

# UNDERSTANDING CONSTRUCTIVE DISCHARGE: SOME CASES

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## CASE DESCRIPTION

*The primary subject matter of this case is the employment concept known as constructive discharge. Secondary issues include employment discrimination, and mixed-motive cases. This case has a difficulty level of three, intended for an upper division, undergraduate course. This case is designed to be taught in one class hour, and is expected to require two to three hours of outside preparation by students.*

## CASE SYNOPSIS

*Federal law protects employees from many types of discrimination. Discrimination may include wrongful termination of an employee. However, what many do not know is that a company may still be guilty of wrongful termination, even if the employee quits, rather than being fired. The following case describes the concept of constructive discharge, explains the characteristics of a "constructive discharge" and then presents some scenarios, in which students are required to determine whether constructive discharge took place.*

## INTRODUCTION

Many types of employment discrimination are prohibited by federal laws, including Title VII of the Civil Rights Acts of 1964 and 1991, The Age Discrimination in Employment Act, The Americans with Disabilities Act, the Rehabilitation Act, and the Equal Pay Act (Federal, 2007). Many states and localities have additional laws, which expand these protections, such as New Jersey's Law Against Discrimination (About the NJ, 2006). These laws protect against disparate treatment, adverse impact, and many other types of unfair conduct. However, what many people do not realize is that these laws even extend protection to employees who voluntarily leave their job, if certain conditions are met. This situation is known as a constructive discharge.

## CONSTRUCTIVE DISCHARGE

Black's Law Dictionary defines a constructive discharge as "a termination of employment brought about by making the employee's working conditions so intolerable that the employee feels compelled to leave." However, this does not mean that every unhappy worker can quit their job, and claim constructive discharge. In order to be a constructive discharge, several criteria must be met. According to Niznik (2007), for someone to successfully claim that they were constructively discharged, there must have been some recent and substantial change to the individual's job or working conditions. Furthermore, these changes must be "so extraordinary and intolerable that they would compel any reasonable employee to quit, under the same circumstances. Additionally, the changes must have been intentionally made, even though it could be reasonably expected that the change would lead to the employee quitting. These changes must also be tied to some other sort of legal violation, such as race or gender discrimination, or the attempt to restrict an employee from exerting their legal rights. Finally, the employer must have no justifiable reason for the change. In short, they have made work unbearable, for the purpose of forcing you to quit. They also must have

done it because of some legal restriction which kept them from just firing the employee. This could include an employment contract, anti-discrimination laws, labor laws, or any other restriction to employment-at-will.

Normal changes in a business environment would not meet these criteria. For example, a business requiring that their professional employees make their own copies, because the business could no longer afford a secretary, may annoy the employee, but would not be intolerable enough to meet the standard here. It also would have a business justification. Similarly, being moved to a less desirable office, while annoying, would not constitute “intolerable”. In contrast, requiring an employee to tolerate sexual harassment, would clearly meet the requirements of this doctrine.

Please read and consider the following cases. In each case, an employee voluntarily severed their employment. Read their stories, and then answer the questions that follow.

## CASES

Situation 1 – In March 1998, Mary Suders was hired as a police communications officer by the Pennsylvania State Police. Shortly after she began working, her three supervisors began barraging her with sexual harassment. One would make comments regarding sex with animals, and would repeatedly bring up the topic of oral sex. Another frequently grabbed his genitals in her presence, and similarly, made references to oral sex. The third made comments like “a monkey could do your job”.

During this time, Ms. Suders repeatedly took a computer skills exam, which was the first step required for a promotion. Each time, her supervisors informed her that she failed the test, and would have to try again. In June 1998, she ran across her tests, ungraded, in a drawer in the women’s locker room. This was an unusual spot for tests to be stored, and even more unusual was the fact that they had not been graded. She decided to hold on to the tests, as proof of what was going on. However, her supervisors caught her, arrested her, handcuffed her, and threatened charges of theft against her. Upon her indication that she wanted to quit her job, they released her. (Pennsylvania, 2004)

Situation 2 – In 1986, Bernadine Duffy went to work for Magic Paper Group as a Customer Service Representative. She was promoted to Senior Customer Service Representative in January 1987, and to Assistant Customer Service Manager in July 1989. In 1993, she alleges that she applied for, and was passed over for promotion to Manager of the Order Processing Customer Service Department. Chosen instead was a younger worker. She claims that she later was given the same tasks as the manager was, but without as large an increase in pay. She indicated that she was told that the long hours were too much to expect from someone of her age. Further, she was told that she should look for a different job, more appropriate for someone her age. She indicated that this situation was adversely affecting her health.

She says she was the only supervisor subjected to weekly performance ratings, was left out of management meetings, was dropped from all committee work, and was chastised for not participating in company events. Her overall performance was rated as average or higher, however, her performance as a supervisor was rated below average. In 1996, Ms. Duffy quit. Then she filed suit, alleging constructive discharge, based on age discrimination, as well as alleging unfair treatment due to her weight, violation of the Americans with Disabilities act and the WARN act.

Scenario 3 In July of 1999, an impasse in labor negotiations between Major League Baseball and the Major League Umpires Association led 56 of the umpires to tender their resignations. They were unable to otherwise pressure the owners, because their current contract prohibited strikes or work stoppages. The owners responded to this by hiring 25 replacement umpires, and then informing 22 of the current umpires that their resignations were accepted, and

they no longer had jobs. These 22 umpires then attempted to rescind their resignations, a move that the owners refused to allow. The umpires argued that “by living in fear that they would be locked out or fired at the end of the current collective bargaining agreement without any hint that negotiations for a new labor contract were forthcoming, employment conditions were such that the umpires were forced to take these actions and were, thus, constructively discharged”. (Major League, 1999). They further argued that the acceptance of the resignations constituted a “concerted activity” to hinder the union’s ability to negotiate, and was therefore an unfair labor practice. The owners disagreed, asserting that there was no indication given that the end of the contract, which would occur in December 1999, would lead to a lockout or dismissal.

### **QUESTIONS**

- 1) Was there some sort of illegal discrimination, or similar actionable violation of the law alleged in this case?
- 2) Do you feel the facts in the case support the claim? Why or why not?
- 3) Does this situation meet the criteria of constructive discharge?
- 4) What could have been done to avoid this situation?

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