

Massachusetts Appeals Court Rejects Whistleblower's Constructive Discharge Claim

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Employees who resign from work, sue their employer, and assert “constructive discharge” shoulder a heavy burden to demonstrate that they had no choice but to resign. A recent decision of the Massachusetts Appeals Court, [Armato v. Town of Stoneham](#), shows just how heavy that burden is.

In *Armato*, the Appeals Court rejected an employee's constructive discharge claim under the public employee whistleblower statute, M.G.L. c. 149, § 185, finding that a reasonable employee would not have felt compelled to resign under the circumstances. Like many decisions siding with the employer on such a claim, the court deemed the alleged retaliatory acts insufficiently severe, pervasive, or related to the alleged protected conduct. Notably, the court also “balanced” the allegedly retaliatory acts against the positive working relationship between the employee and his immediate supervisors, of whom he “thought pretty well” and who “treat[ed] him in a friendly manner” even after he engaged in the protected activity, and determined that such a working environment undermined a constructive discharge claim.

Although *Armato* involved a claim under the public employee whistleblower act, its reasoning applies to any constructive discharge claim under Massachusetts law. Thus, when defending such claims, employers should consider whether the broader context demonstrates that the employee's overall working conditions were tolerable or potentially even favorable. To increase the likelihood that overall working conditions are sufficiently favorable to refute a constructive discharge claim, employers should adopt an effective anti-retaliation program that includes providing anti-retaliation training for managers. Employers should also document decisions affecting an employee's terms and conditions of employment so that they can establish that the employee's work environment does not support a constructive discharge claim.

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