- offers of early retirement
- continued employment on terms less favorable than the employee's former status

A single incident at work can be so bad that it is grounds for a constructive discharge claim. However, verbal abuse, a negative performance rating, and a failure to promote may not be enough to support a constructive discharge claim.

A victim of a constructive discharge must prove the same facts as a victim of a wrongful termination in violation of public policy:

1. You had an employment relationship with an employer
2. Your employer forced you to terminate the relationship by making your work environment intolerable
3. Your employer knew that your work environment was intolerable

4. The employer's decision to make your work environment intolerable (or to allow an intolerable work environment) was against a public policy (California or federal law or regulation)
5. The forced resignation harmed you (caused you to suffer damages or an injury)

You won't need to prove that your employer intended for the work environment to be intolerable. All you need to prove is that your employer knew of the intolerable conditions and left them in place. An employer who promptly stops harassment at work cannot be sued for constructive discharge.