

newsletter  
**SEPTEMBER 2019**

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**CASE LAW**

### **End of illness and retaliatory dismissal**

*Corte di Cassazione, 23 September 2019, no. 23583*

Corte di Cassazione, with judgement no. 23583/2019, confirmed a well-established case-law orientation on retaliatory dismissals stating that, when the employee claims that termination of employment is null and void due to retaliatory reasons, audit of the employee's alleged reasons must be subject to prior check of the groundlessness of reasons claimed as grounds for termination, alleged by the employer but unproven in court. This because nullity of termination ex art. 1345 c.c. requires reasons specified for dismissal to be merely formal and apparent.

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### **Secondment: exercise of power of management changes, while the employer remains unchanged**

*Corte di Cassazione, 15 July 2019, no. 18888*

Corte di Cassazione, labour section, with judgement no. 18888/2019, provided clarifications on the concept of secondment and its application.

The employee's "posting" or "secondment" implies a change in the ownership of management power – since the employee is seconded to a different employer and made subject to its command and control. This, however, doesn't change the ownership of the employment relationship, which remains attached to the seconding employer. Therefore, salary conditions remain those applicable to the seconding employer.

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### **Stock options: tax regulations**

*Corte di Cassazione, order 2 July 2019, no. 17695*

With order no. 17695/2019, Corte di Cassazione pronounced on the fiscal treatment of stock options, specifying the moment to consider for the application of income tax.

Applicable discipline is the one effective upon the exercise of the option and not of the grant of shares; this does not violate the principle of legitimate expectations for the taxpayer since, when shares are offered, the taxpayer has no certainty about the future increase of share value and confirmation of applicable law.

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### **Untaken supplementary leave and allowance in lieu**

*Corte di Cassazione, order 24 September 2019, no. 23717*

Corte di Cassazione, with order no. 23717/2019, clarifies taxation to be applied on the allowance in lieu of untaken days of supplementary leave, for employees exposed to radiation hazard.

It is confirmed that, since said allowance finds its reason in the employment relationship, it is not compensatory in nature and must be intended as salary; therefore, its amount is to be considered for the calculation of the employee's taxable salary.

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### **Payment of social security overdue contribution: terms for opposition**

*Corte di Cassazione, order 7 August 2019, no. 21153*

Corte di Cassazione, with order no. 21153/2019, pronounced on the payment of overdue social security contribution, confirming that the term set by Legislative Decree no. 46/1999, art. 24, par. 5 (according to which the taxpayer may propose opposition to the judge within 40 days from the notification of the payment notice) must be considered peremptory.

This also in absence of a specific legal requirement, since the term serves the function of making the social contribution credit

incontrovertibile in case of failure to challenge it in a timely fashion, also allowing the quick collection of outstanding credit.

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**Social benefits and causes of decadence**

*Corte di Cassazione, Order 16 April 2019, no. 10642*

Corte di Cassazione, with order no. 10642/2019, pronounced on issues where the recipient of a social benefit does not inform public authorities of the loss of legal requirements for said benefit.

Specifically, the violation, by the intended recipient of the benefit, of the obligation to notify INPS of the relevant income for the social benefit implies the obligation to pay the amount back.