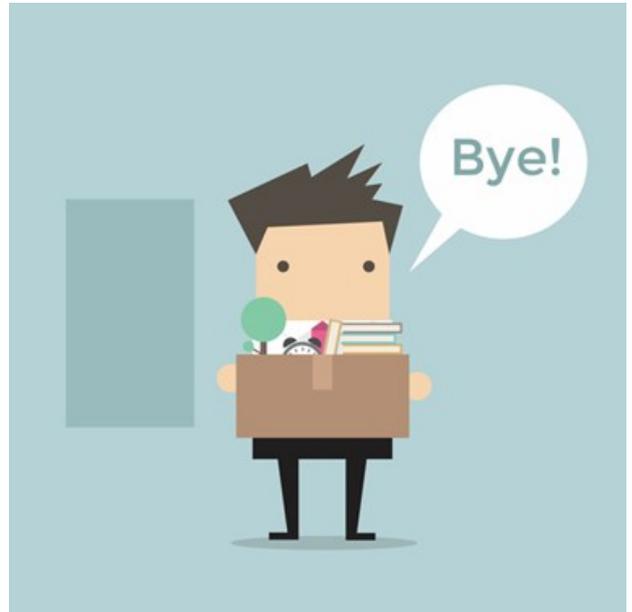




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LawTalk Blog



## Feel like you're being forced into resigning?

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Sometimes people resign from their employment because they feel that they have no other option. The clearest example of this is a situation where an employer says "resign or I'll sack you".

However, the situation can also arise in circumstances which are less clear cut. For example, the worker might be being sexually harassed at work and, because the employer has failed to do anything about the sexual harassment, the worker feels that they have no option but to resign.

In these circumstances, the worker who has been forced to resign may be able to make an unfair dismissal claim against their employer.

*"... if a worker feels compelled to resign from employment because of the employer's behaviour, it is possible to argue that this is in fact a dismissal."*

The *Fair Work Act* says that a person can bring an unfair dismissal claim if they have been dismissed from their employment. The Act goes on to explain that a person who has been dismissed if:

- The person's employment with his or her employer was terminated on the employer's initiative; or
- The person resigned from his or her employment but was forced to do so because of conduct, or a course of conduct engaged in by his or her employer.

Therefore if a worker feels compelled to resign from employment because of the employer's behaviour, it is possible to argue that this is in fact a dismissal. This is known as a "constructive dismissal".

However, in order to establish a constructive dismissal, a worker cannot simply resign and then later say that it was due to the employer's failure to take action about a certain situation. In order to argue constructive dismissal, the worker must make the employer aware of the conduct in question which is causing them difficulty. For example, if someone is being sexually harassed and feels that they have no choice but to resign from their employment, they will not be able to establish that their resignation is a "constructive dismissal" unless they prove that they have advised the employer of the sexual harassment, and the employer has failed to take any action to address the issue appropriately.

If you are in a situation where you feel you have no option but to resign, we would strongly recommend that you seek legal advice before you do so. If your situation is such that you absolutely have to remove yourself from the workplace, we would recommend that you see your doctor, get a medical certificate and take personal/sick leave for a few days in order to give yourself time to seek and secure legal advice.

If you resign without seeking legal advice, you may lose the opportunity to allege a constructive dismissal and claim compensation. If you require any assistance in relation to your employment, or dismissal or resignation, please contact Andersons' specialist industrial lawyers for legal advice.

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