

A heat of the moment resignation

As a rule of thumb, an employee who resigns cannot unilaterally withdraw that resignation just because they change their mind. It will normally be the employer's decision, not theirs, as to whether or not they can do this, particularly if unambiguous words such as "I resign" or "I quit" have been used.

However, there may be exceptions to this where a resignation is delivered in the heat of the moment and is then promptly retracted. Employment tribunals have previously held that where there are "special circumstances", apparently unambiguous words should be considered in context and it would be risky for an employer to rely on that resignation without further investigation. "Special circumstances" have been held to include pressures on an employee (for example, provocation or coercion by a manager) as well as the employee's own personality (for example, an immature employee or an employee with stress and/or work-related issues).

If a resignation is given in the heat of the moment and you feel that there may be "special circumstances" that have contributed to the resignation, it is sensible to allow a reasonable period of time to elapse before accepting the purported resignation. The employee may well turn up for work the next day, tail between their legs, in which case serious consideration should be given to allowing them to stay on – potentially against a background of disciplinary proceedings for poor behaviour. If, on the other hand, the person does not return to work, it is advisable to check with them – preferably in writing – whether or not they are sure about their decision and to require the employee to provide a written resignation letter.

What is a reasonable period of time will depend, to a degree, on the facts, but a day or two is likely to be sufficient in most cases. In these limited circumstances, a failure to allow such a cooling off period and the immediate acceptance of the resignation may lead to a tribunal subsequently concluding that an employee has not resigned, but rather has been dismissed by his employer.

"Are they leaving or not?"

Sometimes an employee's true intentions in respect of their continued employment may be unclear. Often tied in with "heat of the moment" conversations, what should an employer do when faced with comments from an employee such as "I've had enough of this job" or "I'm off"?

It may sometimes be tempting to simply accept an ambiguous resignation on the spot – particularly where you may be keen to see the back of the person in question. However, this does leave scope for the employee to argue that they had not meant to resign and that the employer has overreacted. In these circumstances, a tribunal would look at the facts and ask what a reasonable employer would have understood the words to mean in the circumstances. This exercise would involve consideration of events both preceding and following the words or actions in question.

To avoid this risk, seek clarification of the position from the employee by asking them to confirm their resignation in writing. While a resignation need not be in writing to be effective, getting an unambiguously worded resignation letter will make it more difficult for an employee to subsequently argue that he or she had been dismissed.



Heated discussions can happen in even the most harmonious of workplaces, and can sometimes lead to an on-the-spot resignation that the employee may later wish to retract. Luke Bowers looks at the options for employers in these circumstances.

Departure from the company

In the recent case of *Secretary of State for Justice v Hibbert*, the Employment Appeal Tribunal (EAT) considered what the effective date of termination should be where an employee told her employer in writing on 29 June 2012 that she had "no alternative but to resign my position".

Ms Hibbert was off sick, but following receipt of her letter her employer allowed her a five-day cooling off period to reconsider her resignation, which she did not do.

Her employer then accepted her resignation, informing her that she had to give four weeks' notice and that her last working day would be 27 July 2012.

The EAT held that Ms Hibbert's words were unambiguous and had the same meaning as if she had said "I am resigning now". It was irrelevant and had no legal effect that her employer had set her last working day as 27 July and that she was paid up until that date. The EAT held that Ms Hibbert had resigned on 29 June and that was the

effective date of termination and, therefore, she was out of time to bring any constructive unfair dismissal claim.

This case is a helpful one for employers in clarifying the effect of an employee's resignation, but it should be noted that the EAT did take into account that Ms Hibbert had been given a cooling off period and was in receipt of legal advice at the time she issued her resignation. Any acceptance of a resignation letter should clearly set out arrangements for the employee's departure from the business.

Resignation and ongoing disciplinary proceedings

It is established law that if an employee is invited to resign at the same time as being told that they have no future with the employer, this is likely to be regarded as a dismissal by the employer as opposed to a resignation – particularly where heavy-handed or oppressive tactics are used by the employer. In such circumstances, the key question to ask is who was really responsible for terminating the contract of

employment. If, in reality, it is the employer, then the reason for termination of employment will be dismissal.

However, what happens if this situation arises in the context of ongoing disciplinary proceedings? Rather than face a dismissal finding on their record, it is not uncommon for an employee to resign.

To avoid any potential arguments that this could constitute dismissal, employers should be careful not to give any indication that a decision to dismiss has already been taken.

Rather, employers should set out the alternative to resignation as being the completion of the disciplinary proceedings from which one potential outcome could be the dismissal of the employee.

Resignation of challenging employees

Imagine a difficult and troublesome employee who is a constant drain on management and HR time. Out of the blue, their resignation letter lands on your desk. Eyes wide with disbelief, you reach for the P45 – should anything hold you back?

In most cases, no.

However, keep the champagne on ice for a few minutes longer and review the situation – is the resignation ambiguously worded or are there any warning signs as to why the employee has resigned? Has there been a recent dispute or grievance (particularly in relation to whistleblowing, discrimination or bullying) or changes in your business that might have been a catalyst for the employee resigning?

If the employee's intentions are not clear or there are any warning signs, it will usually make sense to meet with the employee to discuss their decision. You will then be better placed to take the next step – whether that is dealing with any issue that has arisen or confirming your acceptance of their resignation.

The bigger picture

If an employee resigns in any of the circumstances described above, the employer should always assess the position from a commercial as well as a legal perspective. Probing an employee for more detail before accepting a resignation inevitably gives greater scope for the employee to seek to withdraw their resignation, and many employers prefer to take the risk and see what happens.

However, if an employee's intentions are unclear – if there are potential "special circumstances" at play or if there are suggestions of discrimination or whistleblowing in the background – this risk becomes much greater.

Carefully assess both the situation itself and your knowledge of the employee, taking into account the effect on the business if the employee stays and the likelihood of their bringing a claim if they do not, to help decide your course of action.

THE AUTHOR

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For a more in-depth guide to what to do when dealing with a heat-of-the-moment resignation, visit XpertHR:

www.xperthr.co.uk/tasks/resignation/150642