

# L'Islam entra nel rapporto di lavoro in “punta di piedi” tra contrattazione sindacale e sicurezza inclusiva

## Islam subtly enters the labor relationship between trade union negotiations and inclusive safety

**Caterina Timellini**

*PhD in Labor and Law at Modena and Reggio Emilia University and Lawyer of the Court of Modena*

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### ABSTRACT

A fronte di un mercato del lavoro sempre più globale e di una massiccia immigrazione da parte di lavoratori di origine musulmana, il diritto del lavoro italiano è chiamato ad una riflessione sulla regolamentazione dell'esercizio della fede islamica nel contesto lavorativo, nonché sui riflessi della libertà di culto sulla salute dei lavoratori.

**Parole chiave:** religione islamica – contrattazione sindacale – sicurezza – obblighi – prescrizioni - adeguamenti

*Abstract in inglese.*

Faced with an increasingly global labor market and massive Muslim origin workers immigration, Italian labor law is called to reflect on the regulation of the Islamic faith exercise at workplace, as well as on the freedom of worship effects on workers' health.

**Keywords:** Islamic religion - trade union bargaining - safety - obligations - prescriptions - adjustments

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**Variazioni su Temi di Diritto del Lavoro**

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## 1. Introduction to the topic: religion and safety.

The proposed topic, “*Labour Law and Forms of Manifestation of Religious Convictions*”, finally provides a starting point for awareness of an important change of perspective.

If on one hand religion<sup>1</sup> has always been traditionally seen as a private affair, of which management was not to get involved with, today instead, in an increasingly global labor market, attention to this issue can only enter into part of the skills that a good manager must possess. This also happens because, as a study carried out a few years ago highlighted<sup>2</sup>, workers who feel free to discuss their religious values in the workplace are more calm and, consequently, more productive.

So a good manager should not only be able to avoid discrimination against anyone for their beliefs, but also be able to favor their expression without having a negative impact on the company's economy<sup>3</sup>.

There are many jurisprudential cases that have recently leaped onto the headlines concerning the subject and that obtained a pronouncement from the Court of Justice, with judgments that are already providing reference. Just think of the case of the Muslim girl, who did not offer her hand during a job interview in Sweden<sup>4</sup>, or the France and Belgium regulations to ban the Islamic veil in the office<sup>5</sup> or, again, the case of that pastry chef who refused to pro-

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<sup>1</sup> See L. SAPORITO, F. SORVILLO, L. DECIMO, *Lavoro, discriminazioni religiose e politiche d'integrazione*, in [www.staoechiese.it](http://www.staoechiese.it), 2017, 18, 1; H.P. GLENN, *Tradizioni giuridiche del mondo. La sostenibilità della differenza*, Bologna, 2010, Il Mulino.

<sup>2</sup> [Http://www.careeraddict.com/study-show-religion-has-a-positive-influence-in-the-workplace](http://www.careeraddict.com/study-show-religion-has-a-positive-influence-in-the-workplace).

<sup>3</sup> [Https://www.manageritalia.it/it/management/gestire-la-religione-di-dipendenti-e-collaboratori-in-azienda](https://www.manageritalia.it/it/management/gestire-la-religione-di-dipendenti-e-collaboratori-in-azienda). See S. GROSCHE, R. BENDL, *Managing Religious Diversity in the Workplace: Examples from Around the World*, Routledge, 1995; J. SYED, A. KLARFELD (a cura di), *Religious Diversity in the Workplace*, Cambridge University Press, 2017.

<sup>4</sup> [Https://www.bbc.com/news/world-europe-45207086](https://www.bbc.com/news/world-europe-45207086).

<sup>5</sup> [Https://www.manageritalia.it/it/attualita/portare-velo-islamico-in-azienda-vietato](https://www.manageritalia.it/it/attualita/portare-velo-islamico-in-azienda-vietato). See A. ARCOPINTO, *I simboli religiosi nel diritto vivente*, in AA.VV., *Esercizi di laicità interculturale e pluralismo religioso*, a cura di A. FUCCILLO, Giappichelli, Torino, 2014, 179; C.T. ALTAN, M. MASSENZIO, *Religioni, Simboli, Società sul fondamento dell'esperienza religiosa*, Feltrinelli, Milano, 1998, 79; N. COLAIANNI, *Il velo delle donne musulmane tra libertà di religione e libertà d'impresa. Prime osservazioni alla sentenza della Corte di Giustizia sul divieto di indossare il velo sul luogo di lavoro*, in *Stato, Chiese e pluralismo confessionale*, in

vide a cake for a same sex marriage, since contrary to his Christian values<sup>6</sup>.

