

In search of a delicate balance between rights: work, health, confidentiality



By [Ciro Cafiero](#) on

With the pandemic, an unprecedented conflict has also erupted in Italy between three important rights with constitutional dignity. The one at work, the one at health, and the one at confidentiality.

We will remember the conflicts between the right to work and the right to health on the ground of the Ilva di Taranto or that between the right to work and privacy triggered by the controversies (unfounded) on the Amazon bracelet, but these three rights have never been challenged simultaneously as it happened recently.

The conflict took place both on the ground of the companies that have not stopped production, at the dawn of the contagion from Covid-19, and of those (few) authorized in this sense by the measures of the Government when it is soaring, as on that of companies forced to lockdown.

On the field of active companies, the right to work sang victory while the right to privacy for the invasive checks prepared against employees, from measuring the temperature to the investigation of the contacts of the previous 15 days, were both "defeated" the right to health for the greater risk of exposure to infection when adequate measures have not been taken.

Conversely, on the ground of the companies in lockdown, the right to health sang victory given the best protection of the employees that ensued and their right to confidentiality, as they were free from any invasive control, but the right was defeated at work.

If the serious emergency has justified, exceptionally, the opposing outcomes of this conflict, the same cannot happen for the ordinary, or in any case less extraordinary, time that is looming, that

of the so-called "Phase 2". Instead it calls for a prudent balance between the rights involved, all with constitutional dignity.

And then, it is important to ask whether this balance is achieved by the solutions that, in the perspective of recovery, are making more headway, such as periodic health checks of workers, related rapid serological tests and tracking apps for their movements.

Going in order, the first two solutions impact on the discipline of the treatment of workers' health data designed by articles 5 and 6 of the Workers' Statute and which must be read in conjunction with that of privacy, as innovated by the Gdpr (EU Reg. 679 of 2016).

In summary, these data are considered highly sensitive, their processing can only take place by competent subjects and in the context of ad hoc assessments, agreed with the union representatives, to protect the dignity and confidentiality of the subjects concerned.

It is clear that, if no derogating legislative measures intervene, these solutions crash like waves on the cliff of the current discipline. And in fact, the right to privacy would risk a serious blow while the health of workers would not remain completely guaranteed, with a - albeit milder - physiological risk of contagion remaining on its feet.

The same can be said for workers' localization apps, which can be used in businesses, or "contact tracing", if you like, based on the one announced by the government, known as "Immu-ni".

Even in this case, in fact, the guarantees for workers' health would not be absolute and their right to confidentiality would be sacrificed in violation of article 4 of the Workers' Statute, which instead prohibits all kinds of remote controls except for special needs (e.g. example, pre-arranged checks to protect the company's assets).

And again, how to reconcile the obligation of the agreement with the union representatives or at the Labor Inspectorate for tracking systems, provided for by this provision for all cases where they are not strictly necessary for the purposes of carrying out the work activity?

If this is so, the most enlightened solutions can only come from those particular types of technology capable of balancing the three protagonist rights, without harming any of them. Wearable devices, even blockchain-based, equipped with intelligent algorithms, or better wise, are just an example.

These are devices wearable by workers capable of recording their state of health (from blood pressure to heart beat to a circulating virus), to alert them accordingly to any anomalies that concern them and to capture, thanks to these alarms goritmi, only the data necessary for the purpose.

And not every personal shift, specific hematological values, and more generally physical performance in all ease.

Hence also the guarantee of respect for those principles of necessity, proportionality, relevance or, in one word, of minimization of data processing that the European legislator imposes. Ultimately, *tertium datur*. Certainly, "thought" steps forward are needed, without those improvisations that, returned to normal, would not be justified.

In other words, "Phase 2" requires a lucid look at reality. What the "servant-leader" should adopt (we could say the leaders with a spirit of service), in the formulation of Robert Greenleaf: figures with high political responsibilities who listen, heal, persuade, manage and build communities.