

newsletter  
**DECEMBER 2018**

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**CASE LAW**



Studio  
**Arlati Ghislandi**

CONSULENZA  
DEL LAVORO E FISCALE

### **Collective dismissal and truthfulness of grounds for termination**

*Trento Court of Appeal, 11 October 2018, no. 60*

The Court of Appeal of Trento, with judgement no. 60 of 11 October 2018, pronounced upon consequences stemming, in case of collective dismissal pursuant to Law no. 223/91, from the indication of untrue reasons for the reduction of personnel. On general terms, the Court confirms the indisputability of reasons for termination, though still observing that the judge may observe the truthfulness of reasons claimed for termination. Should the judge observe that said reasons are false, each termination is to be considered devoid of any grounds and therefore unlawful.

### **Termination of dirigenti: failure to specify reasons**

*Corte di Cassazione, no. 31318 of 4 December 2018*

Corte di Cassazione, with judgement no. 31318 of 4 December 2018, declared the unlawfulness of the dismissal of a dirigente due to company crisis, for failure to prove either the existence of the claimed company crisis and of declining cash flow.

### **Special leave for the son not yet living with a disabled parent**

*Corte Costituzionale, no. 232 of 7 December 2018*

Corte Costituzionale, with judgement no. 232/2018, declared the unlawfulness of art. 4, section 5, Legislative decree no. 151/2001, where it does not include among subjects entitled to take the leave the son who, upon submission of the leave request, does not yet live with the severely disabled parent.

The son or daughter may take said leave as long as he/she takes residency in the disabled parent's household following the request.

### **Withholding agent and joint liability of final taxpayer**

*Corte di Cassazione – Tax section, 7 December 2018, no. 31742*

With judgement no. 31742 of 7 December 2018, Corte di Cassazione submitted to its united divisions a query on the joint liability of the withholding agent's duty to withhold tax.

There are two different positions on this:

- the first position (from which the Court sees no reason to depart) claiming that, while the withholding agent is defined by law as he who is obliged to pay taxes in lieu of others, this doesn't prevent him from being jointly liable for the payment of taxes and is therefore made subject to audits and related burdens, though may still bring action against the final taxpayer;
- another position claims that the withholding agent is obliged to execute all of the final taxpayer's substantial obligations and to suffer consequences of the actions of tax authorities, which should be aimed at the main taxpayer, if substitution did not apply. The withholding agent is therefore "protagonist of the taxable fact" and direct recipient of the actions of tax authorities and the joint liability with the taxpayer doesn't yet apply during audit and inspection procedures.

### **Taxation on TFR**

*Corte di Cassazione – tax section, 27 April 2018, no. 10243*

Corte di Cassazione, with judgement no. 10243/2018, pronounced upon the taxation of TFR.

It specified that the deposit on the employee's TFR is a form of special taxation intended as a payment in advance, bestowed upon withholding agents who, to recover the amount, may not only proceed as with tax credits in general but also with a specific reimbursement request, since being excluded from the refund would cause an unlawful damage for the agent and wrongful enrichment for the tax authority.