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dismissal is also
known as

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‘constructive unfair dismissal’. It is the forced resignation of an employee due to their employer making their position untenable. While it effectively involves the resignation of the employee, it is seen as a form of ‘unfair dismissal’ in the eyes of the law.

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Constructive dismissal is when the employee is not expressly dismissed by the employer but is entitled to resign as a result of the employer's conduct. The statutory definition of

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Constructive dismissal is detailed in the Employment Rights Act 1996 and states that it applies if:

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Constructive dismissal is where an

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Employee resigns and shows they were forced to do so by the conduct of their employer. Without strict rules in place this would be a 'universal excuse' for resigning, but constructive dismissal claims are notoriously difficult for employees to win.

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The steps leading to a constructive dismissal claim are: The employer commits a 'repudiatory breach' of the contract of employment. The employee resigns in response to this breach. The resignation may be

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with or without notice, but it is usually expected that the employee would resign without notice if they claim their contract has been breached in such a serious way that they cannot reasonably be expected to continue working.

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dismissal is also
termed as
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dismissal. This is when an employee resigns due to a working position becoming untenable. This could be because of the actions or inactions of their employer. While it will result in the resignation of an employee, it is a form of 'unfair dismissal' in the eyes of the law.

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Constructive Dismissal: How to calculate your compensation ...

There are four key elements to a constructive dismissal. An employee can sue their employer and claim constructive dismissal where the employee is forced to

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resign because the employer has committed a serious breach of the employment contract. The employer's breach must be an effective cause of the employee's resignation.

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Dismissal Claims and
How to Win ...

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If an employee feels they have no choice but to resign because of something their employer has done, they might be able to claim for 'constructive dismissal'. The legal term is 'constructive unfair dismissal'.

What constructive dismissal is. An employee can make a constructive dismissal

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Claim if they resign because they think their employer has seriously breached their employment contract. Examples could include:
regularly not being paid the agreed amount without a good reason

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Constructive dismissal is when you're forced to leave your job against your will because of your employer's conduct. The reasons you leave your job must be serious, for...

Dismissal: your rights:

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The basics are that constructive dismissal may be defined as “a situation in the workplace, which has been created by the employer, and which renders the continuation of the employment relationship

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intolerable for the employee - to such an extent that the employee as no other option available but to resign.”

Constructive Dismissal | Labour Guide

Constructive dismissal occurs when an employer's unlawful behaviour

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forces an employee to resign from their position. An employee must have at least two years' service with a company in order to file a claim for constructive dismissal.

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Constructive dismissal was set out in Pretoria Society for the Care of the Retarded v Loots (1997) 18 ILJ 981 (LAC) as follows: Where an employee resigns or terminates the contract as a result of constructive dismissal such employee is, in fact, indicating that the situation has become

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so unbearable that the employee cannot fulfil what is the employee's most important function, namely to work.

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treatment towards the
employee and how
that breach leaves an
employee with no
choice but to resign.
Unfair dismissal
occurs when an
employer: Dismisses
an employee for a
reason that does not
fall within the scope of
one of the five
potentially fair

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2018: Labour Law and Employment Manual | Labour Guide

The essence of
constructive dismissal
is that, in terms of

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s186(1)(e) of the Labour Relations Act, No 66 of 1995 (LRA), an employee who resigns as a result of their employer having made their continued employment intolerable is said to have been unfairly dismissed. Section 193(2)(1) of the LRA instructs Commissioners to

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reinstatement of an employee who has been unfairly dismissed unless the circumstances surrounding the dismissal are such that a continued employment relationship would be intolerable.

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the dismissal is unfair merely because the employer failed to comply with a fair procedure, but there was a good reason for dismissal The worker can get up to 12 months' wages as compensation for an unfair dismissal (procedural or substantive

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(unfairness).

Compensation for an unfair labour practice claim is limited to 12 months remuneration.

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