

## CONSTRUCTIVE DISMISSAL

Constructive dismissal is covered by Section 186(e) of the Labour Relations Act 66 of 1995.

Constructive Dismissal is defined as a dismissal, because although the employee terminated the employment relationship, the employee's resignation is due to the employer making continued employment intolerable. To the extent that the employee cannot be expected to put up with it or endure the employer's treatment.

The word "*intolerable*" involves a breach of contract or some form of coercion or duress.

To ascertain that a constructive dismissal has indeed occurred, it is prudent to follow the test laid out by ***Advocate John Grogan SC, in CWU obo Marele and Glass Centre obo Rubi [1999] 8 CCMA 6.13.15***. Therefore the following questions must be answered in the affirmative:

1. Did the employee intend to bring an end to the employment relationship?
2. Had the working relationship become so unbearable, objectively speaking, that the employee could not fulfill his obligation to work?
3. Was the intolerable situation created by the employer?
4. Was the intolerable situation likely to endure for a period that justifies termination of the relationship by the employee?
5. Was the termination of the employment contract the only reasonable option open to the employee in the circumstances?
6. Was an attempt to resolve the situation made before resignation?