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Italian Rules Regarding Use of Employees' Portrait

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Nowadays, business communication is often being implemented on corporate websites and social media through videos and photographs that sometimes make employees recognizable.

This happens mainly in the company's Facebook pages, where photographs of groups of smiling employees are essentially posted to testify to the "team spirit" placed at the heart of company's activities.

In the industrial field employee images are also present in tutorials films spread on the Internet to illustrate the features of some company's manufacturing processes, machinery, etc...

Sometimes, employees are even involved in acting out parts in employer's advertising films intended for broadcast on major television networks.

Well, in the Italian legal system those practices interfere with heterogeneous rules of law, therefore, having complex practical management.

What we want to clarify here is what specific rules apply in Italy for all such forms of use of employees' portrait and what papers must be perfected by the employers to legitimately use employees' portraits in accordance with those rules.

The cornerstone from which to start are art.10 of the Italian Civil Code (ICC) and art. 96 of the Italian Copyright Act (ICA), which respectively protect personality and authorial rights relating to portraits of individuals.

In detail, art.10 ICC sets forth that "*if the image of a person… has been exposed or published outside the cases in which exposure or publication is permitted by law… the judicial authority, upon the request of the person concerned, may order that the abuse cease, subject to compensation for damages*".

And as far as we are concerned here, it should be made clear that no labor law rule provides that employers hold publication rights over the image of their employees.

If that were not enough, art.96 ICA expressly states that "*the portrait of a person may not be exhibited, reproduced or put on the market without that person's consent*".

This general prohibition is subject to exception just for very limited special cases (i.e., notoriety of the person, journalistic needs, etc...) expressly provided for in art.97 ICA; which cases, however, have nothing to do with subordinate labor activity.

Thus, considering the rules referred to above, we can certainly conclude that the divulgation and commercial use of employee's image is always prohibited in principle.

From another perspective we should say that employment subordination cannot be deemed to "imply" the employer's authority to use, for marketing or other purposes, the image of the employee, even if this latter is depicted in the performance of his contractual duties or in occasion of social events occurred within the company.

We must at this point ask whether this general prohibition can somehow be overcome by the employer.

The answer is certainly in the affirmative, in the first place because divulgation and commercial exploitation of the portrait are rights certainly disposable by individuals, thus also by employees of a company.

The dispositive acts of such rights may also be irrevocable in nature and have effect extended to any means of diffusion of the portrait of the person concerned, in any territory.

However, it is important to remember that, according to art.110 ICA, the rule that "*the transmission of rights of use must be proven in writing*", in principle, also applies to portraits of employees.

Thus, in order to legitimately use such portrait, the employer must obtain in advance a written consent from the employee in question.

Furthermore, employers should not make the mistake of assuming that generic disclaimers (i.e., made to be signed by all company employees at the time of their hiring, or even afterwards), are acceptable.

In fact, such prior signing of general agreements to transfer the employee's image right to the employer can easily be challenged on the grounds that there is no specific consideration of a counter-performance having economic significance.

Moving now to the issue of "how" to structure the written consent, it should be specified that the photograph or video that is the subject of subsequent divulgation must be sufficiently identified, as well as the type of use that the employer will be authorized to make of such images.

Indeed, consent to be portrayed for a certain purpose (for instance, for a technical tutorial) does not automatically imply the grant of a valid permission for every form of divulgation of the same images.

That is, authorization for the divulgation of the employee's image must be deemed to be limited to the use expressly stated in the written disclaimer and other strictly related uses reasonably foreseeable by the employee.

It is also necessary, at this point, to deal with the rules on the protection of personal data, among which should certainly be included the personal image.

First, we should bear in mind that in Italy, in the labor sphere, data protection is mainly regulated by provisions of the "Garante Privacy Nazionale" (National Privacy Authority - NPA) which are valid even after the GDPR 2026/679 came into force, due to the referral that the latter operates toward national laws as far as labor relations are concerned.

And it is well known that all legislation on the processing of personal data requires explicit and informed consent expressed by an unequivocal positive act by the data subject.

Thus, for practical purposes, the interference of the portrait right with more than one piece of legislation must surely cause the employer to collect a valid consent under all the laws mentioned so far.

Let us not forget, however, that the second legal basis of data use under the GDPR is when "*processing is necessary for the performance of a contract to which the data subject is party*." In the issue that concerns us here, however, a clarification is required.

To begin with, the "contract" can serve as the legal basis of data processing only to the extent that such processing is directly related and necessary to the realization of the object of the same contract, when it does not itself represent the contractual object.

Thus, if an employee enters a “special” contract (i.e., other than the employment agreement) for the exploitation of his or her image and for advertising purposes by the employer, then it can be said that the processing of the data is directly related to (or even coincides with) the object of the contract, so that a separate consent according to data protection regulations is no more required.

On the other hand, the same cannot be said of the exploitation of the image for promotional purposes with reference to the contract of employment, i.e., for tasks totally different from the advertising activity.

In this case, to be able to use the employee's image for promotional purposes, it is still necessary to obtain separate consent according to data protection regulations.

Furthermore, the employer must be very careful when asking for consent from the employee. As a rule, the consent of the employee must be free (voluntary) in principle, and it is very important to make it clear that lack of consent does not result in sanctions or negative consequences for the employee.

Only in a few cases does Italy's national privacy law preclude the need for a consent to use an employee's portrait.

For example, regarding corporate tutorials, the NPA ruled that "*television filming in the workplace to document activities or operations only for purposes of divulgation or institutional or corporate communication, involving employees, may be assimilated to temporary processing aimed at the occasional publication of articles, essays and other manifestations of thought. The provisions on journalistic activity contained in the Code (Articles 136 et seq.) apply to them, without prejudice, however, ...to the employee's right to protect his or her image by opposing, for legitimate reasons, its divulgation*."

On the other hand, Italian employees enjoy enhanced protection with reference to corporate social media.

Namely, the NPA's Vademecum of 05/15/2015 ruled that to publish photos of an employee on the company intranet (and even more so on the Internet), the consent of the person concerned is required.

Finally, it should be underlined that when the employer's use of the employee's image is based on consent (and not on a legal basis or contract) it is always possible for the employee, in accordance with data protection rules, to revoke consent later.

This has implications that the employer must consider when planning to use the employee's image, especially in the perspective of potential transfers of the worker to the employment of a competitor of the previous employer, this event being such to generate an interest in revoking the consent.

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