

# Constructive Termination Claims: What Are They and What Can You Do to Avoid Them?

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You receive in the mail a letter from a former employee who threatens to sue you for terminating his employment. You call your attorney, and explain that the employee wasn't fired, but voluntarily resigned. You ask the obvious question: "How can he sue the company for wrongful termination when he quit?" Your attorney explains that, under certain circumstances, employees who resign can later sue for wrongful termination.

Like Alice falling down the rabbit hole, you suddenly feel like you are in a strange world where the rules have changed, and in which an employee can claim to have been wrongfully terminated after resigning. And, although it may seem strange, most states, including California, recognize a legal concept called "constructive termination." Under the constructive termination principle, an employee quits because the working conditions have become so intolerable that he can no longer work for the company. Even though the employee voluntarily quit, the employee really had no reasonable alternative given the intolerable working conditions.

But, not every worker who quits because he feels that his employer did something wrong can successfully assert a constructive termination claim. In fact, when an employee voluntarily resigns, it is usually difficult to show that the employer constructively terminated the employee's employment. Below, we explore California law relating to constructive termination claims.

## Was It A Voluntary Resignation Or A Constructive Termination?

While many employers prefer that an employee's employment relationship be terminated voluntarily to limit potential liability, the doctrine of constructive termination prevents an employer from intentionally engaging in improper or unlawful conduct to cause the employee to quit. The California Supreme Court explained that a constructive termination occurs when "the employer's conduct effectively forces an employee to resign." In other words, the employee's resignation is overlooked for legal purposes because the employment relationship was in effect terminated involuntarily by the employer's conduct. In this situation, the resignation is treated as a firing. If the employer's actions constitute unlawful conduct or a breach of contract, the employee may have a claim for wrongful constructive termination.

But, an employee may not simply quit and claim that he was constructively terminated. California requires that an employee show that (1) his working environment was so unusually adverse that a reasonable employee in his position would have felt compelled to resign and (2) the employer either intended to force such resignation or had actual knowledge of the intolerable working conditions. As one California court explained, an employee claiming to have been constructively terminated must show that "the conditions giving rise to the resignation were sufficiently extraordinary and egregious to overcome the normal motivation of a competent, diligent, and reasonable employee to remain

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on the job to earn a livelihood and to serve his or her employer.”

Generally, a continuous pattern of extraordinary and egregious conduct is required before an employee’s resignation will be considered as a constructive termination. Thus, a single negative performance evaluation or other isolated acts do not typically establish intolerable or unusually adverse working conditions. In severe situations, however, a single act, such as a crime of violence by the employer against an employee or the employer’s requirement that an employee commit a crime, may be enough to constitute unusually adverse conditions.

In addition, it is not enough for the aggrieved employee to subjectively believe that his working conditions are intolerable. Instead, courts look at whether a reasonable person would find the workplace conditions to be unusually adverse. Therefore, if a reasonable person working in the employee’s position would not find the conditions intolerable, the employee’s resignation will be treated as a voluntary resignation by the employee, and not a constructive termination, even if the employee believes that he can no longer work under the conditions imposed by the employer.

### What If The Employer Does Not Know About The Intolerable Working Conditions?

In California, the constructive termination theory only applies when an employer coerces the employee to quit. Hence, in order to show that the employer forced the employee to resign, an employee must show that the employer either intended to create or maintain intolerable working conditions or that the employer had knowledge of such conditions. Even if an employer should have known about the intolerable conditions, but did not, a constructive termination would not occur.

This rule seems fair enough. An employer should not be punished for constructively terminating an employee if it did not know that the employee considered the working environment to be intolerable or unusually adverse. In addition, it would be unfair if an employee was permitted to keep secret the conditions that he found intolerable, only to later sue the employer for these same conditions.

Therefore, employees typically must notify management or someone else in a position of authority of the conditions so that the employer has an opportunity to attempt to remedy the situation. If the employee does not inform the employer, and the employer has not learned of the intolerable working conditions from another source, the employee will not be able to maintain a constructive termination claim.

