

newsletter
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CASE LAW



Studio
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CONSULENZA
DEL LAVORO E FISCALE

Facebook and defamation of the employer

Corte di Cassazione, no. 10280/2018

With judgement no. 10280 of April 27, 2018, Corte di Cassazione confirms the legitimacy of disciplinary termination for an employee who wrote, on her Facebook profile, messages in which she expressed contempt towards the employer, without specifying the name of the company representative (though this could be easily identified).

The Court specified that the diffusion of a defamatory message via Facebook is to be considered as a “proper” act of defamation, due to the potential ability to reach an undetermined number of people.

It is also clarified that, in order to cause a just cause for termination of employment, the intentionality of the employee's conduct is not necessary, since also a guilty (though unintentional) behavior may be suitable to create a breach of trust sufficiently serious and unfixable to prevent the further continuation of the employment relationship.

Unlawful termination for the employee who refuses new duties if disobedience is justified

Corte di Cassazione, Order no. 12094/2018

Corte di Cassazione, with Order no. 12094/2018, ruled the unlawfulness of termination of employment against an employee who refused to execute the employer's orders.

The Court specifies that there is no such thing as a presumed legitimacy of an employer's order, imposing its execution until different order of the Court.

Failure to comply with the employer's orders can be justified in case of objective impossibility, for the employee, to perform the activities he declined.

Maternity treatment for the lawyer in lieu of the mother

Corte di Cassazione, no. 10282/2018

With Judgement no. 10282/2018, Corte di Cassazione applies, waiting for action by the legislator, a ruling by the Constitutional Court (no. 385/2005) which declared the unlawfulness of art. 70 and 72 of Legislative Decree no. 151/2001, where they fail to state that the father is entitled, in alternative to the mother, to enjoy the benefit of maternity allowance following adoption.

Specifically, the principle is applied in case of adoption of a child, for which the father is entitled to enjoy the leave in lieu of the mother, even if he is a lawyer and not a subordinate employee.

“Vertical” part-time employment and social contribution coverage

Corte di Cassazione, no. 10526/2018

Corte di Cassazione, with judgement no. 10526/2018, pronounces itself on the social security contribution seniority necessary for “vertical” part/time employees to receive social benefits.

For this purpose, the Court specified that the amount of contribution credited to the part/time employee is not relevant, while the element to be considered is the possibility that they may, regardless of their amount, be reproporioned over the entire year of accrual, even if paid for employment relationships performed in specific periods.

Nor is failure to reach minimum social contribution amounts relevant in this case.

Automatic audit and challenge of payment injunction

Corte di Cassazione, no. 12689/2018

Corte di Cassazione, with order no. 12689/2018, stated that there is no preclusion to challenging a payment injunction, submitted by the automatic audit procedure, even if said injunction is based on data provided by the taxpayer himself in his own declaration. Said conclusion would imply that the taxpayer's declaration cannot be modified, while it is actually a declaration of knowledge and, as such, amendable following the acquisition of new elements.

Opposition to payment injunction: notification of appeal to parties

Corte di Cassazione, no. 12427/2018

Corte di Cassazione, with judgement no. 12427/2018, pronounces upon the notification of an appeal to the tax collector instead of the domiciled procurer.

The Court confirmed that notification submitted directly to Equitalia is null, therefore the judge – in similar cases – must reiterate the notification.