The topic imposes, in my opinion, a reflection not only on the aspect of discrimination<sup>7</sup>, on which these judgments have been pronounced and about which here we will not proceed to further elaboration, for reasons of time, but also on the state of regulation of this issue within Italian labor law<sup>8</sup>.

Moreover, the topic requires reflection also on the inevitable existing connection between the individual right to worship freedom<sup>9</sup> and the right to protect workers' health.

The problem arises in terms of particular delicacy with reference to those workers who belong to religious cults different from the Catholic one and, in particular, to Islamic faith workers<sup>10</sup>. These, according to the Islamic calendar, stick to food and drink fasting for a whole month (Ramadam) and this lasts from the first light of dawn until sunset.

What must be avoided, in fact, is that the favor discipline envisaged by national legal systems for certain religions, as happens in our country with Catholic religion, can be translated into forms of discrimination against the rights of others.

Here, particular conditions of heat, cold, working with heights, working in confined spaces, with high energy requirements, etc. when affecting a worker, so to speak, normal conditions, more so can have significant (as well as more serious) repercussions on workers who find themselves in particular conditions of physical weakness, due to the fact that they abide by these Koran precepts.

Since the workers have the right to freely express their thoughts, including

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[www.statoechiese.it](http://www.statoechiese.it), 2017, 11.

<sup>6</sup> <https://theguardian.com/law/2018/jun/04/04/gay-cake-ruling-supreme-coiurt-same-sex-wedding-colorado-baker-decision-latest>.

<sup>7</sup> See F. CASOLARI, *L'influenza della giurisprudenza della Corte europea dei diritti dell'uomo sull'azione dell'Unione europea contro le discriminazioni basate sulla religione*, in *La disciplina giuridica dell'Unione Europea in tema di discriminazione e la Convenzione Europea dei Diritti dell'Uomo*, Giornata di studio Modena, 13 maggio 2011, 37 ss., in [www.cittaetropolitana.bo.it/sanitasociale/Engine/RAServeFile.php/f/Atti\\_per\\_sito.pdf](http://www.cittaetropolitana.bo.it/sanitasociale/Engine/RAServeFile.php/f/Atti_per_sito.pdf).

<sup>8</sup> See V. PACILLO, *Contributo allo studio del diritto di libertà religiosa nel rapporto di lavoro subordinato*, Milano, 2003, Giuffrè; A. DE OTO, *Precetti religiosi e mondo del lavoro*, Roma, 2007, EDiesse.

<sup>9</sup> See C. CARDIA, *Religione (libertà di)*, in *Enc. Dir. Agg.*, II, Milano 1998, 914 ss.; A.C. JEMOLO, *Libertà*, III) *Libertà (aspetti giuridici)*, in *Enc. Dir.*, XXIV, Milano, 1974 268 ss.

<sup>10</sup> See A. DE OTO, *Convincimento religioso e ambiente lavorativo: la sfida quotidiana delle libertà fondamentali nell'Italia "multiculturale"*, in S. VIDA (a cura di), *Diritti umani. Trasformazioni e reazioni*, Bologna, 2008, 363.

the religious one<sup>11</sup>, it is equally true that, pursuant to art. 2087 of Italian Civil Code and, in general, the EU legislation on safety at work, it is the employer's responsibility to protect the worker's health, both physical and also in terms of his moral personality.

Now it is clear that the problem is real and this requires a question: within these "exceptional" conditions, are we sure that the normal precautionary measures, identified by the employer in the risk assessment document (*DVR*), are sufficient to adequately ensure health and safety of Muslim origin workers?

Or, on the contrary, should these measures be adapted to better respond to these new social needs?

This is why, in my opinion, the risk analysis will have to take into account the greater or lesser exposure of the "various" workers engaged in the <<same>> working conditions.

## *2. The religious factor and the connections with labor in the Italian context. The role of substitute for collective bargaining and trade union agreements*

Meanwhile, it should be noted that the principle of religious freedom finds, within the Italian context, recognition in the art. 19 of the Constitution and that this recognition has a broad content, as it includes both the freedom to profess one's belief, to propagate it and to exercise its cult.

On the broader topic of religious freedom, however, the same Constitutional Court has ruled, first of all, reiterating that religious freedom belongs to everyone, independently of the contents of the professed faith and that its effective and full enjoyment shall not be subject to the conclusion of an agreement<sup>12</sup>. Circumstance, the latter, not to be overlooked, given that, as will be seen later with the Islamic religion, such agreements do not exist.

