



5 tips for use when resigning due to intolerable working conditions

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Constructive dismissal is a claim for unfair dismissal that is triggered by an employee resigning in response to misconduct on the part of an employer that has made the employee's working conditions so intolerable that he is compelled to leave.

Note that the misconduct on the part of the employer must amount to a fundamental breach of the contractual terms of employment. This may include the making of unilateral changes by an employer to a fundamental term of the employee's contractual terms without consultation. Fundamental terms include those touching on remuneration, working hours and working conditions. In addition, for the employee to succeed in pursuing a claim for constructive dismissal the resignation by the employee on account of the breach must occur within a reasonable time so that it does not appear that the employee condoned the employer's misconduct.

Where an employee considers making a claim for constructive dismissal the following five tips should guide his writing of a resignation letter:-

1. The letter should clearly state the reasons for the resignation and where possible make reference to previous correspondence exchanged highlighting the chain of events and detailing the misconduct by the employer that constitutes a fundamental breach of his contractual terms of employment.
2. When assessing the conduct of the employer for mention in the letter the employee must bear in mind that the misconduct need not be coercive, threatening or in the nature of duress. It may simply be a case where an employer creates an intolerable working environment that constitutes a breach of the contract of employment through sheer professional incompetence.
3. The employee should not include in his letter positive comments that appear to thank the employer or allude to having enjoyed working for the employer. This is because such sentiments may be considered inconsistent with the claim that the employee resigned on account of an intolerable working environment.
4. Resignation should be within a reasonable time from the occurrence of the misconduct that is complained of. Where there has been a delay in resigning there should be clear reasons for it so that it is not taken to be an affirmation or a condoning of the employer's breach.
5. The employee should clearly outline the effect that the employers action or lack of it has had on the employees working life so as to make the employee feel that he had no choice but to resign.