

RULE 5 – Claims of Constructive Discharge (A.R.S. §23-1502)

This policy covers all employees in the classified and unclassified service as defined in the Gila County Merit System Rules and Policies Manual without regard to regular, temporary, part-time, probationary or emergency status, although nothing in this policy waives the at will status of an unclassified employee.

- 5.1 As a precondition to the right to bring a constructive discharge claim against Gila County, employees are required to take each of the following actions before deciding whether to resign:
 - A. The employee must notify the Personnel Director, 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.
 - B. Following that, Gila County must be given at least fifteen (15) calendar days to respond in writing to the employee's written communication. Gila County's response is *not* deemed an admission by Gila County that it committed any act that gives rise to any claims or cause of action by the employee.
 - C. Once Gila County has responded, the employee must read and consider the response.
- 5.2 An employee may use available Annual or Compensatory time of up to fifteen (15) calendar days while waiting for the employer to respond to the employee's written communication about the employee's working condition. If no leave is available, an employee may take unpaid leave of up to fifteen (15) days.

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 (15) CALENDAR DAYS WHILE WAITING FOR THE EMPLOYER TO RESPOND TO THE EMPLOYEE'S WRITTEN COMMUNICATION ABOUT THE EMPLOYEE'S WORKING CONDITION.