

CONSTRUCTIVE DISMISSAL IN NIGERIA AND EMPLOYERS' BEST PRACTICES FOR GRIEVANCE RESOLUTION

Labour and Employment Insight

August 2025

August 2025



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1. Introduction

Often, employers sever an employment relationship by dismissing their employee for various reasons. Considering the severity of dismissal and its legal implications, one would think that dismissal must be express and unequivocal; however, experience has shown that an employer does not need to expressly dismiss an employee for there to be a dismissal. This concept is known as constructive dismissal. The scope of this concept is likely to expand as employees continue to challenge their exits.

In light of the above, this article provides a concise yet nuanced understanding of constructive dismissal, including the acts that may give rise to such a claim. However, it is not concerned with the standard required to prove a constructive dismissal claim, as it falls outside its scope. Instructively, the article will also highlight practices to help employers minimise the risks of adverse claims based on constructive dismissal.

2. Understanding Constructive Dismissal

Constructive dismissal, also known as constructive discharge or constructive termination,¹ occurs when an employer provokes an employee to resign, either by creating a hostile work environment or by unilaterally changing the nature of employment, the place of employment, or important terms of the employment contract.² Unlike in dismissal, where generally the employer severs the employment relationship.³ In constructive dismissal, though it is the employee who severs the employment relationship, often by resigning, the severance is attributed to the employer.

It is essential to note that in constructive dismissal, the employer's action must be of such a nature that it creates a level of frustration, leaving the employee with no other choice but to resign.⁴ The employer must have

1 Oluwaseyi James, "Coercions: Reflections on Constructive dismissal in Nigerian Labour law practice" (August, 2021) ≤ [Coercions: Reflections On Constructive Dismissal In Nigerian Labour Practice - Employee Benefits & Compensation - Nigeria](#) > accessed May 27, 2025.

2 *Ebere Ukoji v Standard Alliance Life Assurance Co Ltd* [2014] 47 NLLR (Pt.154) 531.

3 *Jumbo v P.E.F.M.B.* [2005] 14 NWLR (Pt. 945) 443, 467 A (the court's definition of 'termination' or 'dismissal' indicates that it is the employer that dismisses or the employee or terminates the employment relationship).

4 Emeka Chianu, *Employment Law* (Revised ED, Bemicov Publishers (Nigeria) Ltd 2006) 315.

created an intolerable work condition that the employee's resignation became involuntary—that is, the employee would not have resigned if not for the employer's actions.⁵ From the above, it means that there must be a direct link between the employer's actions towards the employee and the employee's decision to resign.

3. What Acts Amount to Constructive Dismissal

As noted in the preceding section, a key factor in constructive dismissal is the act attributable to the employer that leads the employee to resign from the employment. However, it is essential to note that the event that led to the employee's resignation could be a one-off, serious incident or a series of incidents.⁶ Although what constitutes an intolerable work condition—that is, the event that leads to an employee's resignation—is a question of fact that will depend on the peculiarities of each case, it is essential to identify specific acts which have been considered to constitute constructive dismissal.

Unilateral Change in Terms of Employment

Generally, employment relationships are governed by an employment contract, usually contained in the employment letter.⁷ The employment contract stipulates the terms of employment, which include, but are not limited to, salary and other emoluments, as well as financial entitlements. Considering that the terms of employment constitute an agreement between the employer and the employees, it suggests that it should not be varied unilaterally, especially where such a change is detrimental to the employee's interest. It therefore follows that, where an employer abruptly reduces the employee's salary unilaterally, and such an incident induces the employee to resign, it may be viewed that the employer had constructively dismissed the employee.⁸

5 Jo'mario Saxum Giovanni v Union Bank of Nigeria Plc SUIT NO: NICN/LA/317/2021, unreported judgement delivered by Honourable Justice M. N. Esowe on February 6th, 2025 (the court further noted that what constitutes an intolerable work condition is a question of fact).

6 Ebere Ukoji v Standard Alliance Life Assurance Co Ltd (n7).

7 Skye Bank v Adegun [2024] 15 NWLR (Pt. 1960) 1, 42 G-H.

8 Mrs. Ashiru Bolanle Kudirat v Lagos State University of Education & Ors Suit No: NICN/LA/388/2019, unreported judgement delivered by Honourable Justice M. N. Esowe on January 22nd, 2025.

