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THE EMPLOYEE'S REFUSAL OF GETTING COVID-19 VACCINE AND THE WORKPLACE SAFETY

Comment on the order of the Court of Modena 23.7.2021



The rulings about Covid 19 vaccinations and relevant effects on the workplace keep on coming.

After the Court of Belluno, the Court of Modena, with the order in comment, returns to the topic (which has been already addressed, in the same terms, with order 19.5.2021) confirming that the company can suspend from the work duties and abstain from paying the employee who refused to get vaccinated against Covid-19.

The Court of Modena, through a very linear argumentative path, reiterates some basic concepts.

In Italy, there is no obligation to get vaccinated against Covid-19, at least not at the moment (except for health workers). Therefore, Italian employees are not subject to disciplinary sanctions if they refuse to get vaccinated.

However, “the employer is obliged to ensure the health and safety of the employees and third parties, who for any reason are present inside the company premises, and (the employer) is therefore obliged, under Article 2087 of the Civil Code, to take all the preventive and protective measures that are necessary to protect the physical integrity of the employees”. Moreover, Art. 20 of Legislative Decree 81/2008 expressly provides that “every employee must take care of his/her own health and safety and the one of any other person present in the workplace [...]”.

Thus, in the balancing of interests between the employee's freedom and the employer's safety obligations, the latter prevails.

On the other hand, as already stated by the Supreme Court, in the judgment no. 218 of 23.5.1994, “the protection of health [...] implies and includes the individual's duty not to damage or put at risk the health of others by his own behaviour, in compliance with the general principle that each person's right is limited by mutual recognition and equal protection of the coexisting right of others”.