

**PUBLIC SELECTION BASED ON QUALIFICATIONS AND INTERVIEW FOR THE AWARDING OF NO. 8 EXPERIENCED GRANTS LASTING 36 MONTHS AND NO. 2 EARLY STAGE GRANTS LASTING 12 MONTHS FOR CONDUCTING RESEARCH PURSUANT TO ART. 22 OF LAW NO. 240/2010 AT THE DEPARTMENT WITHIN THE RESEARCH PROGRAMME CALLED "STARS SUPPORTING TALENTED RESEARCHER" - ACTION 1 FOR THE YEAR 2019-2021 - 1<sup>a</sup> TRANCHE - TYPE A - (CUP: F56C18000670001)**

*announced with decree of the Chancellor Rep. no. 126/2019 of 28.02.2019 and posted on the official registry of the University on 28.02.2019*

## **CODE N. 7**

### **RESEARCH PROJECT**

**"The protection of WHISTLEBLOWER pursuant to the Law of 30 November 2017, n. 179. The evolution of the phenomenon in a comparative key"**

**Research structure:** Department of Law

**Duration of the grant:** 36 months

**Scientific Area:** 12 - Law studies

**Academic recruitment field:** 12/B2 - Labour law

**Academic discipline:** IUS/07 - Labour law

**Scientific Director:** Prof. SIGNORINI Elena

The research project concerns the Whistleblowing phenomenon in the private sector and in particular in occupational safety. As is known, whistleblowing is inserted in a disruptive manner in the Italian legal system, acquiring notoriety and life thanks to the Law of 30 November 2017, n. 179. The latter has inserted into the body of art. 6, Legislative Decree no. 231/2001, in relation to which even in the private sector, a complainant may "present, to protect the integrity of the entity, detailed reports of significant unlawful conduct pursuant to this decree and based on factual elements and concordances or violations of the organization and management model of the entity, of which they have come to know due to the functions performed; these channels guarantee the confidentiality of the identity of the reporting agent in the management of the report". In other words, the legislator @ intervened to dictate an "organic" regulatory framework for reporting crimes and / or irregularities that workers (private and public) have come to know in the context of the employment relationship, in order to to strengthen the action of prevention and contrast to corruption phenomena. The institutionalization of the phenomenon in question is a few years behind the majority of European countries and over a century compared to the United States of America, due to a double cultural binary: the fight against corruption in our country has always been fought with criminal repression and the act brought by the complainant was never intended as proactive and in favor of collective social integrity. And it is precisely here that whistleblowing is placed, that is, as an act of prevention and administrative tool to protect the worker. Unfortunately, to date the English term does not find a faithful correspondent in the Italian language, being mostly translated from the doctrine with "reporting", "complainant", "delatore", "mole".

Well, labor law acquires a further instrument to protect the collective interest, but it must face an important problem, related to the overlapping of regulations.

The introduction of the new information channel, aimed at preventing crimes, is added to those already provided for by labor law: the obligation to inform the supervisory body (pursuant to Article 6, paragraph 2, letter d), Legislative Decree . n. 231/01) and the multiple mandatory means provided for by the sector legislation (eg the obligations of information established, in the context of hygiene and safety at work, by articles 19 and 20 of Legislative Decree No. 81/2008 of the supervisors and workers).

If it is mandatory for a company, which has adopted the organizational and management model, to integrate the latter with an information channel reserved for whistleblowing, to date the literal formulation of the legislative novel does not allow to postulate the obligation on the subjects of in art. 5, paragraph 1, lett. a) and b), Legislative Decree. n. 231/2001 to use this channel to report illicit conduct. In

light of these provisions we must therefore question whether, with the intention of favoring and encouraging the emergence of illicit conduct, the new legislation can be interpreted to support the need to privilege the anonymity right of the reporting party even at the expense of a well-known labor law system that, until yesterday, saw in the art. 2014 and 2015 c.c. those obligations of diligence and loyalty, today obscured by the whistleblowing phenomenon.

The project, in the 36 months of duration, will present a monograph that can give an account of the state of the art of whistleblowing in a comparative (European) key, supported by good practices and reform prospects based on the OECD Working Group on Bribery ( 2007), in which Italy was recommended to "introduce stronger measures to protect workers who report suspicious facts"

The research project related to whistleblowing recalls the practice of c.d. "Sycophant", long known and widespread in labor law.

It is an absolutely original research topic, so much so that the issue of l. n. 179 of 2017 represented a decisive step forward in the field of prevention and the fight against corruption, approaching the models successfully tested on the international scene.

In Italy the implementation of the discipline discounts the backwardness of the cultural substratum on which it was implanted and therefore requires an additional intervention, which passes through a serious training program dedicated to workers, the main recipients of the new legislation.

We intend to propose an informative handbook for companies in the private sector, independently of the CCNL of belonging and, more specifically, to study and exclude certain uncertainties (eg if at the end of an internal investigation, the report turns out to be unfounded, as the employee is certain that he does not incur redundancy due to violation of the fidelity obligation pursuant to art. 2105 c.c., despite having acted in good faith?). The fallout on the advancement of knowledge is noteworthy being a little known phenomenon. The aim is to promote the inclusion of the whistleblower figure in society through conferences, studies and publications, in order to reach the standards of countries such as the United States, where, to refer to whistleblowers, we speak of "brave individuals who are line to protect us all ».

(Carr, I., & Lewis, D. (2010) Combating corruption through employment law and whistleblower protection Industrial Law Journal, 39 (1), 52-81, Chalkley, L., & Hogan, J. (2018) .

Whistleblowing: Law and Practice, by JeremyLewis, JohnBowers QC, MartinFodder, and JackMitchell. Oxford University Press, Oxford, 2017, 832 pp., ISBN: 978-0198788034, £ 175.00, hardback. British Journal of Industrial Relations, 56 (4), 886-88.