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Labour Law Hits

Statute of Limitation

September 2022

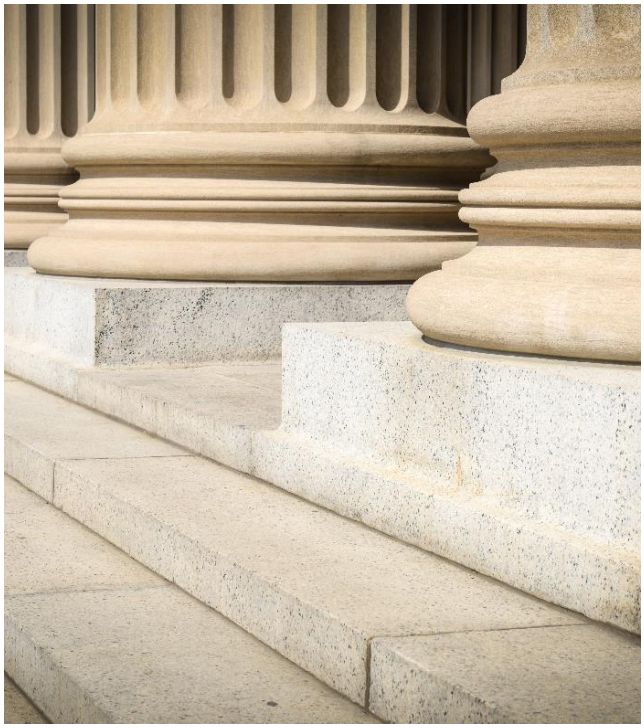
Italian Supreme Court, judgment no. 26246/2022 on the starting point of the statute of limitations on employee's credits after the recent "protection against unfair dismissal" new regulation (introduced by the "Fornero Law" and "Jobs Act")

In the legal framework before the "Fornero Law" and "Jobs Act":

- in companies with more than 15 FTE employees, the statute of limitations for remuneration related claims started running during the employment relationship, while in companies with less than 15 FTE employees started running only from the termination of the employment relationship;
- the main principle was that in larger enterprise employees were more protected, having the right to be reinstated in case of unfair dismissal and, therefore, the fear of exercising the rights linked to the employment relationships during this latter was not justified, as, instead, in smaller organization (i.e.: under 15 FTE employees);
- therefore, an employee who for example wanted to claim unpaid wages, working an enterprise with more than 15 FTE employees would have had to formally move the relevant claims within 5 years of their accrual, under penalty, in lack, of definitive extinction the relevant right.

After the latest new regulation on dismissals, however, as state by the judgment at issue, the legal framework has changed:

- as a result of the "Fornero Law" and of the "Jobs Act" the ordinary protection in the event of unfair dismissal (even if it was involved an employer with more than 15 FTE employees) would no longer consist in reinstatement, but only in an economic indemnity;
- according to the interpretation of the Italian Supreme Court, then, for those credits for which the statute of limitations had not yet expired on July 18, 2012 (when the so-called "Fornero Law" became effective) the statute of limitation does not start running during the employment relationship, but, for all employees, only from the date of its termination (as the principle above described would not be applicable).



This judgement is relevant because:

- involves all private employers with more than 15 employees;
- concerns (by way of example) possible claims relating to salary differences for re-qualification in a higher level, salary increases for overtime, additional monthly payments and other rights accrued during the employment relationship;

- involves, in particular, credits accrued since July 2007 (i.e.: 5 years before the “Fornero Law” become effective), deriving from employment relationships still ongoing or terminated less than 5 years ago;
- entails for employers the extension of the time frame for checks on the regularity and correctness of the remuneration treatments, and for the storage period of the relevant documentation, as well as the opportunity to possibly reconsider the provisions of any risk funds;
- calls for further reflections on the legal and regulatory framework, to be read also in the light of the latest interpretative rulings of the Italian Constitutional Court (which have in fact restored the "real" reinstatement protection for many of the hypotheses of dismissal, for which the so-called “Fornero Law” first and the so-called “Jobs Act” provided only for the an indemnity protection, to which the Supreme Court in comment refers), to assess whether reintegration can really be considered a merely residual hypothesis or it has not somehow returned to be prevalent.

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