### A Constructive Termination Itself Is Not Unlawful.

In California, employees are presumed to be employed on an at-will basis, which means that the employee can be terminated at any time, with or without cause. In addition, the law does not require that an employer be nice to an employee or treat the employee fairly, so long as the employer is not acting in a discriminatory manner. Similarly, the law does not require that an employer provide a stress-free working environment. Hence, a constructive termination claim cannot be based on the intolerable conditions alone because it is not unlawful in itself for an

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employer to terminate an employee.

An employee must also show that the termination was wrongful, which generally means that the intolerable working conditions resulted from improper or unlawful conduct or in breach of an employment agreement. The majority of constructive termination claims are based on an alleged violation of a statute or public policy. For example, an employee may decide to assert a constructive termination claim if he quit after being subjected to harassment or discrimination, which violate state and federal anti-discrimination laws. Similarly, an employee may decide to assert a constructive termination claim if he was asked to engage in unlawful conduct, such as defrauding the government.

Absent some improper or unlawful conduct or breach of an employment agreement, courts generally will not allow employees to pursue constructive wrongful termination claims.

### What Can Employers Do To Avoid Falling Down The Rabbit Hole?

There are numerous steps employers can take to minimize their exposure to constructive termination claims. Below are a few of those steps:

**Implement Anti-Harassment And Anti-Discrimination Policies.** As discussed above, a significant number of lawsuits asserting constructive termination claims arise out of harassment and discrimination in the workplace. Advising employees of the steps that they may take to report harassment and discrimination allows an employer the opportunity to investigate, and remedy, any alleged harassment or discrimination.

**Implement An Open Door Policy.** An open door policy encourages employers to report workplace conduct that they believe is inappropriate. Often, employers can avoid constructive termination claims by simply allowing employees to air their grievances. In fact, some employees are satisfied just to “get it off their chest.” By adopting an open door policy, employers can address, and remedy, workplace concerns before they become lawsuits. In addition, if an employee fails to utilize an employer’s open door policy, it can be strong evidence in a subsequent lawsuit that the employer was not on notice of the employee’s belief that he was the victim of intolerable working conditions.

**Promptly Investigate Complaints.** Every workplace gripe does not need to be investigated. If an employee raises a complaint, however, the employer should generally take it seriously. Not only does this allow the employer the opportunity to ensure that it is treating employees fairly, but it also allows the employer the opportunity to correct any misconduct in the workplace.

**Address Performance Issues.** Most people have an aversion to confronting others. As a result, many managers and supervisors choose not to address disciplinary issues with employees, instead believing that treating the employee poorly will force him to leave. This belief is often true—the employee ultimately quits. But, thereafter, the disgruntled employee often sues, claiming that his performance was exemplary and he was never told that he had any performance issues. Disciplining and counseling employees often goes a long way in preventing, and defending against, constructive termination claims.

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**Conduct Exit Interviews.** Exit interviews are a simple, and often effective way, to limit constructive termination claims. As noted above, an employer must be on notice of the intolerable working conditions. An employee's failure to notify the employer of the allegedly intolerable working conditions as a reason for resignation is helpful in the event the employee later claims that his employment was constructively terminated.

**Obtain A Release.** Employers frequently know when a disgruntled employee will later claim to have been constructively terminated. And, even if the employer has not engaged in any misconduct, it frequently finds it easier to buy peace of mind by offering the employee severance in exchange for the employee's signing an agreement releasing any claims, including claims for constructive wrongful termination. Providing severance is not recommended in every circumstance, and employers must be careful not to create an expectation that under-performing or complaining employees will receive a severance. But, in appropriate circumstances, providing a severance is a good idea to avoid the much more costly and time consuming process of defending a lawsuit.

Ultimately, there is no sure-fire way to prevent a disgruntled former employee who quit from claiming that he was constructively terminated. However, by adopting the above steps and treating employees fairly, employers can minimize their exposure to such claims.

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