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Unit Link
Disciplinary dismissal
Glamping
AI

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Significant Changes to the Legal Framework for *Industrial Design Protection*

On October 10, 2024, the European Union officially approved a legislative package reforming the legal framework for design protection. This update affects both EU designs (formerly known as Community designs) and Spanish designs. The new regulations include Directive (EU) 2024/2823 of the European Parliament and the Council (dated October 23, 2024) on the legal protection of designs, which repeals Directive 98/71, and a new Regulation (Regulation (EU) 2024/2822) that amends provisions of Regulation (EC) No. 6/2002 on Community designs. These were published in the Official Journal of the European Union on November 18, 2024.

Objectives of the Reform

The reform has multiple objectives, with three main aims:

To modernize the legal framework for design protection, such as recognizing animated features and user interfaces at the regulatory level.

To harmonize design protection across EU member states, for example, through the inclusion of a repair clause.

To encourage the use of the system by making it more appealing and cost-effective, such as eliminating the "class unity principle" for multiple design applications.

Key Changes

Beyond terminology updates (e.g., renaming "Community designs" as "EU designs"), the reform introduces several significant modifications:

a) Concept of Design
The definition of design has been expanded to include:

Animated features (e.g., movement, transitions, or other animations).
Designs that do not exist in physical formats. The requirement for visibility during use now applies only to components of complex products.

b) Scope of Design Protection

Several changes extend the scope of design protection:

3D printing activities that infringe on design rights are now explicitly considered infringements.

Protection extends to products in transit (i.e., goods within a customs regime that have not entered the market).

The repair clause, a previously controversial limitation to design protection, is now mandatory across all EU member states.

What is the Repair Clause?

The repair clause limits design protection to allow the market for replacement parts. It excludes from protection any designs for components of complex products used solely for repairing the product to restore it to its original appearance (e.g., car parts).

In Spain, this clause already existed under Law 20/2003 on the Legal Protection of Industrial Design. However, its implementation across the EU now includes specific conditions, such as:

The part manufacturer or vendor must clearly and visibly label the product or packaging to indicate its origin and manufacturer.

Manufacturers must act diligently to ensure the part is not used for purposes other than repair.

c) Other Changes

The prior Regulation's exclusion of unregistered designs not disclosed within the EU has been removed (potentially eliminating the EU-first disclosure requirement for unregistered designs).

States may now invalidate designs based on the use of nationally significant cultural heritage elements.

Member states may optionally assign direct invalidation of designs to national intellectual property offices rather than courts.

Numerous procedural changes have been introduced, such as updates to multiple design applications and the introduction of "Continuation of Proceedings."

Implementation Timeline

These changes will not take immediate effect:

Member states have 36 months (until December 8, 2027) to implement changes from the new Directive.

The new Regulation will be phased in, with most provisions effective from May 1, 2025, and some delayed until July 1, 2026.

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The subject of the trial in the case known as: *"The Bárcenas Papers"*

When one gains direct knowledge of a matter of public relevance, the treatment it receives in the press often comes as a surprise. Journalistic publications tend to employ certain liberties in crafting stories to make them appealing, tapping into elements like emotions, reader ideology, and the undeniable biases and constraints of the particular outlet. Headlines, in particular, are designed for maximum clickbait efficiency. This is evident in how the press has handled the case, whose background is well-known and need not be recounted here.

On November 14, the Supreme Court issued a ruling on the appeals filed against the October 18, 2021, National Court judgment. By this stage, the focus of the trial had long since shifted away from the hidden funds or "B" accounts of the political party, even though public discourse continues to associate the case with this aspect.

Key Legal Considerations

At the time the events occurred, Spain's Penal Code did not yet criminalize the illegal financing of political parties. Furthermore, during the investigation, it was ruled out that the initial fact of receiving undisclosed donations might establish the existence of tax crimes or bribery offenses linked to the donors of these sums. This narrowed the scope of the case to other ancillary actions.

