

#### July - August 2025

Key clarifications on practice and case law.

- 1. Supreme Court, Order No. 19556/2025: repêchage does not impose any obligation on the employer to provide training to the employee;
- 2. Data Protection Authority, Provision No. 390/2025: prohibition on the processing of health data upon return from sick leave;
- 3. Supreme Court, Order No. 21965/2025: Is it lawful to dismiss an employee who refuses a transfer?
- 4. Supreme Court, Order No. 18903/2025: unlawful transfer and reimbursement of travel expenses.

# 1. Supreme Court, Order No. 19556/2025: repêchage does not impose any obligation on the employer to provide training to the employee

With Order No. 19556 of July 15, 2025, the Supreme Court reiterated that the employer's fulfilment of the repêchage obligation does not impose the responsibility to provide training if the employee is assigned to lower-level duties.

In the judgment in question, the Supreme Court reiterated that the repêchage obligation and the possibility of a change in duties, pursuant to Article 2103 of the Italian Civil Code, respond to very distinct logics.

The aforementioned article regulates *the* employer's *right to change* an employee's duties during the employment relationship. It allows for unilateral assignment to lower duties in the event of changes in the company's organisational structure.

In this case, the employer is obliged to maintain the employee's salary unchanged and to provide training so that the employee can perform the new duties.

The *repêchage* obligation, on the other hand, aims to avoid the dismissal of the employee.

Given that, in this case, the interest protected is the employee's interest in retaining their job, the employer may assign the employee to lower-level duties without providing training and with the possibility of reducing their salary.

## 2. Data Protection Authority, Provision No. 390/2025: prohibition on the processing of health data upon return from sick leave

The Data Protection Authority, in provision no. 390 of July 10, 2025, deemed unlawful the processing of personal data carried out by a company which, upon the return of employees from periods of absence due to illness, accident, or hospitalisation, subjected them to interviews accompanied by a questionnaire that also contained questions relating to their health condition.

Following a report by the trade union, it was revealed that these questionnaires were then sent to the company doctor, who assessed the potential implementation of measures to protect the employees' health.

The company justified this practice as a preventive measure pursuant to Article 2087 of the Italian Civil Code, aimed at ensuring the physical and mental well-being of employees.

However, the Data Protection Authority ruled that this practice did not comply with personal data protection regulations, ordering the deletion of the data collected and imposing a fine of EUR 50,000 on the company.

### 3. Supreme Court, Order 21965/2025: Is it legitimate to dismiss an employee who refuses a transfer?

In Order No. 21965 of July 30, 2025, the Supreme Court ruled that an employee's refusal to comply with a transfer ordered by the employer, motivated by the unlawful assignment of lower tasks, requires the judge to make a comparative assessment of the conduct of the parties.

In this case, an employee challenged his dismissal for failing to report to the new workplace assigned to him.

The judges upheld the employee's arguments, ruling that the transfer had not been ordered for organisational reasons.

The Supreme Court, in confirming the decision on the merits, specified that in contracts with mutual obligations, if one party intends to justify its nonperformance by the non-performance of the other party, the judge must make a comparative assessment of the conduct of both parties.

In this case, the employer's failure to comply with the obligations under Article 2103 of the Italian Civil Code, due to the possibility of transfer, does not automatically justify the worker's refusal to perform the work; instead, it is necessary to assess the specific facts.

## 4. Supreme Court, Order No. 18903/2025: unlawful transfer and reimbursement of travel expenses

In Order No. 18903/2025, the Supreme Court ruled that employees are entitled to reimbursement of travel expenses in the event of unlawful transfer.

The Court considered the travel expenses incurred by the unlawfully transferred employee to be compensable as compensation for the financial damage suffered.

However, the employee was denied reimbursement for travel time from his residence to the new workplace, as this cannot be considered working time.

Finally, the employee's request for mileage reimbursement for using his personal car to reach the new workplace was also denied. The NCBA applicable to the employment relationship only provides for the reimbursement of out-of-pocket expenses for travel to locations other than the workplace.



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The main updates on Labour Law of July and August 2025

### The limits of social scoring under Regulation (EU) No. 1689/2024

The European legislation prohibits the use of artificial intelligence systems for evaluating individuals based on social behaviour or personal characteristics, where this involves processing that is prejudicial or discriminatory. Regulation (EU) 2024/1689 of 13 June 2024 (commonly referred to as the "AI Act") recognised the potential ability of artificial intelligence systems to assign social scores to individuals (social scoring). It imposed restrictions to prevent this practice from producing discriminatory effects.

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#### The cap of six-monthly salaries on compensation for unlawful dismissal in small enterprises is unconstitutional in Italy

The Constitutional Court has again ruled on the legitimacy of section 9, para. 1, of Legislative Decree No. 23/2015, which governs the protection granted to employees who have been unlawfully dismissed by companies staffing fewer than sixteen employees. This time, the Italian Court found the provision unconstitutional insofar as it limits the maximum compensatory indemnity to six months' salary.

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#### HR Tip #7 Posting of employee

Employee **secondment** (Art. 30, Legislative Decree 276/2003) occurs when an employer (so-called *seconding party*), to satisfy its interest, temporarily places an employee at the disposal of another party (so-called *secondee*) for the performance of a specific work activity.

Therefore, secondment is legitimate if the following **requirements** are met:

- specific interest of the seconding party;
- temporary nature of the secondment;
- performance of a **specific work activity** at the seconding party.

The posting employer remains **responsible** for the economic and normative treatment in favour of the employee.

In the case of an unlawful posting, the seconding employer and the secondee may be **sanctioned** with imprisonment of up to one month or the imposition of an administrative penalty of EUR 60 for each day of posting, for each employee, between a minimum of EUR 5,000 and a maximum of EUR 50.000.

#### **HR Tip #8** News about Paternity Leave

**Paternity leave** (Article 27-bis, Legislative Decree No. 151/2001) grants working fathers the right to take ten working days off work, which can be taken daily, even intermittently, during the two months before the expected date of birth and within the five months following the birth.

During this period, the employee is entitled to **a daily allowance** equal to 100% of his salary.

A recent decision by the Constitutional Court (no. 115/2025) declared Article 27-bis of the aforementioned decree to be unlawful, as it did not allow the **intended mother** in legally recognised same-sex couples to take such leave.

An employer's refusal to grant compulsory parental leave is punishable by an **administrative penalty** ranging from EUR 516 to EUR 2,582.

#### For further information and insights

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