

# I Don't Feel Safe At Work?

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May 24, 2012 | by Andrew Berns

Dear Ask the Attorney:

My vehicle was keyed in the company garage during work hours. Previous retaliation has taken place by drivers to the office personnel. As a result I don't feel safe at work and it's park at your own risk although no other parking is available. My boss now harasses me 'cause I called off the next day after it happened. She bullies me by confrontation in front of others about the time I leave. Can I quit and file unemployment? I'm in fear of my safety and my possessions

CG

***Our guest blogger is once again, Andrew S. Berns, Esq. who is Chair of Einhorn, Barbarito, Frost & Botwinick, PC's commercial litigation practice which includes employment law, small and closely held business representation, personal injury, workers' compensation and construction litigation matters; Mr. Berns is also the Chairman of the New Jersey State Ethics Commission.***

Dear CG:

Although the facts of your case are unique, it is not unusual for an employer to be unwilling to deal with an unsafe work environment, like the parking at your workplace or in some cases, to permit the creation of a hostile working environment, like the treatment you have been receiving from the boss according to your question above.

While each case should be reviewed by an attorney, if we are only going by the facts provided, you would be justified in resigning and seeking unemployment benefits. Generally, the law does not permit you to resign from a position without valid justification and seek unemployment benefits. However, with the facts you have provided, you may be able to quit and claim what is called

“constructive discharge”, alleging that a reasonable person when confronted with the conditions in your workplace would be justified in leaving the employment.

You should be aware that even in the circumstances you describe, once you apply for benefits, the employer is going to be asked in writing to provide the reason for your separation from employment and may say you resigned without good cause. You will be given an opportunity to explain your version of the facts to a deputy for the Division of Unemployment in a telephone fact finding conference and thereafter, the deputy will provide a written determination of your right or not to receive benefits. If the decision does not go your way, there are also rights to appeal the decision which will be set forth in writing in the initial determination.

Keep in mind, the above explanation does not deal with the amount of your prospective benefit or the length of time you may be eligible to collect. These issues are a function of the amount you have previously earned in what is called your “base year” and how many base weeks you have worked in the base year where you have earned above the required minimum. These are different issues which go beyond the scope of your question but are important considerations for someone in your position.

It is very important to understand that the above stated response is predicated upon the specific facts you provided. This response is intended for informational purposes only. You should speak with a competent employment attorney, especially if the process continues to the appeal stage. Good luck.