newsletter
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CASE LAW

Studio
Arlati Ghislandi
CONSULENZA
DEL LAVORO E FISCALE

Termination of company operations and violation of collective dismissal procedure

Corte di Cassazione, 4 January 2019, no. 89

Corte di Cassazione, with judgement no. 89 of January 4, 2019, pronounced upon consequence stemming from failure to observe the 7-day term for communications set by art. 4, section 9, Law no. 223/1991.Said violation determines the unlawfulness of termination and the payment of related compensation.Closure of business is therefore assimilated to cases such as collective dismissal due to reduction or transformation of business.

Fondi di previdenza complementare: tassazione
Pension/healthcare funds: taxation

Corte di Cassazione, order 27 December 2018, n. 33441

Corte di Cassazione, with order no. 33441/2018, confirmed taxation criteria on sums paid by pension/healthcare funds. Specifically, it clarified that sums paid to a subject who first enrolled with the fund prior to Legislative Decree 21 April 1993, no. 124, are as follows:

a) sums accrued from January 2001 onwards are entirely subject to separate taxation;
b) sums accrued up to December 31, 2000 are made subject to separate taxation only for the fraction composed of social contribution paid by employer and employee and equivalent to the sum paid upon termination of employment. A 12,50% tax is instead applied on returns.

Notice due also if the employee retires

Corte di Cassazione, order no. 521 of January 11, 2019

Corte di Cassazione, with order no. 521 of January 11, 2019, reminded the application of notice period in case of termination of employment upon reaching requisites for retirement.
According to art. 4 of Law no. 108/1990, reaching pensionable age (or otherwise reaching requisites for old age pension) simply implies the possibility to terminate the employment relationship at will and, therefore, the end of a protection against termination of the employment relationship, not necessarily termination of employment itself. Therefore:

- without a valid termination from the employer, the employment relationship continues indefinitely and the employee is entitled to receive salary;
- upon termination of employment for reaching pensionable age, the employer is still required to observe notice period.

Incentive to leave may be paid with TFR

Corte di Cassazione, order 21 January 2019, no. 1513

Corte di Cassazione, with order no. 1513/2019, confirmed the legitimacy of compensation between sums paid as incentive to leave and amounts due as TFR.
Compensation of TFR with the employer's credits is lawful, since the prohibition set by art. 1246, section 3, c.c. for non-seizable credits only covers "proper" compensation of credits (i.e., those where credit-debit relationships stem from different legal relationships) and not "improper" (where said relationship stem from a single relationship, such as the employment relationship).

Civil penalties for failure to pay social contribution and null termination of employment

Corte di Cassazione, order no. 2019 of 24 January 2019

Corte di Cassazione, with order no. 2019 of January 24, 2019, confirmed that the retroactive judgement stating that the employee's dismissal is null and void implies the continuation of the obligation to pay social security contribution; the injunction to pay social contribution is therefore legitimate.
In case of forcible reinstatement of the employee due to null and void dismissal we must make a distinction, for what concerns social fines, between:

- nullity or inefficacy of dismissal, which is subject to an affirmative judgement. In this case the employer, as well as reconstructing the employee's social position nunc pro tunc, must pay civil fines pursuant to art. 116, section 8, let. A) of Law no. 388/2000 and
- voidability of the dismissal devoid of just cause or justified grounds, in which case the employer is not subject to said fines.

Joint qualification as employer and joint liability

Corte di Cassazione, no. 3899 of February 11, 2019

Corte di Cassazione, with judgement no. 3899 of February 11, 2019, pronounced on joint liability in case of joint qualification as employer. The Corte, in this case, admits both the existence and the automatic constitution of a joint liability, for all employers, of social contribution and insurance-related obligations.
This since the employment relationship has been performed, indifferently and at the same time, for the benefit of all employers, without a distinction of performances taken in the interest of one or another.