



•ALERT•

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The Alviero Martini case shows how the concept of corporate responsibility evolves

***Caporalato* and risks for the principal.**

THE ORDER OF THE COURT OF MILAN

The **Court of Milan**, Preventive Measures Section, recently ordered the judicial administration against the historic fashion and leather goods company Alviero Martini, pursuant to Article 34 of Legislative Decree No. 159/2011 (the so-called Antimafia Code).

The case gives the cue to discuss once again about the **risks associated with the crime of unlawful intermediation and exploitation of labor** under Article 603-bis of the Criminal Code (so-called "caporalato") in the delicate relationship between client companies and contractors/subcontractors or suppliers.

It is, indeed, increasingly common among companies to **outsource** certain **services** (e.g. logistics, shipping or production), which often require the employment of workers who are not highly skilled, and consequently, more easily subject to discrimination and exploitation.

Quite well-known and recent cases, such as **Uber** and **Dhl**, have already highlighted the not insignificant risks a company faces today when outsourcing services in the absence of adequate verification of the work of the contractor, subcontractor or supplier.

THE CASE

According to investigations carried out by the Milan Labor Inspection Unit, **Alviero Martini** had outsourced the entire production of clothing and leather goods to third-party companies.



Despite the prohibition on subcontracting, the contractors in turn outsourced jobs to other factories that allegedly employed illegal labor, in total disregard of occupational health and safety regulations.

According to the press, the owners of the factories, who acted as subcontractors, are under investigation for the crime of "caporalato". In contrast, Alviero Martini and top management would not be listed in the register of suspects. Nonetheless, judicial administration was ordered in order to set up internal control measures capable of preventing the production chain from allowing again the outsourcing of contracts or subcontracts to companies employing workers under exploitative conditions.

Article 34 of Legislative Decree No. 159/2011 provides indeed for the appointment of a judicial administrator, who takes over the temporary management of the company, in cases where the latter has facilitated (including through its own negligence and in any case through culpable behavior) individuals responsible for crimes of illegal intermediation and exploitation of labor.

Each business entity must therefore pay attention to compliance with the regulations even by external service providers.

PREVENTION DUTIES OF THE PRINCIPAL

The story just summarized confirms the importance for all companies to activate a comprehensive risk identification activity, also considering the working conditions applied by

their contractors/subcontractors or suppliers.

According to the judges of the Court of Milan the mere contractual prohibition of subcontracting, which was also provided for in Alviero Martini's contracts, may not be sufficient to avoid the risk of judicial administration due to the illegal conduct of subcontractors.

It may therefore be advisable to provide for the possibility for the principal (and thus the contractual right) to:

- **perform access and inspections** - properly tracked and recorded - at the premises of contractors/subcontractors or suppliers; or
- **require** them to **periodically submit** all documentation pertaining to occupational health and safety.

Likewise, it may be appropriate to implement internal procedures for prior verification of the reliability requirements of contractors, subcontractors and suppliers, to whom services are to be outsourced.

All these proposed measures are deemed adequate to prevent the occurrence of exploitative situations and, consequently, the detrimental effects, both economic and reputational, for the contracting company itself.

THE 231 MODEL

The actions suggested above are clearly related to those typical of the adoption of Organizational Models pursuant to Legislative Decree 231/2001.

The Organizational Model system (adopted or yet to be adopted) is also the correct context for managing risks related to "caporalato" by contractors, subcontractors and suppliers.

Moreover, it should always be considered that Legislative Decree No. 231/2001 punishes not only the entities directly responsible for the crime of "caporalato", but also those in whose interest or advantage said crime is committed (such as the principal, in the case of a crime committed by the contractor or subcontractor).

Although for the moment there is no record in the present case of any charges under Legislative Decree No. 231/2001 pressed against Alviero Martini, for a company in its position, the possibility of such a charge must certainly be considered possible.

In this sense, too, it is therefore appropriate to update the 231 safeguards with respect to the standards and regularity of the organization and activities of contractors, subcontractors and suppliers.

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