



I feel like they're trying to force me to resign. Is this a constructive dismissal?

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If a worker feels that their employer's conduct is forcing them to resign their employment, there are options for the worker to protect their interests. Being forced to resign is often referred to as a 'constructive dismissal'. Even if you have already resigned, there may still be options to challenge the legality and validity of the termination, most commonly through an [unfair dismissal claim](#).

What might a forced resignation look like?

A worker can feel like their employer is forcing them to resign for a variety of reasons. Some may include [discrimination and/or bullying in the workplace](#), denial or underpayment of wages and other entitlements, mistreatment by management or concerns about safety in the workplace.

Another example of a forced resignation is where the employer directly requests that a worker to resign or else they will be sacked.

All of the above situations will involve an incredibly stressful and uncertain time. It is important to remember however that there are options to consider if you find yourself in a situation like this and for that reason you should seek legal advice.

What can I do?

If you are still in employment, it is a good idea to try and resolve and/or improve the workplace issues before taking the step of resigning.

Depending on the circumstances a worker could:

- utilise internal grievance or complaint procedures (any complaint should be made in writing);
- seek industrial support from their union, worker's advocate or an employment lawyer;
- where relevant, consider [a stop bullying order](#) from the Fair Work Commission; or
- where applicable, make a complaint to a relevant regulator/authority.

It is better to be proactive and know your legal rights before you have actually resigned, as you may have fewer options available once the resignation has occurred.

What is a forced resignation or constructive dismissal?

A forced resignation, also known as 'constructive dismissal' is recognised under the *Fair Work Act* as [a form of unfair dismissal](#), this means that even if you have already been forced to resign your position you may still be able to apply for relief including lodging an unfair dismissal claim.

Whilst an unfair dismissal claim will commonly relate to termination on the employer's initiative, the [Fair Work Act](#) also specifies that a person is considered 'dismissed' if;

'The person has 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.'

However, it can be a difficult argument to prove that you were forced into resignation as opposed to it happening voluntarily.

The test for 'forced' resignation says there needs to be some action on the part of the employer which is either intended to bring the employment to an end or has the probable result of bringing the employment relationship to an end.

The onus is on the worker to prove they had no real choice but to resign because of the employer's conduct, and this can be a very high bar to prove.

This is why it is important to seek advice to know your rights and explore what avenues you might have before a resignation is tendered.

So, Where to from here?

If you have been forced to resign you may be able to lodge an unfair dismissal application with the Fair Work Commission.

Discover more about what constitutes an unfair dismissal and what remedies are available to workers, in our blog ['What is Unfair Dismissal and what are my options?'](#).

But remember! Strict time limits apply

For all unfair dismissal complaint applications, you must lodge your application within **21 days of the dismissal taking effect**.

Further, where you may have been, or are being, forced to resign, you may also have rights through other legal avenues.

If you feel you are being forced to resign due to a workplace injury or you suffer a psychological injury due to the stress of the situation, you may be eligible to lodge a workers' compensation claim.

In Summary

If you feel like you are being forced to resign by your employer or have recently done so, you should seek urgent advice from a [lawyer experienced in employment law](#) to discuss your situation. [You can contact our employment law team for further advice or assistance.](#)

Legal advice and assistance continues during COVID-19

We continue to provide our client services during the coronavirus outbreak.

Most of our teams have now returned to their respective offices with others remaining fully equipped to work remotely, where necessary.

Get help from an employment lawyer

You can contact us by phone or email to arrange your consultation; either face-to-face at one of our offices, by telephone or by videoconference consultation.

Phone: 1800 659 114

Email: general@hallpayne.com.au

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