SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 6

10 JUNE 2021 • ARTICLE

WEEKLY ITALIAN LABOUR UPDATES

"If it is recognized by collective company agreement, variable remuneration linked to key performance indicators is subject to tax reduction and to partial social charges exemption to the benefit of the employer."

Corporate mobility managers' areas of responsibility defined

The Ministry of Environmental Transition and Infrastructure has defined the areas of responsibility of corporate mobility managers, whose role is to support companies in adopting commuting plans and in planning and managing sustainable mobility projects (e.g., carpooling, carsharing). The Relaunch Decree (art. 229, para. 4, D.L. 34/2020) set out that companies with business units with more than 100 employees are required to adopt a commuting plan for staff to cut the use of private cars with a view to sustainable local mobility. Such a plan is a requirement and when fully implemented will have to be adopted by affected companies by 31 December of each year.

Decree of the Ministry of Environmental Transition 12/05/2021 (published in the Official Journal on 26/05/2021)

Lawful to reduce staff in specific department only

If a corporate restructuring involving a reduction in the workforce is restricted to a specific business unit or company department, a collective redundancy procedure limited to workers operating in said unit or department is legal. However, this requires stating in the prior notice to trade unions the reasons why the redundancies are restricted to a specific business unit or company department, and the reasons why the affected employees cannot be moved to other business units or company departments. Finally, affected employees must carry out irreplaceable tasks which cannot be performed by other workers in the broader context of the company as a whole.

Supreme Court 28/05/2021 n. 14677

Terminations by mutual consent are not included in calculations for collective redundancies

The Supreme Court has maintained that terminations of employment that end with individual dismissals for business reasons do not count towards the five-employee threshold that triggers the obligation to implement a collective redundancy procedure. Art. 7 of Law 604/1966 sets out that if an employer intends to dismiss for business reasons staff hired before the enactment of the Jobs Act, they are required to start a conciliation attempt at the Territorial Labour Inspectorate. In the opinion of the Court, "the intention to proceed with dismissal" is not equivalent to dismissal per se. Accordingly, individual redundancies ending in termination by mutual consent with a termination bonus and right to Naspi unemployment benefits are not relevant to collective dismissals.

Supreme Court 31/05/2021 n. 15118

Equal pay for male and female employees for work of equal value

The principle of equal pay of male and female employees, set out in art. 157 of the Treaty on the Functioning of the European Union, applies directly not only in case of the "equal work", but also for "work of equal value". The Court rejected the argument that applying the principle of equal treatment of male and female employees for "work of equal value" requires provisions (of domestic or EU law) specifying the exact meaning of said principle.

Court of Justice of the EU 03/06/2021 (case C-624/19)

If temporary agency work is regular, application of the social security system of the state of origin is lawful

Temporary workers hired by a temporary employment agency to work in a EU-member state and sent to work in a different member state may retain social security accounts in the state of origin, provided that this arrangement does not conceal a fraud. A fraud occurs if a sham temporary work agency is established in the state of origin, whose only purpose is to benefit from the more favorable social security system offered by such state compared with the state where work is actually performed.

Court of Justice of the EU 03/06/2021 (case C-784/19)

Contract not fraudulent if in line with client directives

Direction from a client to a contractor's employees cannot trigger case of fraudulent contract, if said directive pertain is line with the agreed outcome of said contract. Only if said directives relate to how said outcomes are to be achieved by the contractor's employees can such a case be made.

Supreme Court 11/05/2021 n. 12413

Employees to be reinstated if there is no cause and effect link to company downsizing project

If there is no cause and effect link between a business downsizing project and making an employee redundant for business reasons, then this is a case of, set out in art. 18, para. 7, Workers' Statute, a "clear lack of cause of action" for termination by the employer. Consequently, the employee has the right to reinstatement to their role and to compensation capped at twelve months' salary. The employer is also obliged to pay their social security contributions from the date of dismissal to that of reinstatement.

Supreme Court 19/05/2021 n. 13643

No responsibility for companies for accidents at work under Law 231/2001 if cost cutting not a factor

If a violation of the health and safety regulations against accidents at work is solely due to an underestimation of risk and in no way to cost cutting, an employer's responsibility towards the affected employee does not also imply responsibility on the part of the company under Law 231/2001. In such cases, the breach is deemed not to be down to actions made in the financial interest and advantage of the company and therefore does not fall under the remit of Law 231/2001.

Supreme Court 08/06/2021 n. 22256

KEY CONTACTS

GIUSEPPE BULGARINI D'ELCI
PARTNER • MILAN

T: +39 02 721 7071
M: +39 347 26 86 664

gbulgarini@wfw.com

ROBERTA CRISTALDI
COUNSEL • MILAN

T: +39 02 721 7071
M: +39 344 0506106

rcristaldi@wfw.com