Starting from this unavoidable basis, the Court then reiterated that the constitutionally protected rights are subject to a balancing, in order to avoid that one of these becomes predominant over the others. This means that religious freedom must be promoted and protected by ensuring the needs of political coexistence and respect for everybody's rights.

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<sup>11</sup> See R. BENIGNI, *L'identità religiosa nel rapporto di lavoro. La rilevanza giuridica della "fede" del prestatore e percettore d'opera*, Jovene, Napoli, 2008.

<sup>12</sup> See Corte cost. 23 febbraio 2016, n. 63, in *Gazzetta Ufficiale* 1° Serie Speciale, Corte Costituzionale, n. 13 del 30.03.2016.

For some time the doctrine has dealt with the right to religious freedom set in the world of labor, where, for example, it has studied the religious work, the work in organizations of a (religious) tendency and the work employed by the Holy See and the Jewish Communities<sup>13</sup>.

However, it is under the last of the aforementioned profiles, namely the freedom of religious exercise, that the connections between religious freedom and the world of labor come to take on entirely new connotations of absolute originality where they refer for the first time to Islamic religion.

In particular, following the massive immigration of Islamic workers into our country and with the inclusion of these in the world of labor, which began in the last two decades of the last century and is still in progress, particularly prevalent in some Italian geographical areas (such as Lombardy, Veneto and Emilia-Romagna) and with very significant percentages compared to the total workforce, there is a need to face the phenomenon in order to provide satisfactory solutions for the sake of both workers and companies.

From this point of view, therefore, Islamic faith worship practices strongly affect the employment relationship<sup>14</sup> from working time specific point of view. Consider, for example, the respect for certain mandatory precepts for every faithful Muslim, such as: the weekly religious holiday coinciding with Friday as well as other religious festivities, daily ritual prayer<sup>15</sup>, pilgrimage to Mecca, food conforming to religious precepts that impose a reorganization of company canteens so as to meet these needs<sup>16</sup> and, last but not least, respect for the Ramadam period.

Our Italian traditional work organization, set according to a Catholic-style religious ritual, is therefore difficult to reconcile with these needs which, obviously, arise in terms of absolute novelty.

It should be remembered that pursuant to art. 8 of the Constitution, relations between religious confessions and the Italian State << are regulated by

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<sup>13</sup> [Http://www.lavorofacile.it/determinato-calendario-delle-festivita-ebraiche-lanno-2020/](http://www.lavorofacile.it/determinato-calendario-delle-festivita-ebraiche-lanno-2020/).

<sup>14</sup> See V. NUZZO, *Verso una società multiculturale. Gli inediti conflitti tra la libertà di vestirsi secondo la propria fede e l'interesse datoriale al profitto*, in *WP CSDLE Massimo D'Antona.it – Center for the Study of European Labour Law “Massimo D'Antona”*, 2017, 324.

<sup>15</sup> See L. ASCANIO, *La preghiera islamica in orario di lavoro. Casi, materiali ed ipotesi risolutive della problematica emergente in contesto immigrato*, in *Diritto, immigrazione e cittadinanza*, 2007, 3, 48 e ss.

<sup>16</sup> See A. FUCCILLO, F. SORVILLO, L. DECIMO, *Law, Religions and food choices*, in *CALUMET – Intercultural law and humanities review*, in [www.calumet-review.it](http://www.calumet-review.it), 29 giugno 2016.

law on the basis of agreements with the related representatives >>.

In the nineties, some Muslim organizations rooted in the Italian territory tried to reach agreements with the State<sup>17</sup>. Among these, the most significant was certainly the draft agreement with CO.RE.IS (*Italian Islamic Religious Community*), since it is most consistently based on the pillars of Islam.

In particular, it contains a request for the recognition of Friday as a public holiday<sup>18</sup> or, in any case, for the right to participate in Friday prayers; the recognition of daily ritual prayer in prescribed times and in a reserved and suitable environment, both in the private and public sector; facilitating the implementation of Ramadam religious practice; the ritual pilgrimage to Mecca and the adaptation of company canteens to Koran food prescriptions.

The recognition of Friday as holiday would, according to the aforementioned agreement, result in a working hours recovery on other days, without extraordinary compensation for the non-worked hours, without prejudice to the << essential needs of basic services provided for by the legal system of the (Italian) Republic >> .

The Islamic ritual prayer, instead, would be assured, in correspondence of prayer's time slots, by the possibility for the worker to make use of pauses, at the workplace and in the schools, with the duration of fifteen minutes each, without prejudice for the working hours recovery or for their calculation for remuneration purposes.

Concerning the pilgrimage to Mecca, permits are granted, without prejudice for the working hours recovery and, with regard to food prescriptions, the introduction into the canteens of food and beverages permitted by the Islamic tradition is envisaged.

