

# Court: Reasonable fear of economic harm is enough to support constructive discharge claim

Constructive discharge is an odd legal concept: The idea is that, if an employee believes he or she has no choice but to quit—and that a hypothetically reasonable employee would quit, too—then resigning is the legal equivalent of being fired. And that means the now former employee can sue, alleging he was wrongfully terminated.

Employees can't quit and claim constructive discharge just because conditions at work became uncomfortable. But what level of discomfort is required?

For example, can an employee quit because he fears he will soon be fired and lose retirement or other benefits, plus face the prospect of reduced employment opportunities because being fired leaves a blot on one's career? The answer, according to one federal court: yes.

**Recent case:** Aaron worked as a tenured fourth-grade teacher at a Saint Paul public school where he was the only black teacher.

When the Saint Paul Public Schools developed a "racial equity" policy, Aaron came to believe disciplinary disparities adversely affected black students, resulting in them not getting "as much classroom time as possible." Aaron spoke out against the policy at a school board meeting, claiming it was discriminatory and made it hard for him to do his job.

What followed, he claimed, was a school district campaign to punish him. He had a clean record before the school board incident, but soon he found himself facing investigations about how he was handling discipline in his classroom.

Then, when he took sick leave, the school district launched an investigation into his absence despite a doctor's note. He said white teachers weren't investigated for calling off. In addition, students with disciplinary problems were assigned to his classroom without notice, something he claimed didn't happen to white teachers.

After four disciplinary actions, Aaron became fearful that he could be fired at any time.

He began looking for another teaching position to preserve his tenure, retirement benefits and ability to find work without having a termination in his employment history. Soon, he found a job as a teacher at a charter school and quit.

He then sued, alleging constructive discharge, race discrimination and retaliation.

The school system argued that Aaron didn't have a constructive discharge claim because a reasonable employee would not have felt compelled to quit.

But the court disagreed. It said a reasonable employee could have believed that the risk of staying when he believed he could be fired at any moment was simply too great. Fearing potential economic losses from an imminent firing was reasonable under the circumstances.

The court said Aaron's race discrimination and retaliation claims could go forward. (*Benner v. Saint Paul Public Schools*, DC MN, 2017)

**Final note:** Some supervisors think that if they push hard enough, they can convince a worker they want to get rid of to quit. They may not understand that quitting can be the legal equivalent of being fired. That's why HR professionals must be alert for any sudden increase in discipline against an otherwise exemplary employee. Ask what has changed. Be alert to possible retaliatory motives before rubber-stamping discipline.