Forced Resignation

Both the employer and the employee have the right to terminate an employment relationship, provided that it is done in accordance with the employment contract. In the case of an employee, an employment relationship is severed or terminated once the resignation letter is tendered. This suggests that the resignation must be voluntary. However, if the resignation was not voluntary, in that the employee was forced by the employer to resign, then it could be deemed a forced or compulsory resignation. Considering this, forcing an employee to resign can be considered constructive dismissal.⁹

Toxic Work Environment

Employers have a duty to provide a safe working environment for employees.¹⁰ This obligation on the employer extends beyond physical safety and includes protection from anything that might adversely affect the overall well-being of the employee. Employers are required to protect their employees from issues of harassment, bullying, and discrimination.¹¹ In light of this, subjecting an employee to a toxic work environment, arising from constant maltreatment from superiors, which eventually led to resignation, was considered to constitute constructive dismissal.¹²

Indefinite suspension

Generally, suspending an employee is a disciplinary action that an employer can take.¹³ And a suspended employee is entitled to pay, except that it is otherwise expressly stipulated in the employment contract or any other document governing the employment relationship.¹⁴ However, extreme care should be taken as regards indefinite suspension. This is because if an employee is suspended indefinitely, especially if it is done improperly, which eventually leads to the termination of the employment relationship, it may be considered constructive dismissal.¹⁵



9 CBN v Abiro [2018] 4 NWLR (Pt. 1608) 130, 174, D-E; Patrick Obiora Modilim v United Bank of Africa Plc Suit No. NICN/LA/353/2012, unreported judgement delivered by Honourable Justice B. B. Kanyip on June 19, 2014.

10 Etco Nig. Ltd v Eme [2019] 7 NWLR (Pt. 1671) 300, 311 B-C; Factories Act, CAP F1, Laws of the Federation 2004.

11 Ejieke Maduka v Microsoft Nigerian Limited & Ors [2014] 41 NLLR (Pt. 125) 57 (the court held that it was the 1st and 2nd defendants' duty to protect the claimant from discriminatory and degrading treatment).

12 Subjecting an employee to a toxic work environment was considered as constructive dismissal in Charlene C. Makai v Nigerian Christian Pilgrim Commission (n5).

13 Emeka Chianu, Employment Law (n9).

14 Ernest v First Consultant Medical Centre Ltd [2023] LPELR-60228 (CA)1, 21; Sagamu Microfinance Bank Plc v Lawal [2022] LPELR-58767 (CA) 1, 41-42 D-A.

15 Ilodibia v Nigerian Cement Co Ltd [1997] LPELR-1494 (SC) 1, 18-20. Here, the Supreme Court agreed with the finding of the trial court that the indefinite suspension of the appellant amounted to constructive dismissal.

4. Employer Best Practices for Grievance Resolution

The preceding section of this article highlighted instances that could lead to a constructive dismissal claim, and the discussion showed that such claims often arise from the actions or inactions of the employer, especially when the employee feels aggrieved and the grievance remains unresolved. In view of this, it has become pertinent for employers to put in place appropriate structures to minimise the risk of constructive dismissal claims by implementing best practices that ensure that employee grievances, when they arise, are adequately addressed.¹⁶ This section outlines the core aspects of best practices that employers can adopt to ensure that grievances are adequately resolved, with a focus on confidentiality, transparency, and independence.¹⁷

A. Confidentiality

The process of addressing grievances must be conducted with maximum confidentiality to protect employees' rights, which will help maintain workplace integrity. If confidentiality is lacking, it will erode employees' trust, impeding their ability to express a grievance. When employees are confident that their complaints will be handled privately and sensitively, they are more likely to report issues early, rather than letting them fester to a point where resignation is not only considered but eventually taken, which ultimately leads to constructive dismissal.¹⁸

Best Practices for Confidentiality:

Ensure Secure Channels: Employers should establish confidential channels through which employees can report grievances without fear of retaliation. One common method is the use of suggestion boxes, positioned in inconspicuous parts of the office, where employees can anonymously submit complaints or concerns. Alternatively, a confidential email system, HR hotline, or conduct workplace risk assessments at regular intervals.

¹⁶ Summit law LP, "Constructive dismissal; The Ultimate Employer and Employee Guide" (Summit law LP) <<https://www.summitlawllp.co.uk/constructive-dismissal-guide/>> accessed 19th April, 2025.

¹⁷ ibid

¹⁸ Tanner Pierce, "Employee Grievance" (Eddy, 2025) <<https://eddy.com/hr-encyclopedia/employee-grievance>> accessed 22nd April 2025.

