

# **Work, health and privacy: among the three litigants, technology enjoys**

**By Ciro Cafiero**

The "Covid19" emergency has brought us, without notice, to an extraordinary clash between the right to work, the right to health in the workplace and the right to privacy.

And therefore, among constitutional calibration rights, none excluded: articles 1,3,4,35, 36 of the Charter on the labor side, article 32 on the health side, then declined within the company by Legislative Decree no. 81 of 2008, articles 13, 14 and 15 on the privacy side.

A clash that has already taken place in the past but only partially. On the land of Ilva where the right to work and the right to health and not also that of confidentiality were challenged, in part, on that of Amazon, where the right to health and the right to privacy and not also to work were challenged, to because of electronic bracelets.

All three of these rights simultaneously came into conflict when the current emergency has imposed, for example, the measurement of employee temperatures at the factory entrance.

And therefore to choose whether to make prevail, against a level of it such as to indicate a probable infection by "Covid19":.The right to work by allowing entry, the right to health preventing it, the right to privacy which, in theory , prevents the processing of health data because sensitive data (art. 5 l. 300 of 1970 and EU Reg. 679 of 2016, so-called Gdpr).

Or again, to make the same choice in front of a contact, close or not, between a worker and a person who then proved positive, even without symptoms, to "Covid19" or simply returning from the first so-called areas. "Red" in the country, those in the North first affected by the pandemic.

Moreover, only in the first half of March, and therefore more than a month after the surge in the infection, the "Protocol for the regulation of measures to combat and contain the spread of the Covid-19 virus" intervened, implemented a few days later (March 22) by a Prime Ministerial Decree.

Which, exceptionally, has cleared the possibility of subjecting workers to the necessary health checks, imposed restrictions on their entry into the company in the event of suspected contagion, and therefore, ultimately, assigned prevalence to the right to health, over the right to work and confidentiality, albeit while respecting the dignity of the worker.

And then, it is interesting to ask whether the exceptional nature of this Protocol will justify its effectiveness even in "Phase 2" when the emergency has ceased but it will be necessary to remain alert to prevent its return or if, rather, there are alternative ways that can guarantee a better and more orderly balance of the three fundamental rights at stake.

There is an alternative and it is called technology.

For this year's Yearbook, I analyzed the conflict between the right to health at work and the right to privacy that can be consumed when "wearable devices", technological devices worn by the worker, measure their temperature, pressure, heart rate heart.

The question concerned the choice of the employer in relation to the data recorded by these devices and clues, for example, of an imminent heart attack, of a drop in worker pressure or of any other injury to his health.

Treat those data, even beyond the prohibitions on the processing of sensitive data such as health, (ibidem, art. 5 l. 300 of 1970 and EU Reg. 679 of 2016, so-called Gdpr) and block work in compliance with the right to worker health; or, strictly observe these prohibitions in compliance with the right to privacy and remain inert with the risks and responsibilities that derive from them?

I replied that a technology such as blockchain, so-called block chain, is able to balance these two rights. Thanks to it, even in the form of "smart contracts", in fact, it is possible to process the health data collected by the "wearable devices" and therefore avoid the worker prejudices for his health, but within a perimeter of legitimacy: the one traced by intelligent algorithms, or wanting ethical, installed on such devices.

So why not resort to this same solution for "Phase 2"? It would be an alternative to the exceptional measures provided for in the Protocol of 14 March.

Instead of carpet health checks, mass swabs and more generally particularly rigid measures, a simple wearable technology capable of detecting possible "Covid19" infections.

It would mean giving technology the important value it deserves. A "vaccine" that can cure the job market more than a "virus" that can destroy it. Thanks to its ability, on the one hand, to resolve that extraordinary conflict between fundamental rights, of which the choice of lockdown was in some fashion daughter, on the other, to allow a gradual and more peaceful return to normalcy or, in a word alone, the restart of economic activities.

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