The remaining judicial focus revolved around the use of received funds, which, due to their opaque nature, were not easily convertible. The victim in this instance was a supplier to the political party, who was forced to accept part of the payment for their services through these off-the-books funds. I call them the victim because they bore the brunt of the justice system in an exceptionally harsh manner, enduring severe precautionary measures and an unusual interpretation of tax regulations. Ultimately, the "Bárcenas Papers" centered on the tax violation of a third party—not the paying political party—which, jurisdictionally, could have been tried by a Criminal Court rather than the National Court.

Moreover, even after recalculating the taxable base for the party's supplier to include the hidden payments, the adjustments did not yield a tax liability exceeding €120,000, the threshold for criminal prosecution. Consequently, Treasury experts reexamined the supplier's entire accounting and tax filings in search of other irregularities. This review extended to their application of "periodization"—a tax strategy where income is declared in the fiscal year when the work is invoiced and paid, rather than when it is performed. While this method was ultimately upheld by the Tax Agency, its contentious nature should have relegated it to an administrative discussion rather than elevating it to the realm of criminal fraud.

Judicial and Tax Ramifications

The taxpayer's reliance on periodization became the linchpin of the case's criminal relevance. To sustain the "Bárcenas Papers" and the surrounding media apparatus, this approach had to be deemed fraudulent. However, the Tax Agency not only adjusted the supplier's records for payments from the political party but also for transactions with other clients. Notably, this adjustment overlooked a critical fact: the investigated company, in deferring its tax liabilities, had not failed to pay its taxes but had done so largely in a different fiscal year. While this delayed payment could potentially be likened to a tax regularization (under Article 305.1 of the Penal Code), a substantial portion of the amount in question should have been considered an undue payment, which Treasury experts should not have ignored in seeking a fair assessment of the taxpayer's real situation.

Supreme Court's Decision

In its November 14, 2024, ruling, the Supreme Court corrected many of the excesses by annulling the prior National Court decision. Most defense arguments were upheld: the defendant was acquitted of falsifying commercial documents, the penalties were significantly reduced to much lower levels than in the first instance, and the defrauded tax amount was reduced from €870,000 to €374,096.82. This reduction reflected amounts the Treasury had already received, albeit in a different fiscal year. The court reasoned that while regularization, strictly speaking, is "only exonerative if it is complete," amounts paid in a different fiscal year "cannot be considered defrauded quotas."

Broader Implications

Beyond the many other legal issues raised by this case (e.g., statute of limitations, falsification of commercial documents, aiding and abetting), which merit separate analysis, the Supreme Court's ruling has brought some clarity to a trial that, had it not involved such prominent parties, would likely have been resolved for the taxpayer in a different venue, under different circumstances, and in a much shorter time frame.

Nevertheless, the case leaves behind a decade of criminal proceedings and €5,575,486.42 in frozen assets for each defendant, all to prosecute a tax crime amounting to €374,096.82. This outcome highlights the overreach of popular accusations and their excessive demands, which warrant reflection. It also underscores how media coverage often skews public understanding of a case's true focus.

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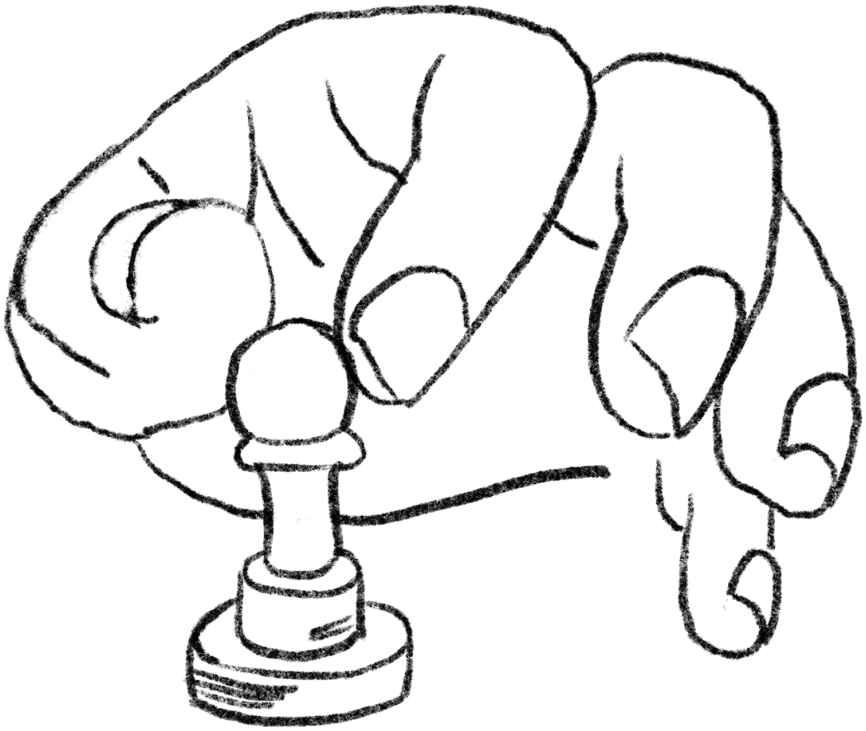