Limit Information Sharing: The investigation must be strictly confidential when a grievance is raised, especially one attributable to the employer. The complainant's identity, the nature of the grievance, and the outcome should only be disclosed to individuals directly involved in investigating or resolving the issue. Limiting information sharing in this way prevents potential leaks, protects the employee's reputation, and minimizes the risk of unnecessary distress for those involved.¹⁹

B. Transparency

Transparency in the grievance process ensures that employees understand the steps involved and the criteria for arriving at a decision. It allows employees to have clear expectations of how their concerns will be addressed, which helps to build trust in the employer's commitment to fairness. In addition, transparency helps avoid any perception that the employer is withholding important information or acting in bad faith, which could lead to constructive dismissal claims.²⁰

Best Practices for Transparency:

Clear Policies: Employers should clearly communicate the steps involved in the grievance process. This will help employees understand how their complaint will be handled, what timelines to expect, and how they will be informed of the outcome. This may include a written grievance procedure that is made accessible to all employees.²¹

Provide Regular Updates: Employees should be kept informed throughout the investigation and resolution process. Regular updates ensure that employees are kept in the loop to prevent frustration or feelings of being unfairly treated.²²

Clear Outcome Communication: Once the grievance has been resolved, the employee should receive a clear explanation of the outcome and any actions that will be taken. If the grievance is upheld, the employer should explain the corrective measures; if it is not, the reasons for the decision should be communicated transparently.²³

19 Joe Beeston, "Lifecycle of a Business- Employee Grievances" (Forsters, 29th August 2024) ≤ <https://www.forsters.co.uk/news-and-views/the-lifecycle-of-a-business-employee-grievances> accessed 22nd April, 2025.

20 Tanner pierce, "Employee Grievance" (n23).

21 Anne Morris, "Constructive dismissal for employers" (Davidson Morris, 12th February 2025) ≤ https://www.davidsonmorris.com/constructive-dismissal/#elementor-toc_heading-anchor-4 accessed 22nd April 2025.

22 Ibid.

23 Simon Gilmour, "Employer's guide: handling employee grievance in employment law" (Harper James, 13th June 2022) ≤ <https://harperjames.co.uk/article/an-employers-guide-to-handling-employees-grievances-in-employment-law/> accessed 22nd April, 2025.

C. Independence

Ensuring independence in the grievance process is crucial to achieving a fair and just resolution. The grievance process should be free from any bias, conflicts of interest, or undue influence from those involved. Independence ensures that decisions are made based on the merits of the case. At the core of an independent grievance process is the principle of a fair hearing, which is based on two pillars: 'let the other side be heard' and 'no one should be a judge in their own cause'.²⁴

By the first pillar, 'let the other side be heard', each party involved—that is, the employee and the party against whom a complaint is made—must have the opportunity to present their respective case. This ensures that decisions are based on all available information and that employees do not feel excluded from the process.²⁵ The second pillar, 'no one should be a judge in their own cause,' ensures that individuals directly involved in the dispute cannot participate in decision-making during the grievance process. This prevents conflicts of interest and ensures impartiality.²⁶

Best Practices for Independence:

Neutral Investigation Team: Ensure that the team or individual responsible for investigating the grievance is impartial and has no conflict of interest. This could involve appointing external mediators or Human Resources professionals (HR) with no personal involvement in the dispute.²⁷

Separation of Investigation and Decision-Making: The person or team conducting the investigation into the grievance should be distinct from the one making the final decision. There should be two separate persons or teams for the different roles. This promotes independence as the decision maker is not influenced by anything that may have happened during the investigation.

²⁴ This is often reflected in the Latin maxim *audi alterem partem* and *nemo iudex in causa sua*. See *Sifax (Nig.) Ltd v Pheonix Capital Ltd* [2025] 5 NWLR (Pt. 1984) 199, 233 E.

²⁵ Sewell & Kettle law Dictionary, "Audi Alterem Partem" <<https://sklaw.au/dictionary/audi-alteram-partem>> accessed 22nd April 2025.

²⁶ Surbhi Jindal and Anunay Pandey, "Audi Alteram Partem and Nemo Judex In Causa Sua: The Two Pillars of Natural Justice"(Manupatra articles, 2023) <<https://articles.manupatra.com/article-details/Audi-Alteram-Partem-and-Nemo-Judex-In-Causa-Sua-The-Two-Pillars-of-Natural-Justice>> accessed 22nd April, 2025.

²⁷ Ibid.

Recusal of Involved Parties: If an individual is implicated in the grievance or has a personal connection to the situation, they should recuse themselves from the grievance process to ensure fairness and independence.²⁸ This will boost the victim's confidence and enable them to provide relevant information to an independent panel.

5. Conclusion

Constructive dismissal often occurs when an employer fails to provide a conducive working environment, leaving the employee with no choice but to exit the employment relationship. Considering this, employers can minimise the risk of adverse claims and legal liability in respect of the same by adopting best practices that are founded on confidentiality, transparency, and independence. Ultimately, integrating these practices is not only legally prudent but also a vital step in fostering a positive work environment.

²⁸ Theodora Hand, “Best practices for conducting investigations in employee grievance” (Appleby, 3rd May, 2024) <<https://www.applebyglobal.com/publications/best-practices-for-conducting-investigations-into-employee-grievances/>> accessed 22nd April, 2025.

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