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RULES AND ANARCHY IN THE WORKPLACE

Comment on the judgment of the Court of Venezia June 04, 2021



The "Covid litigation" begins to show up in the courtrooms: in this case, the Court of Venice has ruled on the legitimacy of a conservative sanction, imposed to an employee who had not worn the protective mask during a meeting company and, also, had posted on the company notice board a communication with which he had basically invited his colleagues not to wear the mask because such an obligation would be "unconstitutional and illegal".

The Court of Venice, confirming the legitimacy of the sanction imposed to the employee (3 days' suspension), recalled that:

- the employer is responsible for the health of employees (art. 2087 Civil Code; Legislative Decree no. 81/2008);
- the Protocol between the Government and Social Unions of April 24, 2020 and the same Company Protocol signed the following May provide for and regulate the use of the protective mask, for the protection of employees;
- the Risk Assessment Document (updated) of the company also identifies the protective masks among the PPE to be used to render the work performance;
- ultimately, *"in the tragic situation in which the Country and the whole world have found themselves because of the Covid-19, the imposition on employees of the use of the mask by [...], stated in the Protocol shared with the Trade Unions, is certainly not an irrational or excessive measure, but it fully meets the employer's duty to protect the employees as best as possible"*.

On the basis of these assumptions, the Court has confirmed the legitimacy of the sanction imposed and the condemnation of the employee to the reimbursement of legal costs.

Incidentally, the employee in question also held the position of Workers' Safety Representative.

If we add to this that pursuant to art. 20 of Legislative Decree 81/2008, *"every employee must take care of his/her own health and safety and of the other persons present in the workplace, on whom the effects of his/her actions or omissions fall, in accordance with his/her training, instructions and means provided by the employer"*, it is clear how the sanction imposed by the employer appears to be really mild, while the judgement examined appears to be a dutiful reminder of respect for the rules and reasonableness.

The right to criticism is an inalienable constitutional value, anarchy is not.