



## Remote control of workers' activities and usability of the evidence.

**CINZIA GAMBA**

Università degli Studi di Pavia  
cinzia.gamba@unipv.it

### 1. Preamble

As part of the extensive reforming intervention called the “Jobs Act”, article. 4 of the Workers' Statute, Law of 20 May 1970, no. 300, relative to the remote control of workers' activities, has been amended by art. 23, Legislative Decree of 14 September 2015, no. 151, enacted in implementation of the delegated Law of 10 December 2014, no. 183. After many years, therefore, the legislature has modified the rules that place limits on the employer powers of control of workers' activities and also, with innovative provisions included in paragraph 3, has dealt with methods of access to the information collected by the electronic and computer control instruments, envisaging that: "the information collected pursuant to paragraphs 1 and 2 is useable for all purposes related to the employment relationship on condition that adequate information is given to the employee on the methods of use of the instruments and the performance of the controls, in accordance with the provisions of Legislative Decree of 30 June 2003, no. 196". The rule of general usability established by the regulation raises the problem of the entrance in arbitration of the information and data acquired through these instruments: an issue which is a corollary of the much broader topic of the limits within which the powers of control in possession of the employer can be exercised. In this contribution we will concern ourselves with the procedural implications that arise from the new formulation of Workers' Statute art. 4, seeking to understand what the consequences of the new regulations could be at the

probative level. It is clear that the balancing of the interests of the employer to effectively manage the business, on the one hand, and the rights that include the "personal area of confidentiality" (1) of workers, on the other hand, find an important arena of contrast in the procedural context, in which the ability to use the data and information obtained as evidence must take place, as a general rule, within the limits imposed by law on the exercise of the powers of control of the employer.

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(1) P. Ichino, *Il contratto di lavoro [The work contract]*, in A. Cicu and F. Massineo (editorial director), *Trattato di diritto civile e commerciale [Treaty of civil and commercial law]*, III, Milan, 2003, p. 230.