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Evolution of the Tax Treatment of "*Unit-Linked*" Life Insurance Policies under the Wealth Tax

Context and Supreme Court Rulings

The Spanish Supreme Court issued two key rulings on October 14, 2024 (Rulings 1598/2024 and 1599/2024) in response to appeals filed by two taxpayers against assessments made by the Galician Tax Agency. These rulings addressed the treatment of unit-linked life insurance policies, where the policyholder assumes the investment risk, concluding that such policies should not be subject to the Wealth Tax (Impuesto sobre el Patrimonio, IP) when the policy does not grant the right of surrender during its term.

The Court's decision specifically applies to tax periods prior to the reforms introduced by Law 11/2021 (effective July 9, 2021), which amended Article 17.1 of the Wealth Tax Law to establish a new valuation criterion for life insurance policies.

Background of the Case

The Galician Tax Agency argued that the value of a unit-linked policy should be included in the taxable base of the Wealth Tax, based either on its surrender value or, in its absence, the equivalent mathematical provision value. Taxpayers contested this interpretation, but both the Regional Economic-Administrative Tribunal of Galicia (TEAR) and the Galician High Court of Justice (TSJ) partially upheld the assessments, rejecting the taxpayers' claims that such policies should not be included in the Wealth Tax base.

Supreme Court's Position

The Supreme Court ultimately ruled in favor of the taxpayers, clarifying that unit-linked contracts without a recognized surrender right should not be included in the Wealth Tax base under the original wording of the law. Specifically:

Original Legislative Intent:

The Court found no basis in the pre-2021 legislation to support the Galician Tax Agency's argument that the mathematical provision value could serve as a substitute for the surrender value.

Nature of Unit-Linked Policies:

While unit-linked life insurance policies combine life coverage (death or survival contingencies) with an investment component, their treatment under tax law should consider their true economic nature.

The Court cited European Union jurisprudence to reaffirm their classification as life insurance products, distinguishing them from other financial investment instruments.
Changes Introduced by Law 11/2021:

The 2021 reform explicitly introduced a rule requiring the inclusion of the mathematical provision value for life insurance policies without a surrender right in the Wealth Tax base.

However, the Court emphasized that this rule does not have retroactive effect and therefore cannot apply to tax periods preceding its implementation.

Implications of the Ruling
The Supreme Court's decisions clarify a longstanding controversy, affirming that:

No Taxation Prior to 2021 Reform:

Unit-linked policies without a surrender value are excluded from the Wealth Tax base for periods prior to July 9, 2021.
Post-Reform Treatment:

For tax periods following the enactment of Law 11/2021, such policies must be valued based on their mathematical provision if no surrender right exists.

Economic Substance over Form:

The rulings underscore the importance of interpreting tax laws in accordance with the economic substance of the contracts rather than their formal characteristics, promoting fairness in tax assessments.

Conclusion

These rulings represent a pivotal step in aligning the treatment of unit-linked life insurance policies with their legislative and economic context. They provide clarity to taxpayers and tax authorities, particularly in distinguishing pre-2021 cases from those governed by the new rules.

