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## The Resignation Trap: Avoiding Unwanted Consequences When an Employee Resigns



By [Jason Kully](#)

It may be assumed that when an employee says “I quit” or walks into his employer’s office, hands in his keys and says “I’m done” the employer can accept the employee’s resignation and move on with replacing the employee. However, this is not always the case and an employer who jumps to accept a resignation may later be found liable for wrongful dismissal damages. As discussed in this article, resignations must be evaluated on a case by case basis and an employer should review the circumstances of the resignation prior to its acceptance.

### When is a Resignation Valid?

A valid and enforceable resignation by an employee must be clear and unequivocal. To be clear and unequivocal, the resignation must reflect an intention to resign or there must be conduct demonstrating such an intention. Whether words or actions equate to resignation must be viewed contextually, meaning that all of the surrounding circumstances are relevant to determine whether an objective bystander would have understood the employee resigned.

For example, if the employee does not write a resignation letter and instead walks out of a meeting after saying “I can’t deal with this anymore,” this may not be a clear and unequivocal resignation.

If there is a clear intention by an employee to resign – for example if the employee says “I quit!” – this does not end the enquiry as a resignation must also be voluntary. Voluntariness can be undermined if a resignation is made during a spontaneous outburst in charged emotional circumstances.

### What Must an Employer do in a Resignation Situation?

Even if a resignation is clear, unequivocal and obviously voluntary, an employer cannot always accept such resignations at “face value.”

An employer may still have an obligation to provide an employee time to “cool off” and to reconsider the resignation. In circumstances like a discipline meeting where emotions may be running high, or where an

employee is suffering from personal issues, including depression or financial vulnerability, an employer has an obligation to allow the employee time to reconsider their actions and to investigate the circumstances of the resignation. An employer who fails to do so breaches an implied term of good faith and fair dealing and may be liable for a wrongful dismissal.

An example is seen in *Evans v. Avalon Ford Sales (1996) Ltd.*, [2015 CanLII 41499 \(NL SCTD\)](#). The plaintiff, who had been the defendant's manager for approximately 12 years, was reprimanded, with profanity, for erring in filling out forms accompanying the delivery of a vehicle as the error resulted in profit loss and concerns for customer satisfaction. The plaintiff asked if the company wanted him to resign and the company replied that it could simply fire him. Shortly thereafter, the plaintiff dropped off his company property along with a note saying that he was "done." The plaintiff and the defendant met thereafter. The plaintiff's position was that the departure had not been by choice while the defendant's position was that the plaintiff resigned. The plaintiff subsequently sued for constructive dismissal.

The Court found that the employer had breached its duty of good faith and fair dealing by refusing to let the plaintiff explain his situation, or to allow him to take time to reconsider his actions and statements, or to potentially discuss his options for continued employment. The Court characterized the employer's actions and inactions as a form of disregard and found that the plaintiff was dismissed and entitled to 12 months reasonable notice.

### **Takeaways for Employers**

The obligations of an employer will vary depending on the circumstances. Nonetheless, employers should seek to avoid "snapping up" resignations.

In resignation situations, employers should be guided by the following principles:

- Consideration should be given to the surrounding circumstances to determine if the resignation was made while the employee was emotional, angry, or dealing with any other stressor;
- The resignation should be confirmed in writing, which can include by email;
- An employee should be provided a reasonable opportunity to reconsider the resignation prior to it being accepted by the employer and prior to the employer taking further action, such as hiring a replacement worker; and
- It may be prudent to reach out to the employee to confirm they understand the consequences of their resignation.

The lawyers in [Field Law's Labour and Employment Group](#) can assist you and your organization if you have any questions with respect to your obligation when faced with an employee's resignation.

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