newsletter
MARCH 2019

CASE LAW

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CONSULENZA
DEL LAVORO E FISCALE

CIGS Special salary integration treatment

Corte di Cassazione, January 18, 2019, no. 1378

Corte di Cassazione,with judgement no. 1378/2019, pronounced upon CIGS special salary integration grants, specifically clarifying that the analysis of criteria for the detection of employees to be placed in CIGS must be performed ex-ante rather than ex-post. This since said analysis must not only serve the function of allowing unions to negotiate criteria for the selection of employees, but also to enable employees to know these criteria and verify the correct usage of the employer's powers.
The employer's power to choose employees to be placed under CIGS treatment is subject to both external limits, connected with anti-discrimination regulations as well as with principle of fairness and good faith, and internal limits, connected with the observance of criteria coherent with the purposes of salary integration, specifically negotiated with trade unions.

Allowances and salary increases due to traveling employees

Corte di Cassazione, order 29 January, 2019, no. 2424

Corte di Cassazione, with order no. 2424/2019, clarified criteria set by art. 7 quinquies, Law Decree no. 193/2016 (converted, with amendments, into Law no. 225/2016), pursuant to which art. 51, section 6 of TUIR (income tax act) covers employees for whom the following conditions apply: (i) no specification of a place of work on the employment contract; (ii) performance of duties requiring the employee's constant movement; (iii) payment to the employee, for the performance of work in places always variable and different, of an allowance or fixed salary element, granted regardless of whether the employee actually did work away on a mission and where the mission was performed.
Treatment set for mission allowances, pursuant to section 5 of art. 51, is applicable for employees who do not fall within the scope of section 6.
The Court specified that art. 7 quinquies provides clear criteria to discern between workers "normally" on mission – for whom 50% of allowances and increases are taxable – and those who "occasionally" work on a mission, for whom allowances are taxed pursuant to criteria set by art. 51, section 5 of TUIR.

Taxation of allowance for untaken vacation

Corte di Cassazione, Order 25 February 2019, no. 5482

Corte di Cassazione, with order no. 5482/20196, stated that allowances paid to employees in lieu of untaken vacation must be considered subject to ordinary taxation. Pertinent regulations (art. 51, of TUIR) states that income related to subordinate employment is made of all sums and values, earned for any reason, connected with the employment relationship. The article detects specific salary items to be excluded from taxation, among which payment in lieu of vacation is not included.

Temporary work and ANF family checks

Corte di Cassazione, 8 March 2019, no. 6870

Corte di Cassazione, with judgement no. 6870/2019, stated that temporary workers hired with a permanent contract are entitled to ANF family checks also while not working and only receiving availability salary. The Court considers that their contract is between 3 parties: the temporary work agency, the worker and the user, who sign two different contracts; the contract signed between the temporary work agency and the user and the employment contract signed between the agency and the worker, with which the worker undertakes to work pursuant to the conditions to be negotiated by the agency.
The law – according to the Court – clearly states that the employment relationship between worker and agency is still effective also while the worker is not active, yet available and waiting for instructions from the work agency ad earning an availability allowance, which is considered as salary and entitles the worker to receive ANF.

Notification of disciplinary measures

Corte di Cassazione, 14 March 2019, no. 7306

Corte di Cassazione, with judgement no. 7306/2019, confirmed that the employee is under obligation to receive, at work and during work hours, communications – informal and formal – from the employer and its delegates and, therefore, the employee's refusal to receive such a communication implies that it must still be deemed as delivered, pursuant to art. 1335 c.c.; therefore, delivery is not to be considered as finalized if, upon the employee's refusal to receive the document, the employer did not read it to the employee or inform the employee of its contects.

Work during injury leave and dismissal

Corte di Cassazione, 19 March 2019, no. 7641

Corte di Cassazione, with judgement no. 7641/2019, confirmed the lawfulness of disciplinary termination of employment against a worker who performed work (driving, loading and unloading commercial vehicles) under a different employer, during injury leave.
The Court ruled that the employee's behavior (against medical prescription) was such to harm and delay recovery, and reminded that – according to its case law – "performance of other work activities by the employee during illness or injury implies the violation of the obligation to diligence and faithfulness, as well as of principles of correctness and good faith (…) also when the employee's activity (…) may compromise or delay healing or return to active service".