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A New Requirement for Disciplinary Dismissal: Supreme Court Ruling, Full Social Chamber, November 18, 2024

The Supreme Court of Spain, in a landmark ruling on November 18, 2024, has altered its long-standing interpretation of the formal requirements for disciplinary dismissal under Spanish labor law. This decision introduces a mandatory pre-dismissal hearing for employees in most cases, aligning with international labor standards.

Background on Disciplinary Dismissal Requirements

Under Article 55 of the Workers' Statute (ET), the formal steps for initiating a disciplinary dismissal are as follows:

Written Notification: The employer must provide a written dismissal letter detailing the reasons for dismissal and the effective date.

Special Cases:

Employee Representatives: A contradictory proceeding must be conducted.

Unionized Employees: If the employer is aware of union membership, the union delegates must be notified beforehand. In most cases, however, no prior hearing or contradictory process has been required before delivering the dismissal letter, except as specified above.

Convention 158 of the International Labour Organization (ILO)

The issue of prior hearings arises from Article 7 of ILO Convention 158, which Spain ratified. This article states:

"The employment relationship of a worker shall not be terminated for reasons related to the worker's conduct or performance before the worker is provided an opportunity to defend against the charges made, unless it is not reasonable to require the employer to provide such an opportunity."

Historically, the Supreme Court (1988 ruling) held that this provision of the ILO Convention did not have direct applicability within Spanish law, as the requirements of Article 7 were not explicitly incorporated into domestic legislation.

The New Supreme Court Ruling

The 2024 decision represents a significant doctrinal shift. The Court ruled that Article 7 of ILO Convention 158 is directly applicable in Spain, even in cases where national law (Article 55 of the ET) does not explicitly require a pre-dismissal hearing.
The key points from the Court's reasoning include:

Applicability of ILO Convention Provisions:

The Court interpreted Article 1 of Convention 158, which allows member states to give effect to its provisions via national legislation, judicial decisions, or established practices.

The Court found the language of Article 7 sufficiently precise to be applied directly without additional legislative action.
Changes in the Legal Framework:
Since 1988, significant legal developments have occurred, such as:

Adoption of conventionality control, which ensures domestic law aligns with international treaties.

Elimination of procedural irregularities as grounds for nullifying dismissals (e.g., missing procedural steps no longer result in automatic nullity).

The removal of processing wages (wages paid during litigation) from dismissal disputes.

Ensuring Fairness and Alignment with International Standards:
The Court highlighted the importance of ensuring dismissed employees are afforded an opportunity to respond to allegations against them, as required by international labor standards.

Implications of the Ruling

The new doctrine mandates a pre-dismissal hearing for all disciplinary dismissals initiated after the publication of this ruling (November 18, 2024). Failing to provide such an opportunity can result in the dismissal being declared unfair (improcedente).

However, the Court clarified that the new standard:

Does not apply retroactively to dismissals occurring before November 18, 2024, to prevent legal uncertainty.

Includes an exception where providing a hearing would not be "reasonable," consistent with Article 7 of the ILO Convention.

Practical Considerations for Employers

Pre-dismissal Hearing Requirement:
Employers must now hold a hearing or provide an opportunity for the employee to respond to allegations before issuing a dismissal letter.

Documenting the Process:

Employers should ensure proper documentation of the hearing or the employee's response to prevent procedural challenges.
Exceptions:

If a hearing is not feasible or reasonable, employers must demonstrate why the exception applies.

Training for HR and Legal Teams:

HR and legal teams should be trained to incorporate this step into dismissal procedures to mitigate the risk of litigation.

Conclusion

The 2024 Supreme Court ruling marks a pivotal shift in the formal requirements for disciplinary dismissals in Spain, aligning domestic practices with international labor standards. Employers must adapt to this new requirement to ensure compliance and minimize disputes.

