

newsletter  
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**CASE LAW**



Studio  
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CONSULENZA  
DEL LAVORO E FISCALE

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**Refusal to work for health-related reason: unlawful**

*Corte di Cassazione, 25 September 2018, no. 22677*

Corte di Cassazione, with judgement 25 September 2018, no. 22677, confirms that an employee who believes his/her duties are incompatible with his/her health conditions may request to be assigned to more suitable tasks but may not, without judicial support, refuse to execute said duties, since protections provided by art. 1460 of Civil Code may be called only if the employer's breach is such to irretrievably jeopardize the employee's vital needs.

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**Reduction of profits: lawful termination of ill employee**

*Corte di Cassazione, 27 September 2018, no. 23338*

Corte di Cassazione, with judgement no. 23338/2018, denied the discriminatory nature of the termination of a gravely ill employee.  
If a legitimate justified reason for termination – such as suppression of the workplace due to reduced workload and income – is specified, termination of employment is legitimate even if the employee is gravely ill.  
Furthermore, under similar circumstances, termination cannot be considered discriminatory in absence of proof on a direct connection between termination and discriminating factor.

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**Non-material damage to the employee's spouse if injury prevents normal sexual relationships**

*Corte di Cassazione, 25 September 2018, no. 22690*

Corte di Cassazione, with judgement no. 22690/2018, pronounced upon the damage refund requested by the spouse of an employee injured after a work-related accident, for the damage connected with the impossibility of having a normal sexual relationship.  
A similar request, according to the Court, is legitimate and the damage must be assessed on an equitable basis, considering the age of both spouses, the absence of children and the wife's care of her husband for the years of infirmity and of the duration of marriage.

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**Commuting accident: covered only if the employee needs to use his/her personal car**

*Corte di Cassazione, 25 September 2018, no. 22670*

Corte di Cassazione, with judgement no. 22670/2018, determined that commuting accidents may not be recognized to employees who commute with their own vehicle if its usage is not necessary but, rather, the outcome of a voluntary choice of the employee, despite the existence of alternative means of transportation.  
Public transport is, in fact, the normal mean for the mobility of individuals and carries the lowest risk.

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**Notion of company branch: criteria**

*Corte di Cassazione, 28 August 2018, no. 21264*

Corte di Cassazione, with judgement no. 21264/2018, determined that a company branch may exist also with a dematerialized or "light" structure created prevalently via employment relationships suitable – actually or potentially – to the performance of business. It is however necessary, for transferred employees, to constitute a cohesive professional group, with precise organizational connections prior to the transfer and a specific know-how, suitable to depict them as a single structure and not just as a number of employees.  
Proof that employees are part of the transferred structure falls upon the company.

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