

Minnesota Supreme Court Does Away with Crucial Notification Requirement for Constructive Discharge

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Until recently, an employee generally could not establish a constructive discharge claim (that they had been forced to resign due to intolerable conditions) without first demonstrating that they informed their employer about intolerable conditions. This requirement was not only a mainstay in Minnesota and the Eighth Circuit, but is common across the country. However, in *Henry v. Independent School District #625*, the Minnesota Supreme Court did away with this notice requirement in disparate-treatment based constructive discharge cases. In doing so, the court injected significant uncertainty into the law of constructive discharge in Minnesota, and removed the critical “notice” element that provided both employees and employers the opportunity to salvage a productive working relationship by fixing whatever condition the employee alleged was intolerable. As a result, employees who resign due to what they reasonably believe are intolerable conditions without first giving their employer a chance to remedy those conditions will not be barred from at least claiming constructive discharge.

While a plaintiff must still prove they suffered (1) objectively intolerable working conditions that were (2) created by the employer with the intention of forcing the employee to quit (that either the employer intended them to quit OR that quitting was “reasonably foreseeable”), the effect of the court’s decision in *Henry* is to widen the path for plaintiffs to establish discrimination or retaliation even if they never suffered an adverse action, such as termination or demotion, that is the employer’s (not the employee’s) decision. Disparate treatment plaintiffs are now entitled to try to show they suffered an adverse action without even complaining of allegedly intolerable conditions before resigning.

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As a result, employers should consider the following actions to limit risk and root out the potential for claims of intolerable working conditions:

- Encourage employees to report workplace concerns via multiple reporting avenues (e.g., a separate human resources department, a hotline).
- Frequently conduct workplace harassment and discrimination trainings.
- Encourage supervisors and leadership to develop professional relationships wherein employees are welcome to and supported in giving feedback about their working conditions.
- Solicit feedback from employees, either during annual performance reviews, or routinely throughout the year. Feedback may reveal employees' perception of their working conditions.

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