

newsletter  
**OCTOBER 2017**

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**CASE LAW**



Studio  
**Arlati Ghislandi**

CONSULENZA  
DEL LAVORO E FISCALE

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**Employee with paid leaves as per Law no. 104/92: right to refuse transfer**

*Corte di Cassazione, judgement no. 24015 of October 12, 2017*

Corte di Cassazione, with judgement no. 24015 of October 12, 2017, states that an employee's refusal to be transferred to another workplace is legitimate if said transfer harms the employee's need to assist family members and the employer doesn't prove that the transfer was determined that the transfer was determined due to technical, organizational and production-related needs unable to be otherwise satisfied.

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**Dismissal during illness: consequences to be clarified**

*Ordinanza no. 24766 of October 19, 2017*

With Ordinance no. 24766 of October 19, 2017, a question concerning effects of termination of employment during illness was submitted to the judgement of Corte di Cassazione. Specifically, the Court will have to determine whether termination of employment is simply ineffective or null, with full reinstatement of the employee.

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**Dirigenti (executives): only vacations accrued during the year may be refunded**

*Corte di Cassazione, judgement no. 23697 of October 10, 2017*

Corte di Cassazione, with judgement no. 23697 of October 10, 2017, clarified that vacation days, for executives, can be refunded – following termination of employment - only as long as they were accrued during the current year.

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**Disciplinary penalties: consultation of company documents**

*Corte di Cassazione, judgement no. 23408 of October 6, 2017*

Corte di Cassazione, with judgement no. 23408 of October 6th, 2017, confirmed that there is no obligation, for the employer, to show company documents to the employee during a disciplinary procedure. The employer is required to allow consultation of company documents, upon the employee's request, only if said consultation is necessary to allow the employee an adequate defense.

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**Usage of company PC for personal purposes: limits in control for the ECHR**

*European Court for Human Rights, judgement no. 61496/08 of September 5, 2017*

The ECHR, on September 5, 2017, confirmed the lawfulness of the employer's checks upon the employee's private usage of company PCs. Said checks, in order to be deemed lawful, must be performed according to certain criteria necessary to guarantee the correct balance between the employee's privacy and the employer's right to monitor the usage of company tools.

### **Injuries and employer's obligation to refund**

*Corte di Cassazione, Labor section, judgement no. 23263 of October 5, 2017*

Corte di Cassazione, with judgement no. 23263 of October 5, 2017, specified that payments covered by INAIL do not necessarily exclude the employer's obligation to cover further damages left uncovered by INAIL insurance.