

newsletter
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CASE LAW



Studio
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CONSULENZA
DEL LAVORO E FISCALE

Nullity of the trial period agreement and its consequences on dismissal

Court of Cassation, ruling no. 17358 of 3 July 2018

With ruling no. 1735 of 3 July 2018, the Court of Cassation expressed its verdict on dismissal for failure to complete the trial period, imposed on the incorrect assumption of the validity of the relative employment agreement.

Said dismissal, which involved an open-ended paid employment contract, is not exempt from the application of the regulations governing dismissal, for which the protection rights of the worker are foreseen in Article 18, Law 300/1970, if the employer does not demonstrate the unfoundedness of the dimensional requirements, i.e. those recognised by Law 604/1966, in absence of the necessary conditions for the applicability of the real protections.

Managing directors and liability: establishing jurisdiction

Court of Cassation, ruling 3 July 2018 no. 17309

With ruling no. 17309 of 3 July 2018, the Court of Cassation pronounced its opinion on individualising the competent Judge and deciding on the liability in the case of legal action against a Managing Director (who is also an employee).

According to the provisions of Article 2396 of the Italian Civil Code, managing directors, when elected by the board or appointed in the statute, the laws that govern the civil liability of the administrators, in relation to the roles entrusted to the same, apply, with the exception of actions exercised on the basis of a working relationship with the company. Therefore, in order to establish the competent jurisdiction during legal proceedings against a managing director, who is also an employee, it is necessary to refer to the genesis of the exercised actions, or more precisely, ascertain if the same appertain to the working relationship or the company (with consequent jurisdiction, respectively, of the competent employment judge and the corporate tribunal).

IRPEF personal income tax and the statute of limitation

Provincial Tax Commission of Lombardy, Ruling no. 1883/16/2018 of 23 April 2018

With Ruling no. 1883/16/2018 of 23 April 2018, the provincial tax commission of Lombardy, citing a principle confirmed by the appeals section of the Court of Cassation, announced its verdict on the statute of limitation for IRPEF credits, which must be paid by the taxpayer by means of a payment notice. In particular, they underline that the ten-year statute of limitation is applicable in the event of a final judgement on the case. Diversely, the five-year term applies in the event of failure to contest a taxation or tax collection order.

TFR redundancy pay to be incurred by the INPS guarantee fund and the direct transfer of companies in crisis

Court of Cassation, ruling 19 July 2018 no. 19277

With ruling no. 19277 of 19 July 2018, the Court of Cassation, announced its verdict on the possibility of accessing the TFR guarantee fund, established by INPS in the event of legal proceedings and the successive acquisition of the company by another company.

The court underlined that, in the event of access to the TFR guarantee fund by employees that are transferred from a company undergoing legal proceedings to the company purchasing the same company (in accordance with ex-Article 47, paragraphs 4 bis and 5, Law 428/90, waiving the requirements of Article 2112 of the Italian Civil Code), if the previous working relationship has not been terminated by means of a dismissal notice and the employee has successively been re-employed, they cannot access the guarantee funds, even when the TFR redundancy pay results as a liability of the company transferring the ownership rights during the bankruptcy proceedings.

Illegal labour brokering: IRPEF to be paid by the effective employer

Court of Cassation, order no. 17805 of 6 July 2018

With order no. 17805 of 6 July 2018, the Court of Cassation announced its verdict on IRPEF personal income tax in the event of illegal labour brokering.

In said cases, by all effects, employees are considered the employees of the contracting company or sub-contracting company that has effectively used the worker's services. Therefore, the responsibility falls on the latter parties, as well as the obligation to comply with the legal pay obligations resulting from the working relationship, the national insurance obligations, and the fiscal obligations of the employer, especially in the case of taxation on salaries that are deducted at source.