



CAMMINO DIRITTO

Rivista di informazione giuridica



WORKING DURING THE ILLNESS PERIOD: VIOLATION OF FIDELITY OBLIGATION

The sick leave granted to the worker cannot be used for aims and purposes different from or incompatible with the state of illness in question, otherwise the dismissal becomes legal (Italian Court of Cassation, sentence n.10627 of May 22nd 2015).

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CIVILE - LAVORO
Articolo divulgativo - ISSN 2421-7123

Publicato, Giovedì 19 Maggio 2016

With sentence n.10627 of May 22nd 2015, the Italian Court of Cassation reaffirmed a strong orientation on dismissal: the worker employed by third parties during the illness period breaks the fidelity obligation, integrating the right cause ex art. 2119 of the Italian Civil Code for dismissal.

The event stems from the judgment of L'Aquila Court of Appeal, which, confirming the sentence issued in the first instance, rejected a worker's appeal against the company where he worked before, with the intention of obtaining a declaration of illegitimacy of the dismissal, with all the consequent reinstatement and compensation clauses stated by art.18 of Workers' Statute.

In the Italian judicial system, the fidelity obligation, codified at art. 2015 of the Italian Civil Code, states that *“workers should not entertain business relations on their own or for third parties in competition with the businessman, they should not spread news about the company's organisation and methods of production or use such information to cause damage to the company”*.

The dismissal was decided after considering the results of stakeouts conducted by a Detective Agency hired by the company: the claimant was spotted working during his sick leave as a cleaner at a university on behalf of another company. The afore-mentioned event integrated a particular case of absolute gravity from a disciplinary point of view, thus violating the duties of loyalty and fidelity on which each working relationship is based.

The worker appealed against the judgment of the Court of Appeal by pointing out the reliability of witnesses and the results of similar criminal judgments, as well as the probative effectiveness of photos.

The Court of Cassation rejected the worker's appeal, stressing that the Court of second degree successfully verified, in accordance with the Detective Agency, that the claimant had worked for the company in which his wife was employed too.