

# CONSTRUCTIVE DISMISSAL

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**Q: I was working for a small business for the past year and a half. From the moment I began work there, I felt bullied by my boss. She criticized everything I did and I could never do anything right for her. The stress of the job got too much for me and two months ago, I resigned. I'm starting to regret this now as I can't find another job. Do I have any rights?**

A: It sounds to be like you may have a case for constructive dismissal. However, you would need to consult a solicitor to determine if you do or not. This is a complex area of law and your solicitor would need full details of the situation before making a decision.

Constructive dismissal is where you terminate your contract of employment, with or without prior notice, due to the conduct of your employer.

It is vitally important to note that in a constructive dismissal case the onus of proof is on you, the employee as you will need to prove that your resignation was justified. This can be contrasted with a case of unfair dismissal where it is the employer who must prove that the dismissal was fair and justified.

Some examples of potential constructive dismissal cases would be where your pay was reduced without your consent and was in breach of your employment contract; a unilateral change in the functions of your job; change of work location where your contract does not make provision for such a change; undeserved warnings; sexual harassment in the workplace; change in work hours and conduct of fellow employees.

All of the examples above have given rise to successful claims for constructive dismissal on one occasion or another; however this does not mean that these situations will automatically lead to a successful claim.

While compensation of up to 104 weeks remuneration can be awarded by the Employment Appeals Tribunal, you do have a duty to mitigate your loss by seeking alternative employment.

For example in *Coyle v Tipper House Trust Ltd UD 904/93* the employee won his case for unfair dismissal but was not awarded anything because the Tribunal held he had suffered no financial loss because he was unfit for work at the time of dismissal and thereafter.



If you have a nil financial loss (eg you immediately gets employment or you are unfit to work due to sickness) the maximum you can be awarded is 4 weeks' remuneration.

The EAT can also reduce the award for any contributory conduct by the employee. Remuneration in this context includes salary, bonuses, benefits.

The Rights Commissioner and Employment Appeals Tribunal will consider what the employee has done to mitigate his loss and whether he has been able to find work since the dismissal.

If you wish to make a claim you should do so within 6 months of the date of the termination of employment. I note that you resigned two months ago. Therefore, you should consult your solicitor immediately as you only have four months left to bring a claim. This time limit may be extended to twelve months in cases where exceptional circumstances have prevented the lodgement of the claim within the six month period.

Before you resigned, it would have been important to have taken the following points into account:

- You should use any complaints or [grievance procedure](#) that is available to you before resigning
- You should also consider using any outside industrial relations procedures available to you before resigning
- You should seek detailed advice before leaving as this is a complex area of law
- You should only resign as a last resort after having used all available means of resolving the problem

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