

newsletter
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CASE LAW



Studio
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CONSULENZA
DEL LAVORO E FISCALE

Crime of non-payment of contributions: constituent elements

Court of Cassation, sentence no. 1439 of 15 January 2018

With sentence no. 1439 of 15 January 2018, the Court of Cassation specified that the electronic submission of Form 770 alone is not sufficient to constitute the crime of non-payment of withholding taxes and contributions. In fact, it is also necessary to prove that the salaries have actually been paid to workers.

The Court stated the following principles in its sentence:

- a) Form 770 and the certificate issued to withholding agents are documents governed by separate regulatory sources, respond to non-coinciding purposes and must not be delivered or submitted at the same time;
- b) no box or declaration contained in the 770 forms shows that the withholding agent attests (even indirectly or implicitly) to having issued the relative certifications;
- c) the circumstantial value of the submission of form 770 alone, for the purposes of proving that the certificates were issued, is implicitly and indisputably excluded by the legislator, which would otherwise have simply punished, by means of a criminal penalty, the non-payment (over a certain threshold) of withholding taxes resulting from Form 770 and not only of withholding taxes resulting from certificates issued to withholding agents.

Supplementary pension contributions for banks: tax treatment

Court of Cassation, sentence no. 124 of 4 January 2018

With order no. 124 of 4 January 2018, the Court of Cassation ruled on the legitimacy of an IRPEF refund requested by a bank employee on the assumption that his contributions to the supplementary pension fund were not taxable.

The taxable amount of the benefits distributed by supplementary pension funds to bank staff also includes contributions paid by the employee, given their optional nature, since only compulsory pension contributions, i.e. those paid "in compliance with the legal provisions", are exempt from tax in accordance with article 48 of the current TUIR *ratione temporis*.

Dismissal for use of parental leave to perform a different job

Court of Cassation, sentence no. 509 of 11 January 2018

With sentence no. 509 of 11 January 2018, the Court of Cassation declared legitimate the dismissal of an employee who uses parental leave to perform another job, instead of caring for a disabled child.

It reaffirmed the principle that leave cannot be used for needs other than providing assistance to the disabled. The failure to do so constitutes an abuse by misappropriation of the proper function of the law, which can be evaluated by the judge as grounds for dismissal.

In this respect, it does not reveal the fact that the carrying out of this activity contributes to a better organisation of the family.

Demoting and burden of proof

Court of Cassation, sentence no. 82 of 4 January 2018

With sentence no. 82 of 4 January 2018, the Court of Cassation confirmed the principles on the burden of proof in demotion cases.

In court, proof must be produced by the worker, and the achievement of said proof can also occur through simple and maximum presumptions of common experience, such as the long duration of the de-qualification, repeated requests to the employer for a review or the fact that the employee's dissatisfaction was known in the workplace.

Asbestos benefits for workers offered early retirement incentives

Court of Cassation, sentence no. 216 of 8 January 2018

The Court of Cassation has ruled that workers offered early retirement incentives have the right to be informed of the possibility to access the “asbestos benefits” provided for by the current regulations for pension purposes, even if the exceeding of the thresholds legitimising this right was certified after the interruption of the relationship.

Consequently, the judges of the Supreme Court have established that workers who were not informed of this possibility are entitled to compensation.

Employer who pays omitted contributions during the judgement

Court of Cassation, sentence no. 1457 of 15 January 2018

With sentence no. 1457 of 15 January 2018, the Court of Cassation ruled on the “punishability” of the conduct of an employer who fails to pay withholding taxes on employees’ salaries, but who pays them later during the proceedings.

This conduct is not punishable unless payment was made prior to the entry into force of the reform (Leg. Decree no. 8/2016), which decriminalised the omissions of payments below the threshold of 10 thousand euros per annum.