

# Raising minor concerns with employee on sick leave could be constructive dismissal

written by BDBF

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# Raising minor concerns with employee on sick leave could be constructive dismissal

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A company who sent written concerns about their performance to an employee who was off sick with work-related stress was found to have constructively dismissed that employee.

Miss Hodkinson was employed by Private Medicine Intermediaries Ltd as a sales director. From October 2013, she was signed off sick due to work-related stress and anxiety. The fit note sent to the company made some reference to bullying causing the stress; when the company's CEO, Mr Baldwin, wrote to Miss Hodkinson to ask if she wished to raise a grievance on that basis, she replied to say she felt too unwell and upset to communicate properly. Mr Baldwin wrote again to Miss Hodkinson asking her to attend a meeting. In the same letter, he raised 6 concerns about her performance which he wanted to discuss with her.

On 15 November 2015 Miss Hodkinson resigned. She alleged that PMI had breached the relationship of trust and confidence and said she felt the timing and nature of the letter was intended to make her want to leave her job.

The Employment Appeal Tribunal held that Miss Hodkinson had been constructively dismissed. PMI was aware that Miss Hodkinson was very ill and the concerns did not need to be raised at that stage. They were not serious concerns; indeed, some of them had already been dealt with before the letter was sent.

This serves as a reminder to employers to pick their timing and their battles when it comes to raising concerns with vulnerable members of staff. In such situations, concerns should only be brought to the employee's attention if it is necessary to do so, and consideration should also be given to whether the timing is appropriate.

*Private Medicine Intermediaries Ltd and others v Hodkinson*  
*UKEAT/0134/15*

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