

newsletter
APRIL 2018

CASE LAW



Studio
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CONSULENZA
DEL LAVORO E FISCALE

Agents: termination allowance during trial period

EU Court of Justice, C-645/16

The European Court of Justice, in the judgement on lawsuit C-645/16, pronounced upon the obligation to pay termination allowance during trial period.

The Court specifies that a trial period may be lawfully contemplated by the agency contract, but this doesn't cancel the agent's right to termination allowance as set by art. 1751 of Civil Code, where applicable.

Restatement in the employment relationship and nature of the allowance set by “Fornero Law”

Corte Costituzionale, no. 86/2018

Corte Costituzionale, with judgment no. 86 of April 23, 2018, pronounces itself on the nature of sums to be paid, pursuant to “Fornero Law”, in case the employer refuses to tentatively readmit to work an unlawfully terminated employee.

Said allowance, set by law in a maximum of 12 monthly installments, has a compensatory nature and is not to be considered as salary; therefore, in case of repeal of the reinstatement order, the employer may claim the amount back.

Transfer of company and entitlement to social contribution incentives

Corte di Cassazione, order no. 8774/2018

Corte di Cassazione, with order no. 8774 of April 10, 2018, pronounces itself on the entitlement, in case of transfer of company, of social contribution incentives for the hire of new employees pursuant to Law no. 448/1998.

Specifically, the Court observes that according to law incentives are subordinate to – among other requisites – an increase in workforce and to the condition that the new company performs activities that do not absorb, not even partially, the activity of pre-existing companies, with the exception of companies with a set limit in workforce or size.

This last requisite is lacking if the incentive is requested by an employer for employees transferred, without solution of continuity and in the execution of a precise legal obligation, from one company to another due to transfer of company.

INAIL classification: effect date of amendments

Corte di Cassazione, order no. 9227/2018

Corte di Cassazione, with order no. 9227 of April 13, 2018, pronounces itself on the date of effectiveness of new INAIL classification, made equivalent to the one forcibly rectified by INPS pursuant to art. 49, Law no. 88/1989 and art. 3, c. 8, Law no. 335/1995.

When Law (art. 14, c. 3, Ministerial Decree 12/12/2000) refers to the different classification of the company applied by INPS, it specifies that it is effective from the date of efficiency of the “adopted provision”. Retroactivity applies only in case of (I) wrong or incomplete declaration by the employer, implying the payment of a lower amount than the sum actually due and (II) wrong classification of activities, not due to the employer's fault, involving the payment of a higher amount than the one actually due.

IRPEF: lawful reimbursement of taxes erroneously paid by the withholding agent

Corte di cassazione, order no. 7509/2008

Corte di Cassazione, with order no. 7509 of March 26, 2018, pronounces upon the lawfulness of reimbursing IRPEF income tax to heirs of a defunct former employee.

The order, specifically, insists on an IRPEF reimbursement due to the full payment of taxes without applying tax incentives due

to people struck by the 1990 earthquake (Law no. 289/2002).

The Court specifies that benefits are due regardless of the full payment of taxes, by the taxpayer him/herself or by the withholding agent.

Tax collection fees: constitutional legitimacy of regulation

Corte Costituzionale, order no. 65/2018

Corte Costituzionale, with order no. 65 of March 29, 2018, confirmed the constitutional legitimacy of art. 17, c. 1, of Legislative Decree no. 112/1999, regulating the national tax collection service and determines related fees.

Specifically, the Court clarifies that there is no difference in treatment between the taxpayer who pays the sum specified in the collection notice in a timely fashion and the one who decides to challenge the notice.

Current regulations have also been confirmed, even though the fee's amount is not dependent on the type of collection activities performed. Said fees serve the purpose of backing the complex activities and maintenance of the national collection system, and are determined according to criteria suitable to ensure their adherence to actual costs.