

newsletter
OCTOBER 2019

CASE LAW

Termination of employment and trust relationship

Corte di Cassazione, 1 October 2019, no. 24491

Corte di Cassazione, with judgement no. 24491/2019, pronounced upon the burden of proof for the re-hire of dismissed employees.

The Court confirms that the burden is bestowed upon the employer, who must also provide proof of having sought a different, suitable position for the employee.

Tax reimbursement and limitation period

Corte di Cassazione, 26 September 2019, no. 24012

Corte di Cassazione, with judgement no. 24012 of 26 September 2019, pronounced upon limitation period for reimbursements. For the reimbursement of sums paid in excess to INPS taxpayers, in order to prevent reaching limitation period, must act within 48 months as per art. 38, Presidential Decree no. 602/1973 and not 10 years as per art. 37. This last term is only applicable for withholdings directly applied by public administrations.

Tax advisors: OK to the reunion of pension contribution

Corte di Cassazione, 15 October 2019, no. 26039

With judgement no. 26039 of 15 October 2019, Corte di Cassazione confirmed that the taxpayer – a certified professional enrolled with the pension fund for chartered tax advisors - is entitled to the reunion of pension contribution paid to said fund with contribution paid to INPS.

This also applies if the taxpayer's pension is only calculated on a contribution-based regime.

Income from participation to capital companies: not taxable for social contribution purposes

Corte di Cassazione, 20 August 2019, no. 21540

With judgement no. 21540/2019, Corte di Cassazione – Labour section – pronounced on the calculation of INPS taxable income for self-employed professionals who perform duties requiring enrolment under the artisan section of INPS.

Social contribution duties must not consider income from the mere participation to a company, with no performance of work, since income disconnected from work is to be considered capital income and not subject to pension and social contribution charges.

Pension credit and admittance to bankruptcy liabilities

Corte di Cassazione, order 2 October 2019, no. 24589

With order no. 24589/2019, Corte di Cassazione pronounced on the collection of social contribution credits, whenever a tax collection agent is a party in the trial procedure.

The creditor authority is not a necessary party, and its call to the proceeding may or may not be determined by the judge.

Injury of the apprentice and employer's liability

Corte di Cassazione, 2 October 2019, no. 24629

With judgement no. 24629/2019, the Supreme Court pronounced on health & safety obligations that an employer must observe in the presence of an apprentice.

The employer is bestowed with the burden of proving the adoption of all necessary precautions against the event, with specific reference to the organization of work, especially on the apprentice's duties, instructions, information and training on inherent risks, while the injured subject's recklessness in taking an initiative leading to injury doesn't matter.