

**4 PJI 23 | MISCELLANEOUS ISSUES - CONSTRUCTIVE DISCHARGE**

In this case, [Plaintiff] claims that [he/she] lost wages and benefits because [Defendant] “constructively discharged” [Plaintiff] from [his/her] job. Put another way, [Plaintiff] claims that [he/she] left [his/her] job because the hostile work environment made [his/her] working conditions intolerable.

[Defendant] denies that [he/she/it] constructively discharged [Plaintiff] and claims that [Plaintiff] voluntarily quit.

To prove constructive discharge, [Plaintiff] must prove that the hostile work environment made [his/her] working conditions so intolerable that a reasonable person in [his/her] position would have felt compelled to resign.

If you find that [Defendant] constructively discharged [Plaintiff], you may award [Plaintiff] lost wages and benefits caused by the constructive discharge. If you find that [Plaintiff] was not constructively discharged, you may not award [Plaintiff] lost wages and benefits due to the loss of employment.

((Rev. 03/2022) | *Judicial Council of the United States Eleventh Judicial Circuit*)

**Annotations and Comments**

A constructive discharge occurs where working conditions are so intolerable that a reasonable person would have felt compelled to resign. Akins v. Fulton County, 420 F.3d 1293, 1302 (11th Cir. 2005). In evaluating constructive discharge claims, the Eleventh Circuit does not consider the plaintiff’s subjective feelings. Instead, it employs an objective standard. Hipp v. Liberty Nat’l Life Ins. Co., 252 F.3d 1208, 1231 (11th Cir. 2001) (per curiam).

For a discussion of when the Ellerth/Faragher affirmative defense may apply in a constructive discharge case, see Pennsylvania State Police v. Suders, 542 U.S. 129, 139-41 (2004).

When this instruction is used, it may be necessary to adapt the verdict form accordingly.

