

EMPLOYMENT RELATIONSHIP—CONSTRUCTIVE TERMINATION. (DELETE SHEET)

This instruction has been deleted. No North Carolina Appellate decision has held that a tort claim for “hostile work environment” constructive termination is valid in this jurisdiction.¹

¹Only two decisions, *Whitt v. Harris Teeter, Inc.*, 165 N.C. App. 32, 598 S.E.2d 151 (2004) (McCullough, J., dissenting), *reversed for reasons stated in the dissenting opinion*, 359 N.C. 625, 614 S.E.2d 531 (2005) and *Graham v. Hardee’s Food Systems*, 121 N.C. App. 382, 465 S.E.2d 558 (1996), have addressed “a claim in tort for a hostile work environment constructive wrongful discharge[,]” as opposed to a “wrongful discharge claim . . . [based upon] the public policy exception to the at-will-employee doctrine as defined in [*Coman v. Thomas Manufacturing Co.*, 325 N.C. 172, 381 S.E.2d 445 (1989)]. . . .” *See Whitt*, 165 N.C. App. at 45, 598 S.E.2d at 159-60.

Neither decision adopted the “hostile work environment constructive wrongful discharge” claim as valid in North Carolina. *See Graham*, 121 N.C. App. at 385–86, 465 S.E.2d at 560–61 (stating that “North Carolina courts have yet to adopt the employment tort of constructive discharge,” and “[a]ssuming, *arguendo*, we adopt the existence of a cause of action for constructive discharge, the instant record on appeal contains no evidence” to sustain it); *Whitt*, 165 N.C. App. at 45, 598 S.E.2d at 160 (stating that “North Carolina state courts have yet to adopt this type of claim,” and “[a]ssuming, *arguendo*, that North Carolina courts have adopted the claim of constructive discharge,” the court below properly granted the defendant’s directed verdict motion in the case at hand); *Beck v. City of Durham*, 154 N.C. App. 221, 231, 573 S.E.2d 183, 190 (2002) (“Our courts have only recognized the validity of a claim for constructive discharge ‘in the context of interpreting whether constructive termination by [a plaintiff’s] employer triggered the termination payment provision of [an] employment contract.’” (quoting *Doyle v. Asheville Orthopaedic Assocs., P.A.*, 148 N.C. App. 173, 177, 557 S.E.2d 577, 579 (2001))).

Compare *Bristow v. Bailey Press, Inc.*, 770 F.2d 1251, 1255 (4th Cir. 1985), *cert. denied*, 475 U.S. 1082 (1986) in which the Fourth Circuit Court of Appeals recognized constructive discharge as a cause of action. *But see Honor v. Booz-Allen*, 383 F.3d 180, 187 (4th Cir. 2004) (“Because the claim of constructive discharge is so open to abuse by those who leave employment of their own accord, this Circuit has insisted that it be carefully cabined.” (citation omitted)).

