

Notice to Employees

ARIZONA CONSTRUCTIVE DISCHARGE NOTICE

23-1502. CONSTRUCTIVE DISCHARGE

- A. In any action under the statutes of this state or under common law, constructive discharge may only be established by either of the following:
1. Evidence of objectively difficult or unpleasant working conditions to the extent that a reasonable employee would feel compelled to resign, if the employer has been given at least fifteen days' notice by the employee that the employee intends to resign because of these conditions and the employer fails to respond to the employee's concerns.
 2. Evidence of outrageous conduct by the employer or a managing agent of the employer, including sexual assault, threats of violence directed at the employee, a continuous pattern of discriminatory harassment by the employer or by a managing agent of the employer or other similar kinds of conduct, if the conduct would cause a reasonable employee to feel compelled to resign.
- B. As a precondition to the right of an employee to bring a constructive discharge claim against an employer pursuant to subsection A, paragraph 1 of this section, the employee shall take each of the following actions before deciding whether to resign:
1. Notify an appropriate representative of the employer, in writing, that a working condition exists that the employee believes is objectively so difficult or unpleasant that the employee feels compelled to resign or intends to resign.
 2. Allow the employer fifteen calendar days to respond in writing to the matters presented in the employee's written communication under paragraph 1 of this subsection.
 3. Read and consider the employer's response to the employee's written communication under paragraph 1 of this subsection.
- C. If an employee reasonably believes that the employee cannot continue to work during the period for the employer to respond to the employee's written communication regarding the conditions allegedly constituting constructive discharge, the employee is entitled to a paid or unpaid leave of up to fifteen calendar days or until the time when the employer has responded in writing to the employee's written communication, whichever occurs first.
- D. Any communications or actions by an employer in response to an employee's communications about the employee's working conditions shall not be deemed an admission by the employer that it has committed any action that gives rise to any claim or cause of action by the employee against the employer.
- E. An employer shall be deemed to have waived the right to notice under subsection A, paragraph 1 if the employer fails to provide written notice to its employees of the requirements of this section as follows:
1. Notice by the employer under this section shall be provided by the posting of a notice, substantially in the form set forth in paragraph 2 of this subsection, in conspicuous places on the employer's premises where notices to employees are customarily posted, by including substantially similar language in an employment handbook or policy manual that is distributed to employees or by including the notice in a written communication that is provided to employees.
 2. A notice that is substantially in the following form satisfies the notice requirements of this section:

NOTICE

An Employee is encouraged to communicate to the employer whenever the employee believes working conditions may become intolerable to the employee and may cause the employee to resign. Under section 23-1502, Arizona Revised Statutes, an employee may be required to notify an appropriate representative of the employer in writing that a working condition exists that the employee believes is intolerable, that will compel the employee to resign or that constitutes a constructive discharge, if the employee wants to preserve the right to bring a claim against the employer alleging that the working condition forced the employee to resign.

Under the law, an employee may be required to wait for fifteen calendar days after providing written notice before the employee may resign if the employee desires to preserve the right to bring a constructive discharge claim against the employer. An employee may be entitled to paid or unpaid leave of absence of up to fifteen calendar days while waiting for the employer to respond to the employee's written communication about the employee's working condition.

- F. Notwithstanding any other requirements of this section, an employee may bring a constructive discharge claim without prior written notice in the event of outrageous conduct by the employer or by a managing agent of the employer including sexual assault, threats of violence directed at the employee, a continuous pattern of discriminatory harassment by the employer or by a managing agent of the employer or other conduct if the conduct would cause a reasonable employee to feel compelled to resign.