

newsletter
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CASE LAW



Studio
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CONSULENZA
DEL LAVORO E FISCALE

Assignment to lower duties: when this is possible

Corte di Cassazione, 29 March 2019 n. 8910

Corte di Cassazione, with judgement no. 8910/2019, pronounced on the conditions upon which it is possible to assign the employee to duties lower than those proper for the employee's classification level. Specifically, it is clarified that prevalent activity performed by the employee must be suitable for the classification category. The employee, only for reasoned and contingent company needs, can be assigned to lower duties, as long as these are not prevalent compared to those suitable for the classification level. Specifically, the performance – by employees assigned to sales duties, classified as level V employees – of cleaning duties, on a planned and non-occasional basis, has been deemed unlawful, though the job description required the performance of cleaning duties “where needed”.

Revocation of company car granted to the employee

Corte di Cassazione, 2 May 2019, no. 11538

Corte di Cassazione, with judgement no. 11538/2019, confirmed the lawful revocation of the company car from an employee who, pursuant to company regulations, had received it in the exclusive interest of the company, so that it could have been revoked by the employer at any time and without any notice, without any right to compensation and with a deduction on payroll, in June and December each year, of the cost inherent to the personal usage of the car. The Court clarified that such a contractual scheme does not configure compensation in kind and authorizes the unilateral revocation by the employer.

Taxation on supplementary pension

Corte di Cassazione – fiscal section, order 8 May 2019, no. 12154

Corte di Cassazione, with order no. 12154/2019, pronounced upon the taxation of the lump sum that the pension fund for employees of a bank settle in favor of an ex-employee, following an agreement on the termination of any pension payment. Such a payment is to be considered, pursuant to art. 6, par. 2 of Presidential Decree no. 917/1986, income of the same category of the supplementary pension the employee waived and must, therefore, be made subject to the same tax treatment. Basis for taxation is the entire amount paid to the sum, with no possibility of subtracting paid contribution since, pursuant to the Presidential Decree, only social contribution paid in execution of a legal obligation are not to be considered income.

One-off payment for transfer to a different unit is non-compensatory

Corte di Cassazione, order 30 April 2019, no. 11436

Corte di Cassazione, with order no. 11436/2019, pronounced upon the tax treatment of one-off sums paid upon the employee's transfer, confirming that these are salary and not compensation for damages. Specifically, the employee received a one-off lump payment upon transfer from Parma to Bologna. The employer had calculated and withheld taxes for work-related income. The employee asked for their reimbursement, claiming their compensatory nature, while the tax authority resisted claiming is nature of salary, subject to ordinary taxation.

Failure to pay social contribution and nature of additional fees

Corte di Cassazione, order 10 May 2019, no. 12533

Corte di Cassazione, with order no. 12533/2019, clarified the nature of additional sums due to INPS in case of failure to pay social contribution or late payment.

The obligation on these sums consists in a civil fine rather than administrative, as an automatic consequence of failure to pay or late payment, legally predetermined. Therefore, said additional sums:

- have the same nature of the main obligation and remain subject to the same limitation period;
 - consist in a predetermined amount due upon expiration of the term legally set for the payment.
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INPGI: probative value of audit report

Corte di Cassazione, 9 April 2019, no. 9866

Corte di Cassazione, with judgement no. 9866/2019, pronounced upon the probative value of the audit report written by INPGI towards the recognition of a journalistic employment relationship, with ensuing request of social contribution and fines.

It has been specified that, since INPGI is the claimant, it has the burden of proof and said proof cannot be assumed from audit reports or declarations provided by third parties.