

When Is An Employee Who Quits Entitled To Lost Wages? By Karen Sutherland

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Many employers believe that an employee who voluntarily quits cannot sue for wrongful discharge. However, an employee who feels forced to quit because of intolerable working conditions may be entitled to damages under a "constructive discharge" theory.

Constructive Discharge

A recent court decision held that a *constructive discharge* occurs when an employer deliberately makes an employee's working conditions intolerable, thereby "forcing" the employee to resign. The employer must deliberately create the intolerable condition. However, the employer's mental state as to the resulting consequence on the employee is irrelevant. In other words, the employer does not have to want the employee to quit. Work conditions are intolerable when they are so difficult or unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign.

The court held that work conditions were not intolerable for a public school principal who was reassigned to an administrative position working with at-risk students. The pay was the same, but the new position had less prestige and required her to work in a smaller office with fewer amenities and staff.

The court recognized that the plaintiff suffered "some degree of frustration," but that the frustration did not rise to a level of being so difficult or unpleasant that a reasonable person in her shoes would have felt compelled to resign.

Conclusion: An employer cannot escape liability for wrongful discharge simply because an employee resigns instead of being fired.

Constructive discharge cases are hard to prove, but can be costly to employers because courts generally will not dismiss them without a trial. *Sneed v. Bama*, 80 Wn. App. 843 (1996).

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