

The compatibility between employment relationships and corporate offices in stock companies

Order no. 5318 of 28 february 2025

With **Order No. 5318/2025**, the Italian Supreme Court (Corte di Cassazione) returned to the issue of the compatibility between corporate offices and subordinate employment in stock companies. The Court has clearly stated a key principle: the **Chairman of the Board of Directors** (as well as the Sole Director) **cannot also be hired as employee** of the same company.

As is well known, **subordination implies the existence of a hierarchical and external power of direction, supervision, and disciplinary control exercised by the employer over the employee**. In the case of executives, subordination may consist of general strategic guidelines rather than detailed operational instructions. However, the **executive remains subject to a hierarchically superior body**, which may be another higher-level executive or, more frequently, the Board of Directors itself or one or more of its members.

On the contrary, **directors are not subject to the typical hierarchical and managerial controls** by the company and, reporting to the Board of Directors, **act in the name and on behalf of the company** as part of the corporate body. The relationship between a director and the company, in fact, **does not constitute an employment relationship** (neither subordinate nor autonomous), but rather the different legal case of the corporate relationship, characterized by **organic identification** (*immedesimazione organica*).

In the past, regarding the compatibility between subordination and corporate office, Italian case law has often recognized the legitimacy of such concurrent roles, but only if it was clearly demonstrated that the duties under the employment contract were separate and distinct from those related to the corporate office. Therefore, **if the corporate powers granted were so broad as to effectively eliminate any form of subordination, the subordinate employment relationship was considered non-existent** (this view has also been supported by various INPS – the Italian social security authority – provisions).

With specific reference to the role of the Chairman of the Board of Directors, also following INPS Message No. 3359 of 2019, the coexistence of a corporate office and subordinate employment has been considered to the extent that the Chairman was subject to collective decisions and that his role was distinct from that of an employee.

Nevertheless, with Order No. 5318/2025, the Italian Supreme Court once again addressed the issue, clearly excluding the compatibility between an employment relationship and the office of Chairman of the Board of Directors or Sole Director.

In light of the above, the following principles apply:

- **Sole Director: it is not possible to configure an employment relationship.**
- **Chairman of the Board of Directors: it is not possible to configure an employment relationship.**
- **Chief Executive Officer (CEO):** the coexistence between subordination and the role of CEO **depends on the scope of the powers granted** by the Board of Directors. If the CEO has broad autonomous powers without the need for approval, the roles are incompatible; if the powers are limited or specific, it is possible to configure both roles simultaneously.

Consequently, in cases where the two roles are incompatible and the employment relationship is declared non-existent, the **following risks arise**:

- from a tax standpoint, the Italian Revenue Agency (*Agenzia delle Entrate*) may consider **the cost related to the director/executive as non-deductible for tax and accounting purposes**.
- from a social security standpoint, **INPS could disallow the amounts paid for social security under the ordinary scheme**, requiring payment to the separate scheme (*Gestione Separata*) and **denying pension recognition** for the relevant period. As a result, **the director/executive might take legal action against the company to claim compensation for lost pension benefits**.

Therefore, it is essential that companies take actions to align their management structures with this ruling.

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