

newsletter
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CASE LAW



Studio
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CONSULENZA
DEL LAVORO E FISCALE

Interruption of workplace conservation period and obligation to grant vacation

Corte di Cassazione, 29 October 2018, no. 27392

Corte di Cassazione, with judgement no. 27392 of 29 October 2018, pronounced on the employer's obligation to grant vacation in order to prevent exceeding the period of mandatory conservation of the employee's workplace.

The Court confirms that the employer is not held to grant a request for vacation, since said request is to be evaluated by the Company in function of its needs. However, if the employee's request is aimed at avoiding loss of employment, only actual and solid Company needs may, pursuant to general principles of correctness and good faith, justify a refusal and therefore justify the employer's interest to refuse the employee's request for vacation.

It is up to the employer to prove – when the employee requests vacation days with the purpose of avoiding termination of employment – that, towards the decision, the employee's relevant interest to prevent loss of employment was held in due consideration.

Appeal against termination of employment and expiration terms for judicial action

Corte di Cassazione, 31 October 2018, no. 27948

Corte di Cassazione, with judgement no. 27948 of 31 October 2018, pronounces on terms to be observed for the judicial appeal against termination of employment, as per law no. 92/2012, in case of settlement request.

Said law sets the obligation to challenge termination extrajudicially within 60 days and that said appeal is not effective unless followed, within the further term of 180 days, by the deposit of the appeal at the Court or by submission to counterpart of the settlement request. If the settlement request is refused, or an agreement cannot be reached, an appeal to the judge must be deposited within 60 days from the refusal or failure of the tentative agreement.

In case of refusal, the further suspension term of 20 days following settlement request, pursuant to art. 410, c. 2, Code of Civil Procedure is not applicable.

Failure to pay social contribution: payment of employee share

Corte di Cassazione, 16 October 2018, no. 25856

Corte di Cassazione, with judgement no. 25856 of 16 October 2018, confirmed the principle set by art. 23, Law no. 218/1952, according to which the employer that fails to pay social contribution for its employees is required to also pay their share of social contribution, without any chance to recover social contribution from them at a later occasion.

This since the combined provisions of art. 19 and 23 of said law contemplates 2 different cases, one where social contribution is normally paid upon expiration of terms and another – the one contemplated by art. 23 – when payment is omitted or late, with relevant consequences for the employer.

Temporary workers: unemployment treatment for the loss of a single contract

Corte di Cassazione, 17 October 2018, no. 26027

Corte di Cassazione, with judgement no. 26027 of 17 October 2018, pronounced upon the temporary worker's right to receive unemployment treatment in case only one of two employment relationships is terminated.

The Court confirmed that the allowance is due, since unemployment does not necessarily imply a complete lack of any work activity but rather an income below minimum amounts set by law.

Confirmation of the lawfulness of different seizure limits on salaries, pensions and other allowances
Corte Costituzionale, 15 November 2018, no. 202

Corte Costituzionale, with judgement no. 202 of 15 November 2018, confirmed the constitutional lawfulness of art. 545, par. 3, 4 and 8, of the Code of Civil Procedure, where it doesn't contemplate the total exemption from seizability of the amount of salary necessary to guarantee the employee at least the strictly necessary sums for basic needs.

The regulation has also been declared constitutionally lawful where it doesn't contemplate different limits between salaries seized at the employer and those paid to the employee's bank account prior to seizure.

Non-seizability of minimum vital sums may be eroded upon certain conditions.

Lawfulness of these regulations is justified since the legislator intended to balance the employee's needs with the creditor's legitimate interest to recover due sums.

Statistical sector studies: obligation to motivate non-acceptance of justifications
Corte di Cassazione, order 14 November 2018, no. 29323

Corte di Cassazione, with order no. 22677 of 14 November 2018, pronounces on the obligation, for Agenzia delle Entrate, to provide a reason for failure to accept the taxpayer's justifications, before proceeding with a payment injunction based on statistical sector studies.

Whenever the taxpayer has been heard and provided reasons for his/her behavior, the Office is obliged to clarify the reasons for disattending the objections raised by the taxpayer.