



# Employment Law Hits

Focus on the possible cumulation of the director role with the employee status

# The potential risk in case of overlapping

## The risks

The combination of the role of director and of the employee status has always been a critical issue for the proper structuring of corporate governance.

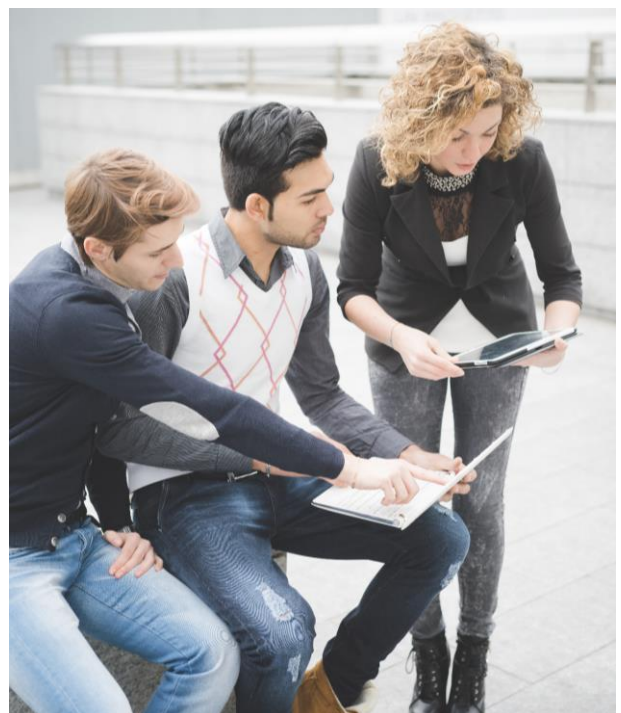
Indeed, when a subject inside the company has such role and such status and their distinction is not properly defined and marked, the existence of the employment relationship may be denied, with relevant consequences...

## ...from a social security and compensation perspective

The employee could lose the right to pension benefits and the relevant social security contribution made could be paid back, as a consequence of the deletion of the pension position of the involved employee. The risk for the company, therefore, is that the employee may file a lawsuit in order to be compensated for the pension damage caused by the company, consisting in the loss of the pension treatment or in its diminished value.

## ...from a tax perspective

As also clarified by a recent ruling of the Supreme Court (Order No. 36362, Nov. 23, 2021), in case of ascertained non-existence of a real employment relationship or in the absence of the requirement of the proper distinction between the duties underlying the office of director and the tasks of the employee, the relevant employment cost shall not be deductible from the company's income and should therefore be qualified as director's compensation, which, in turn, is deductible only if specific formal requirements (provision in the bylaws and/or company resolution) occur.



# The possible mitigation actions

## The practical implications

The risks can only be minimized through the proper definition of agreements and corporate acts that satisfy the conditions allowing the lawful overlapping of the role of director with the status of employee, according to case law and to the guidelines provided by INPS.

In fact, it is necessary to carefully manage the drafting of proxies and the employment contract, ensuring that the distinction between the two relationships is clear, as well to take care that it remains effective during time, through the adoption of appropriate behavior policies.

## Conclusions

Particular attention should therefore be paid to the simultaneous presence of a director role with an employment relationships involving the same individual in the same corporate and business organization, which presupposes the proper case-by-case verification of the existence of the conditions indicated by case law and administrative practice.



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## Editorial Board

**Alessandra Maniglio**

Partner | [amaniglio@deloitte.it](mailto:amaniglio@deloitte.it)

**Ivana Azzollini**

Partner | [iazzollini@deloitte.it](mailto:iazzollini@deloitte.it)

**Pietro Venerando**

Partner | [pvenerando@deloitte.it](mailto:pvenerando@deloitte.it)

**Andrea Bonanni Caione**

Of Counsel | [abonannicaione@deloitte.it](mailto:abonannicaione@deloitte.it)

**Stefano Miniati**

Managing Associate | [sminiati@deloitte.it](mailto:sminiati@deloitte.it)

## Under the coordination of:

**Monica Rattone**

Senior Associate | [mrattone@deloitte.it](mailto:mrattone@deloitte.it)

## By

**Giorgia Lovecchio Musti**

Senior Associate | [glovecchiomusti@deloitte.it](mailto:glovecchiomusti@deloitte.it)

**Francesco Chiari**

Associate | [fchiari@deloitte.it](mailto:fchiari@deloitte.it)

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