Lastly, the Ramadam-related consequences are of utmost delicacy, which are reflecting both in a working hours reduction and in facilitating the use of holidays during this period.

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<sup>17</sup> See *Bozza di intesa tra la repubblica italiana e l'UCOII (Unione delle Comunità e Organizzazioni Islamiche in Italia) (febbraio 1993)*, in *Quad. dir. pol. eccl.*, 1993, 2, 561 ss.; *Bozza di intesa tra la Repubblica italiana e l'Associazione Musulmani Italiani*, in *Quad. dir. pol. eccl.*, 1996, 2, 536 ss.; *Bozza di intesa tra la Repubblica italiana e la Comunità Religiosa Islamica*, in *Quad. dir. pol. eccl.*, 1998, 2, 567 ss. See, also, A. CILARDO, *Il diritto islamico e il sistema giuridico italiano. Le bozze di intesa tra la Repubblica italiana e le Associazioni islamiche italiane*, Napoli, 2002, ESI, 212.

<sup>18</sup> See L. MUSSELLI, *Rilevanza civile delle festività islamiche*, in S. FERRARI (a cura di), *Musulmani in Italia, La condizione giuridica delle comunità islamiche*, Bologna, 2000, 195 ss.

However, these agreements are still on paper, as they were never definitively approved pursuant to art. 8 of our Constitution, perhaps due to the lack of a unitary representation of the Islamic Communities with which to start a negotiation<sup>19</sup>.

Trade union agreements partially made up for such agreements, which, however, on one hand manifested themselves randomly<sup>20</sup> on the other hand are concerning a general definition of religious freedom of immigrant workers, not specifically the Islamic cult, which instead, due to its rigid and particularly stringent rules, it inevitably needs special attention.

Therefore, there are no organic texts dealing with the conditions of Muslim workers; however in some collective bargaining agreements, some concessions are recognized for those who profess Islam, in particular precisely with regard to holidays and extraordinary permits.

In this context we can remember, for example, the art. 74 of the CCNL (*National Collective Bargaining Employment Contract*) for cooperatives members and employees carrying out activities relating to sports facilities and leisure time signed on July 20<sup>th</sup>, 2006, also taken up by art. 78 of the CCNL for cooperatives members and employees carrying out activities in favor of public and private sector signed on January 31<sup>st</sup>, 2007 and by art. 25 of the CCNL for cooperatives members and employees operating in the car rental sector signed on March 14<sup>th</sup>, 2007, according to which working members and employees who profess a religion other than the Catholic one, have the right to weekly rest on a day other than Sunday and recovery of non-worked hours even on Sundays without the right to any extraordinary compensation.

Similar rules are also provided by art. 23 of the CCNL for employees of distribution and services sector companies dated December 18<sup>th</sup>, 2007, by art. 36 of the CCNL Federculture (*National Association Of Public And Private Bodies within the Cultural Sector*) dated March 21<sup>st</sup>, 2005, by art. 78 of the CCNL for employees of data processing centers (CED) dated April 21<sup>st</sup>, 2009, by art. 63 of the CCNL for executives and middle managers of the same sector, as well as by art. 24 of the National Collective Bargaining Agreement for

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<sup>19</sup> See F. RICCIARDI CELSI, *Fattore religioso e lavoratori di religione islamica. Aspetti riguardanti la contrattazione collettiva e gli accordi sindacali*, in C. CARDIA, G. DALLA TORRE (a cura di), *Comunità islamiche in Italia. Identità e forme giuridiche*, Giappichelli, Torino, 483.

<sup>20</sup> See N. FIORITA, *L'Islam nei luoghi di lavoro: considerazioni introduttive sul ricorso alla contrattazione collettiva*, in *Coscienza e libertà*, 2005, 9 ss.

Anas (*National Road Organization*) employees dated December 18<sup>th</sup>, 2002.

Again, the art. 14 of the CCNL on the discipline of domestic work in 2013 provided for the right to weekly rest for the <<worker who professes a religious faith that provides for the solemnization on a day other than the Sunday>>, while the art. 14 of the CCNL for employees of artisan businesses in the food and bread-making sector dated November 23<sup>rd</sup>, 1998 legitimizes a balanced management of the relationship between the technical-productive needs of the company and the employees needs and customs, without prejudice to the employees' commitment for preventive information<sup>21</sup>.

The Framework Agreement between CGIL, CISL and UIL (*Italian trade unions*) and Confindustria (*General Industry Confederation*) Monza and Brianza considers <<possible and desirable, those measures which are enhancing the multiple religious affiliations among company employees >> through <<granting holidays and permits, in periods of particular religious interest>>.

