

newsletter  
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**CASE LAW**



Studio  
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CONSULENZA  
DEL LAVORO E FISCALE

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### **Dismissal for occurred physical unsuitability: prior obligations for the employer**

*Corte di Cassazione, 21 May 2019, no. 13649*

Corte di Cassazione, with judgement no. 13649/2019, confirmed the obligation, for the employer, to assess reasonable changes in their organization prior to termination of an employee for occurred physical unsuitability, due to handicap. The employee, unlawfully terminated, had been declared permanently unsuitable to perform his duties as a driver and the company had offered the position of cleaner, with a reduction in work hours. The employee refused, claiming that the employer had to create a specific position as aid to the staff in the company workshop.

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### **Collective dismissal and legitimation to appeal**

*Corte di Cassazione, order 22 May 2019, no. 13871*

Corte di Cassazione, with order no. 13871/2019, pronounced on the existence of an interest to proceed with an appeal against collective dismissal.

The Court confirmed the principle stating that collective dismissal may be unlawful for violation of choice criteria, pursuant to art. 1441, par. 1, c.c., but not null and void. Therefore, an appeal against it may not be moved by anyone, but only by subjects with a substantial interest.

Therefore, in case dismissal is unlawful, it may not be challenged by any employee, but only by those for were affected by the violation.

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### **Reimbursement of sums following convictions**

*Corte di Cassazione, order 12 June 2019, no. 15755*

Corte di Cassazione, with order no. 15755/2019, pronounced on the reimbursement to the employer of sums in case of partial amendment of a prior judgement.

It is specified that the automatic grant of monetary revaluation on sums due as salary is contemplated only for subordinate workers, or self-employed workers without an entrepreneurial structure; it is not, instead, contemplated for coordinated collaboration relationships.

It is also specified that the employer is entitled to claim back the amount actually received by the employee and may not demand the return of sums, gross of tax withholdings, that never became part of the employee's assets.

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### **Non-liability to punishment for failure to apply withholdings: clarifications**

*Corte di Cassazione, order 10 June 2019, no. 25537*

Corte di Cassazione, with order no. 25537/2019, shed light on how the clause of non-liability for "particularly minor offences" in the felony of failure to pay social security contribution withholdings on employee salaries.

The Court specifies that said felony is not committed following the mere failure to meet payment deadlines, but once the cap of € 10,000.00 is exceeded. Furthermore, reiteration of the crime is not configured for each single unpaid sum in the year.

Non-application of penalties for "particularly minor offence" may be applied if unpaid amounts slightly exceed the cap.

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### **Failure to pay social contribution and agreement among creditors ("concordato preventivo")**

*Corte di Cassazione, criminal section, 17 July 2019, no. 31327*

Corte di Cassazione, with judgement no. 31327/2019, pronounced upon the application of the clause exempting the employer from criminal liability when payment of withholdings is finalized within three months from notice of violation (art. 2, par. 1-bis, Law Decree no. 463/83).

This regulation, according to the Court, is also applicable in case of "concordato preventivo", to which the defaulting company may in the meanwhile have been admitted.

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### **Usage of undeclared workers and effect on company revenue**

*Corte di Cassazione, no. 17518 of 28 June 2019*

Corte di Cassazione, with judgement no. 17518/2019, confirmed a principle related to the effect of undeclared workers on company revenue.

Said usage allows the Tax Agency to proceed with a presumptive recalculation of company revenue, determining higher income connected with the unregistered cost of employees and increased workforce. I.e., once usage of undeclared workers has been ascertained and, pursuant to their declarations, payment of an unregistered salary is also detected, the presumption of a higher income follows suit.