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ITALIAN CONSTITUTIONAL COURT LEGITIMATES THE NON-VAX EMPLOYEES' SUSPENSION



The unpaid suspension measures adopted against health and education sectors employees who were not vaccinated against the SARS-CoV-2 virus are lawful. This was established by the Italian Constitutional Court in a statement on 1 December, published ahead of the filing of the final ruling.

This was a long-awaited decision, even beyond the obvious political and social implications, which could have led to economically disruptive consequences for the many employers in the sectors concerned. This is especially relevant for those companies that, faced with the failure to vaccinate by some of their employees, had ordered their suspension from their duties and, consequently, from their salary.

However, the Court, thus averting a number of probable appeals, deemed 'reasonable' the choices made by the legislator during the pandemic period, in particular those that led to the adoption of Decree-Law No. 44 of 2021. This means that suspended without salary employees will not be able to resort to the Employment Tribunal in order for the employer to be condemned to pay the salary and social security contributions that would normally be due. Not only that, they will also not be entitled to compensation for the loss suffered.

Indeed, for the Italian Constitutional Judges, the 'duty of solidarity' and the protection of public health, established by Articles 2 and 32 of the Italian Constitution, take precedence over the freedom of individual self-determination. The consequence is that the employee, who refuses without valid medical reason a vaccine that is mandatory by law, is effectively deprived of an essential requirement for the performance of his duties. No work and no salary, therefore, at least until fulfillment of the vaccination obligation.

A decision that brings an end to months of interpretative doubts and disputes, but which does not surprise the most attentive observers. In fact, the Italian Constitutional Court had already recalled in 2018 that the Law can impose certain vaccination obligations on certain categories of employees, in the event of the outbreak of pandemics or epidemics, even after the stipulation of the individual employment contract. Any non-compliance leads to suspension from duties and, consequently, from salary.