

## Is a resignation full and final?

### Employee resignations – when can an employer rely on a resignation and are cooling off periods still recommended? An update.

Resignations are part and parcel of employment, and often occur without an issue. However, an employer can be left in a precarious situation when an employee announces “*I quit*” in the heat of the moment, where it appears the employee may not intend for their words to be taken literally.

The historic position was that a fair and reasonable employer would provide the employee who had resigned “in the heat of the moment” an opportunity to cool off and reconsider, and that this would mitigate the risk of a personal grievance of unjustified (constructive) dismissal.

However, the 2022 cases of *Urban Décor Ltd v Yu*<sup>1</sup> and *Mikes Transport Warehouse Ltd and Modern Transport Engineers Ltd v Vermuelen*<sup>2</sup> suggested that instead a clear resignation was immediately effective, and employees could not simply rely on their employer’s failure to provide them with a cooling off period to support a claim that they had been unjustifiably dismissed.

In the Mikes Transport Warehouse case, Chief Judge Inglis provided the following guiding principles in relation to resignations:

1. Resignation is a unilateral act. It is not open to an employer to assert that the relationship remains on foot and the resignation is of no effect.
2. An employee is not required to justify their decision to resign or for the decision to be well thought through.
3. The key issue is whether, on an objective assessment of the circumstances, the employee resigned.
4. A resignation given in clear and unequivocal terms is more likely to satisfy an objective assessment than words of resignation expressed in an equivocal manner or which are plainly not meant to be taken seriously.
5. If a resignation is effective, it cannot then become a dismissal as the employment relationship ends when the resignation is given by the employee.
6. If there are concerns the resignation arose from misconduct by the employer, this is a separate issue that can be addressed by referring to case law relating to constructive dismissals.

Since 2022, the objective assessment of an employee’s resignation has been applied by the Employment Relations Authority to determine if an employee has resigned. The Employment Authority summarises the current position:

*“The emphasis has moved away from consideration of whether an employer has given a cooling off period to an objective consideration of whether the employee has resigned. The employer can rely on that as a resignation rather than having to go back and ask if they are really sure. However, in some cases a cooling off period may still be required where words are spoken in anger or frustration. An employer is still subject to the duty of good faith which requires the employer to be*

<sup>1</sup> *Urban Décor Ltd v Yu* [2022] NZEmpC 56.

<sup>2</sup> *Mikes Transport Warehouse Ltd and Modern Transport Engineers Ltd v Vermuelen* [2021] NZEmpC 197.

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## Is a resignation full and final? (Continued)

*active and constructive in maintaining the employment relationship.*<sup>3</sup>

Therefore, the key consideration for employers when deciding if a "cooling off" period is necessary is whether the specific words said by the employee when resigning, and the surrounding circumstances in conjunction with those words, was it made in the heat of the moment or was it meant to be taken seriously

Employers need to consider the circumstances and should not assume a "cooling off" period is unnecessary. If a resignation is ambiguous or in the heat of the moment, a reasonable and fair employer should objectively consider the full context of the resignation as providing an opportunity to reconsider (and retract the resignation) in a "cooling off" period may minimise the risk of a constructive dismissal claim.

### Want to know more?

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<sup>3</sup> CSJ v JRL [2023] NZERA 282