Unjustified Absences at the End of a Contract

Management of Unjustified Absences Near the End of a Fixed-Term Contract

Managing employees near the expiry of a fixed-term contract can give rise to complex situations for employers and human resources to manage. Especially when it comes to unjustified absences.

In particular, one wonders how to behave with an employee who, despite having an extension of a fixed-term contract that he has not yet signed, is absent from work without any justification in the last few days before the original expiry of the contract. This behavior could be interpreted and evaluated by the employer in different ways, which we will analyze below.



Silent Resignation: When Employee Behavior Matters

First of all, we could find ourselves faced with a case of tacit resignation or resignation for conclusive facts of the worker, who with his behavior manifests his will not to continue the employment relationship, despite having received the proposal to extend the contract from the employer.

The Court of Cassation, labor section, with ruling no. 25583

of 10/10/2019 intervened on the subject of resignation for conclusive facts in the case of prolonged absences by establishing the following: “The voluntary withdrawal of the worker can be inferred from declarations or behaviors that, unequivocally, manifest the intent to withdraw from the relationship, as in the case in which the employee has left the workplace and has not shown up for several days (see Cass. 5454 of 2011)”. However, it must be taken into account that, under penalty of ineffectiveness, resignations must be made through the mandatory online procedure on the website of the Ministry of Labour and Social Policies introduced by Legislative Decree 151/2015.

Unsigned Extension: Risks and Legal Implications

The second hypothesis to take into consideration is that of the nullity of the extension of the fixed-term contract not yet signed by the worker with the consequence that the contract would expire at the originally agreed term. However, regarding the possibility of considering the extension of the contract null and void due to the failure to sign by the worker, the case law is not uniform and this would create uncertainty for employers who decide to take this path.

Furthermore, the issue of the protection of the worker’s trust in the continuation of the employment relationship could arise, having in any case received a contractual extension.

Disciplinary Proceedings: Unjustified Absences of the Worker

Finally, the continuation of unjustified absences could certainly determine the opening of disciplinary

proceedings pursuant to art. 7 L. n. 300/1970 against the worker which, as is known, could result in dismissal for just cause in the event of failure to send justifications or in the event of unsuitable or insufficient justifications. In fact, there are numerous National Collective Agreements that expressly mention unjustified absences as one of the causes of dismissal for just cause.
For example, the CCNL Commercio – Confcommercio provides in art. 238 that "the measure referred to in point 5) (disciplinary dismissal) applies exclusively for the following shortcomings: unjustified absence of more than three days in the calendar year".



Conclusions: The Safest Path for Employers

Ultimately, if the employer finds himself having to choose between the options mentioned above, our advice is to opt for

opening a disciplinary procedure for unjustified absences, with the possibility of dismissing the employee for just cause, being the safest path and, at the same time, the most protective of the employee’s rights.
In any case, in order to prevent complex situations related to unjustified absences and the management of extensions of expiring fixed-term contracts, we advise employers to adopt a preventive approach based on clear and timely communication with employees.

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