Some specific arrangements for Islamic workers, on the other hand, are referred to in some local agreements within those companies in which a high percentage of Muslim workers is present.

The reference here is connected to Castelgarden in Castelfranco Veneto, a company with a European-level market appreciation for the production of garden tractors, lawn mowers and gardening products, which created a small mosque within the company seat for Muslim origin employees and organized the company canteen so as to serve food according to Islamic prescriptions.

Another interesting case is represented by Fonderie Pavinato of Thiene (Vicenza), which allowed Muslim laborers since 1990 to continue their working hours skipping their lunch break in order to complete their working day an hour earlier during Ramadan.

In Bologna province, an engineering company, through an agreement with CISL, granted non-EU workers of Islamic faith who intend to participate in Friday prayers, an extension of their lunch break time from 12 to 14 instead of from 12 to 13, with obligation to recover hours at the end of the day<sup>22</sup>.

In 2004, CISL also entered an agreement which recognized for the first

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<sup>21</sup> See R. BOTTONI, *Le discriminazioni religiose nel settore lavorativo in materia di alimentazione*, in *Quad. dir. pol. eccl.*, 2013, 1, 107 ss.

<sup>22</sup> See D. CALDERA, *Tempi di lavoro e di culto dei lavoratori musulmani, con uno sguardo all'Intesa*, in *Islam e Bologna. Un anno di ricerche di tirocinio all'Osservatorio provinciale dell'immigrazioni*, 2014, 1.



time the practice of daily prayer with Muslims employed at Essevi, a cooperative supplying parcel delivery services at Linate airport, providing for the right to pray for thirty minutes every six hours or for fifteen minutes every four hours of work, with procedures to be decided from time to time in agreement with service managers<sup>23</sup>.

Similarly, in the Provincial contract for agricultural workers and florists-nurserymen for Ragusa province dated September 23<sup>rd</sup>, 2004, under art. 8 the right was acknowledged to an extraordinary unpaid four-hour permit for each week in order to allow religious practice and, during the period of Ramadan, two hours of unpaid daily rest, to be compensated in another period of the year, as required by company bargaining in terms of compensation. This forecast, however, was no longer taken up again by bargaining.

As another example, the 2006 Integrative Provincial Contract for construction workers being employed by companies of the Cooperative Movement in Ravenna Province refers to <<(applying) appropriate organizational and service solutions, in agreement with the RSU (*Unitary Union Representatives*) and the Trade Unions>> to manage the Ramadan period.

At Alstom Power Italia SpA based in Sesto San Giovanni, Muslim employees were allowed in 2009 to take time off work for their prayer breaks and at the Zincatura Padana S.p.a. of Reggio Emilia, Muslims were given the possibility of not working on the last day of Ramadan, as long as they ensure a working day for the Patron Saint's feast day.

Furthermore, Novagest, a company from Treviso dealing with food products for vending sector, introduced fresh products complying with religious or philosophical principles, while food company Tre Alfieri Halal was the first in Italy to propose canteens serving foods in which all the ingredients respect Koran rules.

All the aforementioned hypotheses fall, as we have seen, within trade union agreements with the individual company or, at most, are found within some national collective bargaining agreements<sup>24</sup>. On the other hand, no legislative provisions on this point or, in any case, no more structured regulation on the subject are available.

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<sup>23</sup> [Http://www.repubblica.it/2004/c/sezioni/cronaca/pausapre/pausapre/pausapre.html](http://www.repubblica.it/2004/c/sezioni/cronaca/pausapre/pausapre/pausapre.html). See L. ASCANIO, *La preghiera islamica in orario di lavoro. Casi, materiali ed ipotesi risolutive della problematica emergente in contesto immigrato*, cit., 64.

<sup>24</sup> See C. GAMBA, *Il Ramadan nel contratto di lavoro*, in *Il Sole24Ore*, 20 agosto 2009.

The only specific regulatory case that could be found concerning the subject is contained in the D.p.r. (*Decree of the President of the Republic*) dated May 7<sup>th</sup>, 2008 bearing the <<Transposition of the supplementary trade union agreement for non-managerial staff of the National Fire Brigade Corps, relating to the 2006-2009 four-year regulatory period and the 2006-2007 economic two-year period>>.

Article 14 relating to "Holidays", at paragraph 5 establishes in facts that: <<Employees belonging to Jewish and Islamic religions, as well as to other religious denominations recognized by the State, have the right to enjoy, on request, a weekly day off other than Sunday. In this case the non-performed workday is recovered on another working day, in agreement with the manager of the structure or with the super-ordinate manager>>.

