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RETALIATORY DISMISSAL AND DISCRIMINATORY DISMISSAL: their proof in the Italian procedure



Retaliatory and discriminatory dismissal, being null and void measures, entail the reinstatement of the employee. However, the cases are different and have different procedural treatment.

The **retaliatory dismissal** is caused solely by the employer's retaliatory intent. It is therefore a reaction not supported by any objective or subjective motivation, responding to a legitimate conduct of the employee. The classic example is the dismissal due to the fact that the employee has taken part in a strike or to a specific trade union. The concrete hypotheses can be various, which is why the law does not provide an exhaustive list of retaliatory dismissals.

The **discriminatory dismissal** occurs in cases strictly listed by law, as a result of an unjustified difference in treatment due to the employer's undue assessment of certain characteristics or qualities of the employee. This is the case of dismissals imposed for pregnancy; for belonging to a political, racial, religious or linguistic category; for reasons related to sex or sexual orientation; for disability issues; for the employee's age; and, finally, for the employee's personal convictions.

The most important difference, in each case, is procedural:

- in the case of **retaliatory dismissal**, it is up to the employee to prove that the sole fact placed as justification for the measure represents an undue reprisal by the employer against his legitimate conduct;
- differently, in the case of **discriminatory dismissal**, the employee may limit himself to providing only evidence of facts - possibly even of a purely statistical nature - capable of establishing the presumption of the discriminatory nature of the dismissal, while it is entirely up to the employer to prove by appropriate means that the dismissal is based on a lawful motive.

The professionals in the [Employment Law department](#) of Bacciardi Partners are at your disposal for the ordinary management of labour relations and for assistance in labour and employment disputes.