newsletter

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CASE LAW

Studio
Arlati Ghislandi

CONSULENZA
DEL LAVORO E FISCALE

Recorded conversations: production in court and conditions for disavowal

Corte di Cassazione, order no. 21898 of 7 September 2018

With order no. 21898 of 7 September 2018, Corte di Cassazione confirms – specifying conditions – that it is possible to produce recorded conversations in court, since these are sources of proof pursuant to art. 2712 c.c.
Recorded conversations are lawful proof as long as:

- at least one of the subjects in the conversation is an actor in the Court procedure;
- the subject against whom the conversation is brought has not challenged the conversation or its apparent contents.

The disavowal of the recorded conversation must be:

- performed within the limit of procedural regulations (art. 167 and 183 c.p.c.)
- clear, detailed and explicit
- resulting in elements stating the non-correspondence between actual and recorded events.

Non-deliberate cash shortages: unlawful termination of employment

Corte di Cassazione, 13 September 2018, no. 22380

Corte di Cassazione, with judgement no. 22380 of 13 September 2018, pronounced itself on the legitimacy of disciplinary termination against an employee for cash shortages.
Termination was ruled unlawful since the employer – charged with providing proof of the employee's malicious intent – didn't prove that shortages were due to the employee's willful intent to subtract and embezzle money. It is further specified that disciplinary termination is disproportionate, since the bond of trust between parties is not compromised; the employee didn't place money due to simple forgetfulness and must therefore be reinstated in the employment relationship.

INAIL – right of subrogation against the subject responsible for the injury

Corte di Cassazione, no. 21961 of 10 September 2018

Corte di Cassazione, with judgement no. 21961 of 10 September 2018, pronounced upon the conditions allowing INAIL to act in subrogation against the subject who caused the injury.
Specifically, it is clarified that INAIL may always act against the subject who caused the injury for the reimbursement of sums paid towards healthcare and salary integration.
This also if the employee still received salary during injury leave.

Leaves for assistance to the newborn child: father's right when the mother is self-employed

Corte di Cassazione, no. 22177 of 12 September 2018

With judgement no. 22177 of 12 September 2018, Corte di Cassazione rules upon the possibility, for the father, to request leaves to assist the child during the first year of age even if the mother, self-employed professional, receives maternity leave allowance.
Art. 40 of Maternity Act states that daily leaves may be granted to the father only where the mother, subordinate employee, does not use them. The regulation provides no alternative when the mother has the status of subordinate employee. The law also states that this is possible when the mother is not a subordinate employee, with no further requisite. This means that, in this case, the father may take daily leaves in lieu of the mother.

Taxation upon TFR: substantial and procedural clarifications

Corte di Cassazione, civil Tax section, Order 24 August 2018, no. 21128

Corte di Cassazione, with order 24 August 2018, no. 21128, provides clarifications on the taxation of TFR, with specific reference to periods of work abroad and to the submission of notices.
In tax proceedings, the ban on the addition of new exceptions insists on all strictly intended new exceptions, consisting in vices of the tax document or facts suitable to change, terminate or prevent the tax request, while it doesn't extend to "improper" exceptions or mere requests, which may also be brought forward.
Concerning periods of work abroad, the Commission states that TFR has the same nature of salary and should be taxed in the country where the income it is accrued upon is generated.

Model management activity and tax withholding obligations for foreign companies

Corte di Cassazione, order 7 September 2018, no. 21865

With order no. 21865 of 7 September 2018, Corte di Cassazione – tax section pronounces upon the obligation to apply IRPEF income tax withholdings on sums paid by an Italian company to a Swiss company, acting as a model management agency and on sums paid directly to non-resident models, for performances in Italy.
The order recalls the following principles of the OCSE convention:

- company earnings of a signatory state are only taxable in this state, unless the company acts in the other state via a permanent organization;
- income that a resident of a signatory state earns from freelance work are only taxable in said state, unless said resident has a permanent base in the other state for the performance of his/her activity;
- the income of an artist in cinema, radio, television, of a musician or of a sportsman for his/her activity performed in the other state may be taxed in the other state, therefore the subject may be taxed in both the state where the performance is held and in the state of residence. Therefore, unlike other self-employed subjects, taxation on the artist's (or sportsman's) income can be applied in a state just because the performance is taken there, regardless of the presence of a permanent organization.

The Court ruled that, in this case, models are not artists, since their activity does not insist on artistic abilities but rather on their attitude to show the product. Therefore, payment is not subject to taxation in Italy.