

To the clients:

Subject: Withdrawal of Resignation Even During the Probationary Period

With Ordinance No. 24911/2025, the Court of Cassation has provided clarifications regarding the scope of application of the right to withdraw a resignation, as provided for in Article 26 of Legislative Decree No. 151/2015, specifically in cases where the resignation was submitted by the employee during the probationary period.

The probationary agreement, governed by Article 2096 of the Italian Civil Code, is an ancillary clause to the employment contract, the purpose of which is to allow both parties to assess the mutual suitability of the employment relationship.

During this period, the law grants both parties a broader right to terminate the relationship, without the need to provide justification as required in regular employment relationships.

With the introduction of Article 26 of Legislative Decree No. 151/2015, implementing the so-called Jobs Act, the legislature significantly reformed the rules on voluntary resignation and mutual termination of employment contracts.

The regulation, aimed at combating the phenomenon of so-called "blank resignations" and ensuring the authenticity of the employee's intent, established that such actions must, under penalty of invalidity, be carried out exclusively via electronic procedures using forms made available by the Ministry of Labour and Social Policies.

Furthermore, the same Article 26 provides for the right to withdraw the resignation or mutual termination within seven days from the date of submission of the electronic form. The Ministry of Labour and Social Policies had previously expressed a negative opinion on the applicability of this right of withdrawal to resignations submitted during the probationary period, with Circular No. 12/2016, which excluded termination during the probationary period from the cases covered by the withdrawal provisions.

However, this interpretation has been rejected by the Court of Cassation, which, with Ordinance No. 24911/2025, established a legal principle to the contrary.



Studio Pisciotta

C.F. PSCNGL74H27G273R

P.I. 04848330827

pecstudiopisciotta@studiopisciotta.it

studiopisciotta@studiopisciotta.com

www.studiopisciotta.com

Sede di Marsala Via Sibilla, 5 - +39 0923 952388

Sede di Palermo Via Stefano Turr, 38 - +39 091 6090036

Sede di Roma Via C. Colombo, 456 - +39 06 5817225

Sede di Reggio Calabria Via Sant'Anna, 4 - +39 0965 24582

The Supreme Court held that the right to withdraw a resignation, as provided under Article 26 of Legislative Decree No. 151/2015, also applies to an employee's termination of the employment relationship during the probationary period.

The Court's reasoning is based on the following key arguments:

➤ **Exhaustive nature of the exclusions:**

Article 26, paragraph 7, of Legislative Decree No. 151/2015 provides an exhaustive list of cases in which the telematic procedure (and the related right of withdrawal) does not apply. Since resignations during the probationary period are not expressly mentioned among these exclusions, any interpretation that seeks to exclude them would be inconsistent with the literal wording of the provision and would go beyond mere statutory interpretation.

➤ **Non-binding nature of ministerial circulars:**

Administrative circulars, such as Circular No. 12/2016 issued by the Ministry of Labour, are internal acts of the public administration and do not have binding force on judicial interpretation.

➤ **Autonomy of legislative purposes:**

The regulation of the probationary period, which serves to assess the mutual suitability of the employment relationship, and the regulation of telematic resignations, which aims to protect the authenticity of the employee's consent, pursue distinct and non-overlapping objectives.

The Court emphasized that the need to prevent employer abuses—such as the so-called "blank resignations" exists both during and after the probationary period. Therefore, denying the restorative effect of withdrawal during the probationary period would frustrate the protective purpose underlying Article 26.

Effects of Withdrawal and Continuation of the Employment Relationship

Considering the principle affirmed by the Supreme Court, the withdrawal of resignation, if exercised by the employee within seven days from the submission of the telematic form, renders the resignation ineffective. As a result, the employment relationship is deemed uninterrupted and continues regularly.

The employer is therefore obliged to reinstate the employee in order to allow for the completion of the probationary period. The Supreme Court clarified that the employer may not discharge this obligation by merely offering compensatory damages based on the residual duration of the probationary term.



Studio Pisciotta

C.F. PSCNGL74H27G273R

P.I. 04848330827

pecstudiopisciotta@studiopisciotta.it

studiopisciotta@studiopisciotta.com

www.studiopisciotta.com

Sede di Marsala Via Sibilla, 5 - +39 0923 952388

Sede di Palermo Via Stefano Turr, 38 - +39 091 6090036

Sede di Roma Via C. Colombo, 456 - +39 06 5817225

Sede di Reggio Calabria Via Sant'Anna, 4 - +39 0965 24582

The withdrawal results in the full reinstatement of the employment relationship, along with all related obligations. Naturally, the employer's right to freely terminate the employment relationship at the conclusion of the probationary period remains unaffected, should the outcome of said period be unsatisfactory, or even prior to its expiration, provided such termination complies with the limitations established by case law.

Operational Guidelines and Social Security Obligations

Based on the principles outlined above, the local offices of the Institute shall comply with the following instructions. Upon withdrawal of the resignation by the employee, exercised in accordance with the procedures and within the terms set out in Article 26, paragraph 2, of Legislative Decree No. 151/2015, the employer is required to ensure the continuity of the employment relationship and all related social security obligations.

Therefore, no notice of termination shall be submitted to the Institute's information systems. Should such notice have already been transmitted, it must be cancelled. Uniemens data flows must be submitted regularly and without interruption, ensuring full contribution coverage for the employee.

Any refusal by the employer to reinstate the employee following a timely and valid withdrawal of resignation constitutes a breach of contractual obligations. From a social security perspective, such behaviour—by preventing the employee from performing their duties—does not extinguish the employer's obligation to pay contributions, which remains in force pursuant to general legal principles.

During inspection activities, enforcement personnel shall verify compliance with contribution obligations in accordance with the judicial interpretation adopted herein.

Any termination of the employment relationship attributable to the employer, following a valid withdrawal of resignation by a probationary employee, shall be deemed an unlawful dismissal, with all legal consequences including the recovery of unpaid social security contributions.

18th September 2025

Lawyer Dr. Angelo Pisciotta



Studio Pisciotta

C.F. PSCNGL74H27G273R

P.I. 04848330827

pecstudiopisciotta@studiopisciotta.it

studiopisciotta@studiopisciotta.com

www.studiopisciotta.com

Sede di Marsala Via Sibilla, 5 - +39 0923 952388

Sede di Palermo Via Stefano Turr, 38 - +39 091 6090036

Sede di Roma Via C. Colombo, 456 - +39 06 5817225

Sede di Reggio Calabria Via Sant'Anna, 4 - +39 0965 24582



Studio Pisciotta

C.F. PSCNGL74H27G273R

P.I. 04848330827

pecstudiopisciotta@studiopisciotta.it

studiopisciotta@studiopisciotta.com

www.studiopisciotta.com

Sede di Marsala Via Sibilla, 5 - +39 0923 952388

Sede di Palermo Via Stefano Turr, 38 - +39 091 6090036

Sede di Roma Via C. Colombo, 456 - +39 06 5817225

Sede di Reggio Calabria Via Sant'Anna, 4 - +39 0965 24582