

newsletter
MARCH 2018

CASE LAW



Studio
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CONSULENZA
DEL LAVORO E FISCALE

Disciplinary termination of employment and probative value of emails

Corte di Cassazione, March 15, 2018, no. 6425

Corte di Cassazione, with judgement no. 6425/2018, expressed its position upon the probative value of emails without digital signature retrieved by the employer from the employee's company account.

Emails belong to the category of electronic documents.

Said electronic documents have full probative value – pursuant to art. 2702 of Civil Code – only if signed with advanced electronic signature, qualified or digital. The judge may instead freely evaluate, pursuant to art. 20, Legislative Decree no. 82/2005, the suitability of any different electronic document (such as traditional email) to satisfy the requisite of written form, with respect to its objective quality, safety, integrity and unchangeability.

Unlawful tender contract: a recap of regulations from the Consiglio di Stato

Consiglio di Stato, no. 1571 of March 12, 2018

With judgement no. 1571 of March 12, 2018, the Consiglio di Stato, in application of criteria set by Corte di Cassazione, recaps the most recurring hints at an unlawful tender contract.

Tender contract are not to be considered “genuine” when the following elements are detected:

- a) request by the contracting party of a certain number of work hours;
- b) stable insertion of the contractor's staff in the contracting party's production cycle;
- c) same duties performed by both the contractor's and the contracting party's staff;
- d) property of structures and tools needed for the performance of duties by the contracting party;
- e) the contracting party organizes the activities of the contractor's employees.

Reduced social contribution for the apprentice also without application of the NCBA

Corte di Cassazione, no. 6428 of March 15, 2018

Corte di Cassazione, with judgement no. 6428 of March 15, 2018, confirmed that the peculiar social contribution applied for apprenticeship contracts is not subject to the employer's application of regulations set by national, local or company-based (if any) collective agreements signed by the most nationwide representative trade unions.

The application of a special, reduce social contribution rate for apprentices is not considered a social contribution relief (i.e. the reduction of an otherwise higher rate) but is rather the general rule set by national law for said employment contract.

Insurance against occupational illness

Corte di Cassazione, no. 5066 of March 5, 2018

Corte di Cassazione, with order no. 5066/2018, clarified its position on the existence of an insurance obligation against all illness conditions, even if different from those officially registered.

Confirming an ancient and consolidated position on the matter, the Corte specifies that not only the specific risk inherent to the employee's duties is relevant, but also the “improper” specific risk, i.e. not strictly inherent to the employee's work but otherwise connected with said work. Such is the case for preliminary activities, prevention, internal locomotion, normal pauses and union activities.

Reimbursement request submitted to a locally incompetent office

Corte di Cassazione, no. 5203 of March 6, 2018

Corte di Cassazione, with judgement no. 5203 of March 6, 2018, confirmed that the submission of a tax reimbursement request to an office different from the locally competent one is a suitable action not only to prevent the loss of the taxpayer's right to said reimbursement, but also to determine a silent rejection that may be challenged in court. This since the incompetent office is held responsible to submit the request to the locally competent one.

Electronic payslips and their probative value

Corte di Cassazione, no. 6245 of March 14, 2018

Corte di Cassazione, with order no. 6254 of March 14, 2018, expressed its position on the probative value of payslips on an electronic support.

The Corte specifies that a paper-based document loaded on an electronic device is fully suitable for probation purposes, as long as its conformity to the original is not challenged. Electronic payslips fall within the scope of art. 2712 of Civil Code, according to which photographs and other electronic depictions are suitable to provide full proof of their content, if the subject against whom they're presented doesn't challenge its conformity to the original.