Again in this case, the input was provided at the Union level, even if the issue was then taken up by the legislator himself, who precisely transposed the results.

### *3. Protecting worker's safety versus the employee's right to religious freedom.*

Within the Italian context, moreover, with more specific reference to the aspects of safety in the workplace, some cases leaped to the headlines due to a deficient business management, which would require a deeper reflection on the subject.

Protagonists of the story were the farmers' associations and the labor unions of Mantua, worried by the limit imposed by Ramadam in eating and drinking. As it is known, Muslims cannot drink or eat from dawn to dusk during the Ramadam. However, during a working day spent in the fields collecting melons, watermelons and vegetables, not drinking water exposes the worker to very high illness risks.

This is why Confagricoltura (*National Confederation Of Agriculture*) and the three trade unions CGIL, CISL and UIL, gathered in the Committee for safety in the agriculture sector in Mantua, signed a document that provides for the obligation to take water, under penalty of temporary suspension from work. In particular, in this document, given that: << The protection of health comes before any religious practice >>, it is advised << to take water in abundance before and during work >>, providing that: << Those who work in particularly hot and humid days and times are obliged to take water, under penal-

ty of temporary suspension from work, or the interruption of the relationship in case of relapse, according to the contractual rules and the laws in force >>.

In this case, therefore, the employer's response was not to meet and facilitate the employees' religious practices, but rather to sanction them, up to the dismissal in case of relapse, in the face of a persistence in the religious practice of fasting and non-consumption of drinks<sup>25</sup>.

An immediate reaction came from the Islamic community of Mantua and its spokesman, Ben Mansour, according to which: << No one can force a person to interrupt his fasting, even if the health of the person comes before anything, even before Ramadam fasting. >>, provided that: << The risk assessment must be left to the concerned person. However, it never happened that someone felt ill during Ramadam for these reasons. A man died in the fields a year ago, but he was an Indian, not a Muslim following Ramadam>><sup>26</sup>.

Now, faced with episodes like these, the need for the legislator or, at least, for the interpreter, to take a position, aimed at rebalancing religious freedom and protecting the health of workers professing their Islamic faith, is self-evident.

The religious theme and, in particular, the belonging of a worker to the Islamic cult then imposes a further step forward.

What we want to highlight here, in fact, is the interconnection between this fact and the issue of worker safety protection.

If in general, in order to avoid that the workers are exposed to risks in the workplace, the employer must carry out a risk assessment taking into account the risks associated with << gender differences, age, origin from others countries >>; however, if the worker carries out his work in prolonged conditions of fasting and lack of fluid intake, he can only be more exposed to risks to his health. And of these risks it is the employer that must take care of, adopting all those measures that art. 2087 c.c. prescribes and that the legislation on safety at workplace requires.

Certainly, if we examine the normative text concerning safety at workplace, the legislator did not expressly contemplate belonging to a religious cult, as the Islamic cult is, as a circumstance that exposes the worker to particular risks.

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<sup>25</sup> See P. COLAPRICO, *Ramadam, braccianti obbligati a bere. Licenziamento per chi si rifiuta*, in *La Repubblica*, 13 agosto 2009, 20.

<sup>26</sup> <https://www.lastampa.it/2009/08/14/italia/non-bevi-al-ramadam-ti-licenziano-ZCc5EmUosKPUtjhP5tUN/pagina.html>.

This fact could perhaps be included in the above-mentioned risks related to the definition of "coming from other countries"; however, this solution is not fully convincing, as here the legislative formula seems more to be referring to the risks connected to a geographical origin and the consequent lack of understanding of the language, that to a profession of cult.

The religious factor can be rather included in the generic and more modern art. 2087 c.c. that, with its open formula, referring to the protection of the worker's moral personality, certainly aims to safeguard even his most intimate sphere, as the religious one<sup>27</sup>.

Moreover, we shall remember that Art. 1 of the Italian Workers' Statute, entitled <<About Worker's Freedom and Dignity>>, establishes that: <<The workers, without distinction of political opinions, trade unions and religious faith, have the right, in the places where they perform their work, to freely express their thoughts, in accordance with the principles of the Constitution and the provisions of this law >>.

Hence the employer's obligation to put in place all those measures that are necessary to protect the worker also from a religious point of view. This means that the worker must be placed in a position to profess his faith, without exposing him to risks for his health.

Here is why the religious factor shall become part of the risk assessment, which the employer is obliged to take care of<sup>28</sup>.

But how will this happen, in the absence of legal provisions concerning this issue?

