newsletter
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CASE LAW

Studio
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CONSULENZA
DEL LAVORO E FISCALE

Assistance of a severely disabled family member and right to be transferred

Corte di Cassazione, order 1 March 2019, no. 6150

Corte di Cassazione, with order no. 6150/2019, pronounced on the case of an employee who requested to be transferred to a business unit closer to the sister's domicile, since she required assistance as a severely handicapped person. The employer denied the transfer, considering – erroneously – that art. 33 of Law no. 104/1992 may only be applied upon first hire and not also in case of ensuing transfer.
The court, confirming the ruling reached in appeal, stated that art. 33 of Law no. 104/1992 grants the employee who assists a severely disabled family member the right to choose, insofar as possible, the closest workplace to the domicile, not only upon hire, but also during the employment relationship with a transfer request.

INAIL allowance also in case of injury due to the employee's recklessness

Corte di Cassazione, order 19 March 2019, no. 7649

Corte di Cassazione, with order 19 March 2019, no. 7649, stated that the employee is entitled to the refund of damage due to injury whenever said injury happens "on occasion of work".
The Supreme Court specified that, in order to determine the "occasion of work", one must consider all events – including extraordinary and unpredictable events – inherent to the workplace, machineries, people and the behavior of the employee himself, as long as they're connected with the performance of work, including movements from one place to another, with the only exception of "willful risk" that marks the limit of insurance coverage. Willful risk is to be found in the presence of a voluntary and arbitrary action, i.e. an action that is both illogic and unconnected with production purposes, performed by the worker in order to satisfy purely personal desires.

"Tax peace" only for controversies inherent to taxation

Corte di Cassazione, 13 March 2019, no. 7099

Corte di Cassazione, with ruling no. 7099/2019, pronounced upon a controversy inherent to the challenge of a payment notice, issued pursuant to art. 36-bis of Presidential Decree no. 600/1973 due to failure to pay income tax or payment of income tax for a lower amount than due which, as specified by the Court, is not included among tax payment notices suitable for facilitated settlement. Said notice is not to be considered a "proper" payment notice, but simply a request to pay taxes already acknowledged by the taxpayer.

Collective bargaining agreement and disciplinary measures

Corte di Cassazione, order 27 March 2019, no. 8582

Corte di Cassazione, with order 27 March 2019, no. 8582, pronounced on judgements of the Court of Verona and of the Court of Appeal of Venice, which ruled as unlawful the dismissal of an employee guilty of driving a company car under the influence. In both first instance and appeal, dismissal was ruled unlawful since the mere act of driving under the influence was considered relevant; an action that, pursuant to the applicable collective agreement, is not to be punished with termination of employment. The Supreme Court ruled instead that such a behavior couldn't be strictly linked to the collective agreement, since in this case the employee had not been charged with "simple" DUI, but rather with driving a company car with a blood-alcohol level of 2.32 g/l, which is a criminal offence and a way more serious infraction than the one contemplated by the NCBA.

Refusal to work due to lack of health & safety measures

Corte di Cassazione, 29 March 2019, no. 8911

Corte di Cassazione, with judgement 29 March 2019, no. 8911, pronounced on the employee's refusal to work due to the employer's failure to provide health and safety measures. Specifically, the Court clarified that such a refusal is legitimate if the employee can prove the gravity and relevance of the employer's shortcoming, unless the violation concerns measures specifically required by law or general obligations set by art. 2087, Civil Code.
In the circumstance, a train driver was dismissed for having repeatedly refused to work in the absence of a second trained driver in the cockpit.
Initially, the Court of Genoa had voided the dismissal, considering the employee's behavior as legitimate; said ruling was then confirmed in appeal. The Supreme Court, instead, overturned this, despite confirming that the employer's responsibility is contractual in its nature. Said responsibility implies, for the employer, the obligation to create a work environment suitable to ensure the employee's health and safety and, if disattended, allows the employee to refuse work. The employer's liability is not, however, to be intended as objective, since the employee also has to prove the employer's lack of diligence. This may have different variations; it may be a violation of measures explicitly required by law, for which the employee is only required to prove the violation itself, or violation that may be traced to the generic obligation to safety, for which the employer should simply prove the adoption of health & safety measures coherent with current standards. For these, the employer cannot be expected to apply every possible precaution and must only take measures suitable to provide protection against foreseeable accidents related to the employee's duties.

Applied and unpaid tax withholdings: joint liability

Corte di Cassazione, 12 April 2019, no. 10378

Corte di Cassazione, with order 25 February 2019, no. 5482, stated that when the withholding agent does not proceed with the payment of withholdings, the withholdee may not be considered as jointly liable pursuant to art. 35, Presidential Decree no. 602/1973, since said liability is connected not only with failure to pay, but also with failure to apply withholdings.