STUDIO PISCIOTTA
COMMERCIALISTA | STUDIO LEGALE, SOCIETARIO E DEL LAVORO

Dear Clients

Object: Workers Dismissal must be presented via Internet

Working relationships can be stopped through dismissal, resignation or agreement between the parties. To counteract the phenomenon of the "Blank Resignation" the illegal practice to sign an undated letter of resignation, the legislator has introduced a norm on article 26 of the D.Lgs. n. 151 of the year 2015, which foresees that the subordinate work can be only terminated through resignations or upon reciprocal agreement between the two stipulating parties adopting formal modalities or at assisted competent places.

Therefore, workers that want to resign must follow the new regulations. Except in specific cases, the old procedure of writing resignations and sign them previously Blank Resignation" is not valid.

There is also another phenomenon in fact, some workers have their employers fired them for justified and object reasons (Firing c.d.) to collect Unemployment money. Note that resigning workers or consenting to settlements are not entitled to receive any unemployment money.

The worker does not come to work, the employer must apply the disciplinary sanction by writing him/her a dispute letter from which he won't receive any reply and once the period foreseen by the Workers' Statute is over the dismissal can be activated. This dismissal allows the employee to be eligible for the unemployment money collection NASPI, and it holds the employer responsible and obliges him to pay the (Firing c.d.) a contribution to NASPI which amounts to 603,10 € annually (41% of the maximum import paid by the NASPI) for each year of seniority service of the worker, for a maximum of three years with a maximum import equal to 1.809,30 €.

To prevent it happening, some employers have requested that the ex-employees reimburse the "firing ticket fee" and in other cases the employers have concluded that unjustified absences of workers are to be considered their willingness to terminate their employment. Some courts have endorsed this conclusion as true.

The Supreme Court has, however, by its Order n. 27331/2023 established that the subordinate working relationship can be only terminated through specific formal procedures or at assisted places as seen on article 26. Legislative Decree 15172015.

The Supreme Court expressed its conclusion on a case employee v employer. An illegitimate oral dismissal while the Company sustained that it had been the employee who had resigned without obligation of the formal written warning.

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The Supreme Court has established that the termination of the working relationship given the D.Lgs 151/2015 must observe the termination modality as foreseen by the art. 26 D.Lgs 151/2015.

Its article 1, foresees that the dismissal and its consent settlements are to observe the modality it has established using the apposite forms available on the internet site of the Ministry of Labour and of the Social Policies (w.w.w. Lavoro.gov.it).

Within seven days of the transmission date the Resignation Form and the Consent Settlement the worker has faculty to recede.

The procedure for the telematic dismissal applies for the subordinate working relationships, except for resignations:

- Assisted places (art. 2113, c, 4, cc) or before Commission of Certification (art 76 D.Lgs. 276/2003),
- during the probationary period (art. 2096 c.c.),
- domestic work,
- working parents,
- marine job.

As seen on art. 26 of the Legislative Decree 151/2015 co.4, the transmission of the forms for the dismissal and Consent Settlement can be carried out through assistance institutions, Union Organizations, labour consultants, bilateral Bodies, or Commissions of Certifications see articles 2 and 76 of the D/lgs 276/2023, or before qualified Organs of the Certification of the work contract or commissions of Certification like:

- bilateral Organs in the territory with National Reference that is when the Commission of Certification is constituted regarding Bilateral Organism of National Competence,
- provincial Direction of Work and the Province,
- public and State Universities including university foundations registered and exclusively in relation with collaboration with Labor Law teachers,

- general Direction of the protection of the work conditions at the Ministry of Labor for the Social Policies only in case in which the employer has his locations in two provinces,

- provincial Councils of labor consultants, exclusively for contract negotiated in the territorial area of reference,

The new provision of the Supreme Court is in contrast with the jurisprudential orientation which asserts freedom of form on working relationship termination on the basis art 2118 of the Civil Code. It provides the obligation of dismissal warning from a permanent contract which presupposes that the burden of proof of an alleged oral dismissal and thus violets the prescriptions on article 2. L. 604/66 as in article 1 paragraph 37 L. 92/2012, falls on the party that sees harmed his/her own rights, in this specific case the employee.

The Supreme Court concludes that if the termination of the working relationship takes place following the D/lgs 151/2015 the principal of typicality applies see article 26 of the cited article decreed and thus it is not possible to terminate the working relationship for reciprocal consent, the prescribed modality must be observed.

Palerme, Rome, October 24 2023

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