For example, according to recent INAIL (*National Institute of Occupational Accident Insurance*) indications on the subject, with particular reference to employers in construction and agriculture sector<sup>29</sup>, the employer must: check how many of his employees follow Ramadam; report the aforementioned workers to the competent doctor, as they are exposed to risks of dehydration, hypoglycemia, loss of consciousness, etc. who, as such, must be identified and monitored; prepare a working plan guaranteeing a distribution of workloads by taking into account the fasting of its workers; encourage moments of recovery during the day; prepare specific support measures in case of illness; guaranteeing moments of information and training on the employment relation-

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<sup>27</sup> See C. TIMELLINI, voce *Sicurezza sul lavoro*, in *Dig. Disc. Priv. Sez. Comm.*, Appendice di Aggiornamento 2003, Torino, 2003, Utet, 564 ss.

<sup>28</sup> <https://www.sicuromagazine.it/valutazione-rischio-differenti-culture-religioni-lavoratori/>.

<sup>29</sup> <http://www.cesf.pg.it/files/news/opuscolo.pdf>.

ship and fasting, also making use of cultural mediators, where communication difficulties develop; report to the competent doctor and record illness cases in this workers category.

To all of the above, however, it must be added that even for the workers there are specific obligations regarding safety, given for example by the fact of having to inform their employer that they are following Ramadam, as well as from the need to comply with safety requirements.

All this leads, therefore, to theorizing a new concept of safety at workplace to be defined in terms of a so-called inclusive safety<sup>30</sup>, a new notion of safety which includes not only those who bear national cultural and linguistic individualities, different abilities, disabilities, gender and age differences, but also those who bear values, including religious ones.

#### *4. Some hints to the European community landscape.*

The topic, as well as having an every-day obvious practical tangible implication within the various business realities operating in our country, as well as in other foreign countries, has recently leaped onto the headlines also following statements by the Danish minister for the integration Inger Stojberg. In a commentary published in the Bt tabloid, Stojberg<sup>31</sup> revealed her doubts about the compatibility between Koran precepts, ancient precepts of over four hundred years, with the current market economies, starting from some practical examples, such as, for example, that of the bus drivers whose reflexes would be put at risk by fasting during daylight hours.

Thus, in order to "avoid negative consequences for the rest of the Danish society", the minister called for an extreme solution according to which Ramadam workers should inevitably benefit from work permits, thereby triggering inevitable controversy.

I therefore find it interesting to dwell on the discussion about whether the proposed Danish solution can be judged as good or not.

As noted above, the Danish Minister, having taken note of the situation ari-

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<sup>30</sup> [Http://www.superando.it/2018/04/03/sicurezza-inclusiva-per-tutti/](http://www.superando.it/2018/04/03/sicurezza-inclusiva-per-tutti/). See also A. ZULIANI, M. ZULIANI, *Sicurezza inclusiva, bisogni e necessità dei migranti*, in *Ambiente&Sicurezza sul lavoro*, 2016, 12, 68 ss.

<sup>31</sup>

[Https://www.ilmessaggero.it/primopiano/politica/immigrati\\_ramadan\\_islam\\_musulmani\\_politica\\_religione\\_danimarca\\_europa-3763580.html](https://www.ilmessaggero.it/primopiano/politica/immigrati_ramadan_islam_musulmani_politica_religione_danimarca_europa-3763580.html).

sing from the practice of Ramadam, has theorized a completely new solution. It is a matter of imposing the use of permits to practicing Islamic workers, but the question that arises here is whether an imposition from such institutions can be considered lawful.

As it is known, permits represent a derogation and mitigation of the principles concerning contract termination and correspondence, producing a conservative effect of the essential employment relationship aspects, namely keeping the job, conserving seniority and remuneration<sup>32</sup> in exchange for an exemption, albeit temporary and justified, from the obligation to perform work.

In Italy, articles 2 and 3 of the National Constitution establish the interests protected by the institution of the permits, since the first provision << recognizes and guarantees the inviolable rights of man, both as an individual and in social formations >> and art. 3 aims to ensure equal treatment of citizens also from a religious point of view.

What is leaving us puzzled is imposing the use of a permit by public authority, since the opposite is justified when the concerned person applies for it. That is exactly the opposite of what the Danish Minister theorized, who instead imposes a fruition, that is recognizing the employer the possibility of requesting the employee to compulsorily abstain from his work, possibly sanctioning him in case of disobedience.

In this sense, the institution of permits is used as a business tool to impose market logics and to intervene into the employment relationship management with a view that is blatantly in favor of the company and not of the employee, for which, instead, the instrument of permits was hypothesized by the legislator.