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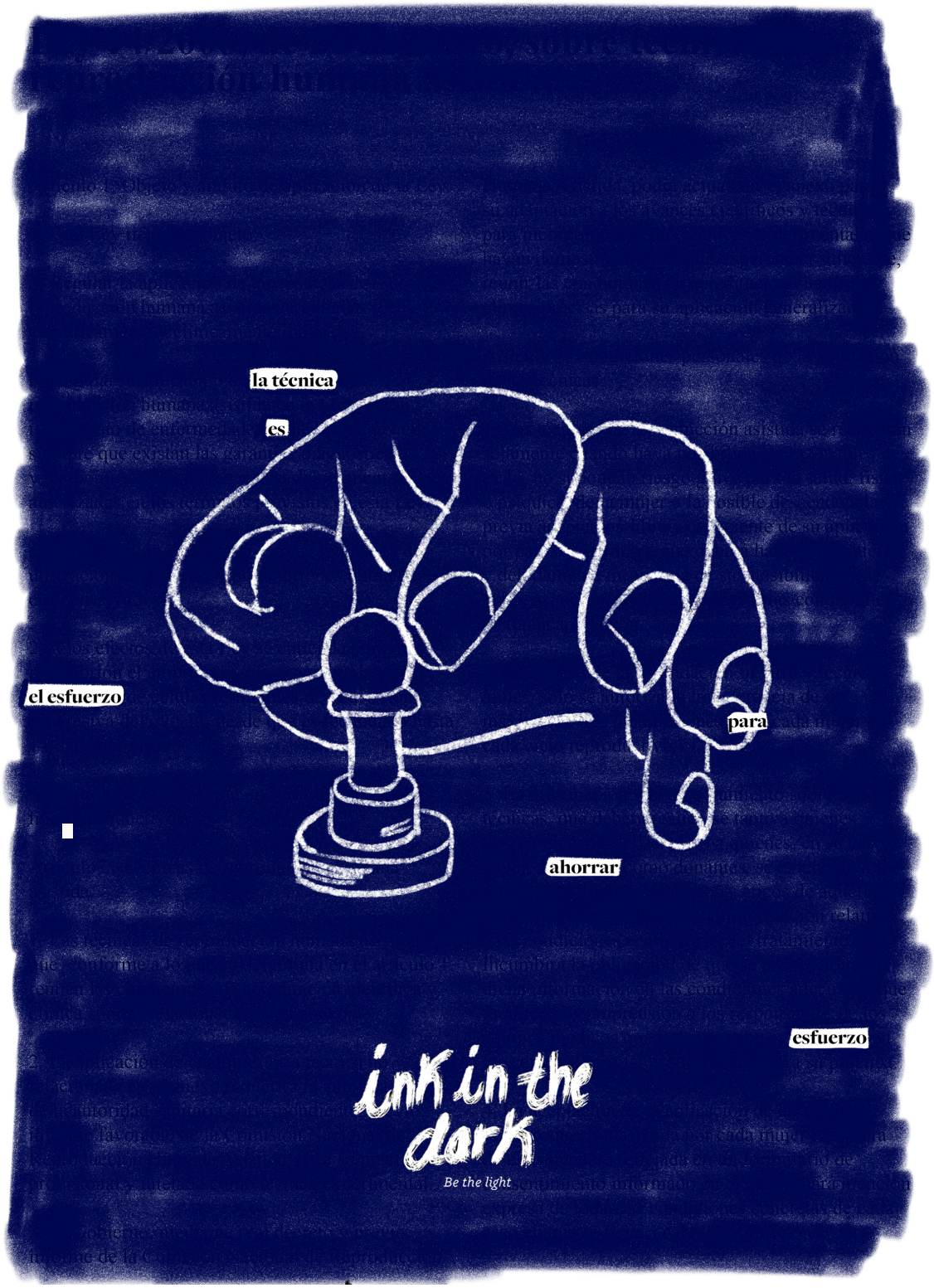

December

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Madrid Introduces Luxury Camping Category: "Glamping"

The Community of Madrid has taken steps to regulate and promote glamping—a luxury camping experience that merges outdoor adventure with the amenities of high-end accommodations. This emerging global trend allows nature enthusiasts to enjoy camping without sacrificing comfort or sophistication.

Current Regulation

Glamping, along with other camping activities, is currently governed by Decree 3/1993, which lacks specific provisions for this niche segment. Key regulatory features include:

Authorization Requirement: Operators must obtain classification and opening authorization from the Directorate-General for Tourism.

Stringent Location Conditions: Article 7 imposes restrictions on the parcels of land where camping facilities may be established, creating challenges for new developments.

