



# #AskMachins

## Constructive Dismissal

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Constructive dismissal is where an employer has committed a serious breach of contract that the employee's only option is to resign in response to the employer's conduct.

In order to bring a successful claim, the employee will need to show that:

- Their employer was in repudiatory breach of their employment contract;
- They resigned in response to that breach; and
- They did not delay too long before resigning in response to their employer's breach.

### **When should I resign?**

It is important to resign promptly in response to the employer's breach. You should not delay too long before resigning.

### **Do I need to give notice?**

Employees are entitled to resign with or without notice. However, there are circumstances in which working their notice could potentially affect the claim.

### **How important is the resignation letter?**

You will need to show that you resigned in response to, or as a consequence of your employer's breach. Therefore, if you can show the reasons for resigning in your resignation letter, this will help in establishing whether you did in fact resign in response to the breach.

### **Should I raise a grievance?**

Yes, if the circumstances allow. A failure to raise a grievance may mean that any compensation could be reduced by up to 25%.

### **When do I have to bring a claim by?**

You must usually make the claim within 3 months less 1 day of the date your employment ended.

### **Can I bring another claim alongside constructive dismissal?**

You may bring other claims at the same time. Common example of other claims brought are discrimination and whistleblowing.

### **What sort of compensation will I receive if I bring a constructive dismissal claim?**

If you succeed in your constructive unfair dismissal claim, an Employment Tribunal may award you a basic award, a compensatory award and damages.

### **What is the last straw rule?**

A build-up of a number of minor breaches by the employer can amount to a fundamental breach of contract, so if none of the individual actions is so serious that it amounts to a repudiatory breach in itself, a catalogue of more minor actions can be so that the final, minor act is said to be "the last straw" which drives the employee to resign.