

Remind bosses about legal risk of 'make workers so miserable they quit' strategy

Some supervisors wrongly assume that employees can't sue if they quit—only if they're fired. That makes some bosses think the best way to get rid of overly litigious employees is to make life so horrible that they quit.

That's not smart.

Employees who find working conditions so intolerable that they have no choice but to quit can still sue. This is called constructive discharge.

Fortunately, courts expect employees to have relatively thick skins. Workplaces will never be perfect and courts don't expect them to be. On the other hand, courts don't want to encourage employers to treat employees badly in the hopes they will quit in frustration rather than wait to be terminated.

Recent case: Laurence Phifer worked as police officer in Rocky Mount, N.C. He recommended a female friend for a position within the police department.

After the woman was hired, Phifer claimed the police chief harassed her and coerced her into a sexual relationship. When Phifer voiced his objections to the alleged harassment, he says the chief began treating him poorly in hopes he'd quit.

Eventually, Phifer did quit and took another job. He sued, alleging he'd been retaliated against. In court, Phifer argued he had been constructively discharged and had no choice but to find another position. As evidence, he said he'd been falsely accused of speeding, denied a requested shift change, reprimanded for entering a house without backup and been told "shut your damn mouth" during a discussion.

The city defended itself by reminding the court that he quit voluntarily.

The court dismissed the case, reasoning that none of those incidents made working conditions so intolerable that he had to quit. (*Phifer v. City of Rocky Mount*, No. 5:08-CV-292, ED NC, 2010)

Final note: The court system is increasingly accepting constructive discharges as the equivalent of a firing, especially if it's a supervisor who appears to be making life a nightmare for the worker.

Sometimes, disgruntled employees may be advised by their lawyers to "set up" their bosses so it looks as though conditions were intolerable. The worker then quits in disgust and files a lawsuit that adds a hostile work environment count to the complaint.

What counts as 'constructive discharge'?

Courts were recently faced with the constructive discharge decision in the following cases. Was the situation so bad that the court said it justified quitting?

☐ **Yes** ☐ **No** 1. A bully boss yelled at the employee and criticized her in front of customers.

☐ **Yes** ☐ **No** 2. A co-worker insulted the employee every day with comments about his national origin.

☐ **Yes** ☐ **No** 3. An employee said he heard racist comments daily.

☐ **Yes** ☐ **No** 4. An employee unfairly received a poor evaluation.

☐ **Yes** ☐ **No** 5. An employee was moved to a different office.

Courts' answers: 1. No. 2. Yes. 3. Yes. 4. No. 5. No.