Proposed Changes

In February 2024, Madrid began revising the regulations for tourism campsites and motorhome sites, concluding the public consultation phase in July 2024. The new Draft Decree introduces significant innovations tailored to glamping.

Key Features of the Draft Decree

Definition of Glamping:

Glamping is classified under a new type of tourist campsite, requiring a minimum four-star rating and compliance with criteria outlined in Articles 30 and 35.

Specific Requirements (Article 35):

Four-Star Classification: Establishments must meet high standards for services, amenities, and infrastructure.

Unique Camping Elements: Campsites must feature distinctive accommodations such as domes, bubble tents, tipis, yurts, safari tents, or treehouses. These structures may be mobile, semi-mobile, fixed, or a combination.

Luxurious Furnishings: Each plot must include furniture designed for relaxation, alongside ornamental elements reflecting the luxury theme.

Capacity Limits: Campsites must accommodate between 30 and 90 guests.

Simplified Authorization via Responsible Declaration (Article 37):

The Draft Decree replaces the prior authorization process with a responsible declaration model, streamlining the setup of glamping sites.

Operators must submit up to eight mandatory declarations as stipulated in Article 38.

Eased Location Restrictions:

The new framework removes many restrictive site conditions, encouraging the growth of glamping establishments in Madrid.
Implications

The reforms aim to:

Encourage Development: By simplifying authorization and relaxing site conditions, Madrid positions itself as a hub for luxury camping.

Meet Growing Demand: The draft decree caters to a market segment seeking unique and upscale outdoor experiences.

Conclusión

Although the final terms of the new decree remain pending, the Community of Madrid has signaled its commitment to fostering the glamping industry. These changes reflect an effort to balance innovation, tourism development, and regulatory oversight.

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Artificial Intelligence in Employment Relations

Artificial Intelligence (AI) is set to have significant implications in the field of employment and labor relations.

Impact on Employment

First and foremost, there is widespread concern about the potential impact of implementing AI systems in companies on employment levels. While AI undoubtedly represents progress in improving working conditions and production systems, it also raises fears among workers and unions about potential job losses due to technological innovation.

Privacy Concerns

AI can enable more transparent and efficient management, including identifying individual career paths. However, its use must be approached cautiously to avoid compromising employee privacy. This is especially relevant given Article 4 of Law 300/1970, which prohibits employers from remotely monitoring workers' performance using technological tools. AI systems operating autonomously and non-transparently could exacerbate existing risks of performance evaluations based on personal data obtained unlawfully.

Employer's Discretion vs. Regulatory Compliance

The adoption of AI in employment relations falls within the discretion of business decision-making, reflecting economic freedom in managing and structuring enterprises. However, such use must align with national and European regulations. The recent EU Artificial Intelligence Regulation classifies certain AI systems as "high risk" while allowing their use under strict conditions (Article 6, para. 2, and Annex III, para. 4).

Health and Safety Evaluations

Another critical issue relates to Article 5 of Law 300/1970, which prohibits employers from directly assessing an employee's fitness or health conditions. Evaluations must be conducted by public entities or specialized professionals, and automated AI systems in this context may be deemed unlawful. These assessments require a medical professional's discretion, which cannot be replaced by algorithms analyzing unrelated factors, such as absenteeism or lifestyle habits.

Balancing Human Judgment and AI

AI adoption can bring significant benefits if integrated responsibly. It should complement rather than replace human judgment, particularly in decisions such as workload distribution, promotions, incentives, task assignments, or revocations. As outlined in Article 14 of EU Regulation 2024/1689, such decisions must remain under human oversight.

Ethics and Social Impact

While AI is a powerful tool for enhancing efficiency and innovation, it also introduces ethical and social challenges. Its inherent intrusiveness into areas beyond mere employee performance and professional capability assessments underscores the importance of addressing its use thoughtfully.

In conclusion, AI's integration into the workplace must prioritize ethical considerations and ensure that ultimate accountability and merit-based judgments rest with humans. A carefully supervised application of AI can drive substantial benefits while respecting individual rights and preserving the human element.

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