

ADVICE ON NAVIGATING THE MURKY WATERS OF CONSTRUCTIVE DISMISSAL AND REDUCTIONS IN EMPLOYEE REMUNERATION

Do you want to reduce an employee's pay without being slapped with a constructive dismissal lawsuit? You may be surprised to hear that you have more latitude than you thought.

Bruce Haddock was employed for 16 years by the grocery store chain Thrifty Foods. Haddock was a very good employee until personal issues began to affect his work performance, culminating in his demotion from the position of seafood department manager to a clerk and a reduction in his total compensation by approximately 16%. Unhappy with the change, Haddock left work and sued, arguing that the change in his job and his pay amounted to constructive dismissal.

The legal doctrine of constructive dismissal provides that, if there is a dramatic change to an important term of an employee's job, such as pay, reporting relationships or even the location of work, he or she may be entitled to reject that change, leave work and then sue for severance. Because of this, employers have been very reluctant to make compensation or job-based changes for fear of lawsuits.

In this case, the court found that the change in Haddock's duties and title was significant and that it would also affect his compensation. As such, Haddock was entitled to damages. However, it was a hollow victory for him because the court found that those damages were measured by the difference between what he would have earned as a manager and what he would have earned as a clerk.

Interestingly, the court also offered the following guidelines on the amount of reduction in compensation required to constitute a constructive dismissal:

- A reduction of approximately 9-10% in pay without more does not amount to a constructive dismissal;
- A reduction of approximately 14-17% in pay can amount to a constructive dismissal, but only in conjunction with some other significant unilateral change to an employee's job such as changes to job responsibilities; and
- A reduction of approximately 20-46% in pay will amount to a constructive dismissal.

According to these guidelines it may be possible to reduce an employee's pay by approximately 15% with impunity. However, this much of a reduction should not be combined with any other adverse change.

Whitten & Lublin is a team of legal experts who provide practical advice and advocacy for workplace issues.

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