

Employee must show “Intolerable” Working Conditions to Establish Constructive Discharge

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A pregnant employee used nearly all of her annual paid time off during the first three months of the year, leading the employer to advise her that she could have no more absences. When the employee ignored the warning and began a medical leave on the very next workday, the employer told her that the absence “[wasn’t] going to work.” The employee took this as a termination and chose not to return to work. Instead, she sued the employer for constructive discharge under Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978, alleging that the employer had made attendance demands that were impossible for a pregnant woman and did so with the intention of making her quit. The U.S. Court of Appeals for the Eighth Circuit found that while the employee’s work conditions were “unpleasant and unprofessional,” they were not “intolerable,” as required to establish constructive discharge. Further, the employee had failed to establish that the employer intended to make her quit or should have foreseen that she would quit because of its demands. Employers should remember that an employee alleging constructive discharge will have to prove both that work conditions were “intolerable” and that the employer specifically intended to force the employee to quit or should have reasonably foreseen that the employee would quit.

Trierweiler v. Wells Fargo Bank, Case No. 10-1343 (8th Cir. Apr. 8, 2011)

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