In the Spanish context, on the contrary, art. 12 of the 1992 Cooperation Agreement between Spain and the Islamic Commission allows the worker to request to abstain from work on the established holidays, on Fridays the whole year and one hour before sunset in the Ramadam period, upon recovery hours at other times<sup>33</sup>.

Here, contrary to the Danish proposal, it is the worker who requires the use

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<sup>32</sup> See T. RENZI, *Permessi, aspettative e altre ipotesi*, in C. CESTER (a cura di), *Il rapporto di lavoro subordinato: costituzione e svolgimento*, in *Diritto del lavoro*, Commentario diretto da F. CARICI, Torni, 2007, Giappichelli, 1797 ss.

<sup>33</sup> See A. MOTILLA, *L'accordo di cooperazione tra la Spagna e la Commissione islamica. Bilancio e prospettive*, in S. FERRARI (a cura di), *Musulmani in Italia, La condizione giuridica delle comunità islamiche*, cit., 260 ss.

of an abstention period from work and who commits himself to recovering the non-worked hours, a solution which is certainly more in line with the legislative rationale.

### *5. Concluding remarks and perspectives de iure condendo.*

After this brief excursus on the subject in question, in conclusion we can highlight it as a positive fact that, through national and company contracts, our society has perceived the problem, trying to dictate a regulation which is certainly still perfectible, but represents at least a first step towards a general discipline on the subject.

The best solution seems to give workers leave, breaks and permits<sup>34</sup>; however, since these institutions cannot be imposed by the company and must be used at the worker's request, the question of how this <<emergency>> can be managed is still open, in the hypothesis in which the worker does not spontaneously apply.

Indeed, it is necessary to highlight the inevitability of acknowledging that the religious factor is the engine of contemporary society, as an element of group identity and belonging, as well as a moment of cultural diversity for individuals and peoples. Furthermore, we must be aware of the fact that denying religious freedom <<affects the dignity of people within their work environment and in their access to economic instruments>><sup>35</sup>, with a lowering in the quality of life of the affected ones, a worsening in their integration conditions and even an influence in their career choice<sup>36</sup>.

Provisions for negotiation such as those mentioned above and such as, for example, the territorial framework agreement between CGIL, CISL and UIL and Confindustria Monza and Brianza for the development of good practices

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<sup>34</sup> See M.R. PICCINI, *Il tempo della festa tra religione e diritto*, Cacucci Editore, Bari, 2013.

<sup>35</sup> See L. SAPORITO, F. SORVILLO, L. DECIMO, *Lavoro, discriminazioni religiose e politiche d'integrazione*, cit., 5.

<sup>36</sup> See M.C. NASSBAUM, *Women and human development. The capabilities approach*, Cambridge University Press, Cambridge, 2000, 205 ss.; E. SIGALOW, M. SHAIN, M.R. BERGEY, *Religion and Decisions about Marriage, Residence, Occupation, and Children*, in *Journal for Scientific Study of Religion*, 51, 2012, 304 ss.

on immigration issues of July 25<sup>th</sup>, 2013<sup>37</sup>, represent deflationary tools useful for not further weighing up the judicial charge, as well as for defusing social tensions in view of a composition of contrasts and greater integration<sup>38</sup>.

In this sense, then, even bargaining becomes <<inclusive>>, as it aims to bring the religious factor into the company organization with particular reference to working hours, weekly rests, holidays and organization of company canteens, in order to eliminate inequalities and divisions among workers<sup>39</sup>.

In addition, employers must take steps to prepare specific safety measures to protect their Islamic employees, introducing special measures within the risk assessment.

As former US President Thomas Jefferson used to say: <<Religion is a blessing if it reawakens the civil spirit; it is a "curse" if it becomes an excuse for discrimination >>.

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<sup>37</sup> [Http://www.cgilbrianza.it/pdfcms/accordombimmigrazione\\_25lug13.pdf-29.11.pdf](http://www.cgilbrianza.it/pdf/cms/accordombimmigrazione_25lug13.pdf-29.11.pdf).

<sup>38</sup> See L. CORAZZA, *Il nuovo conflitto collettivo. Clausole di tregua, conciliazione e arbitrato*, Franco Angeli, Milano, 2012, 162.; M. FORLIVESI, *La sfida della rappresentanza sindacale dei lavoratori 2.0*, in *Dir. Rel. Ind.*, 2016, 3, 664 ss.

<sup>39</sup> See L. SAPORITO, F. SORVILLO, L. DECIMO, *Lavoro, discriminazioni religiose e politiche d'integrazione*, cit., 43.