SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 7

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WEEKLY ITALIAN LABOUR UPDATES

"In view of overcoming the healthcare emergency, the company policy and the collective agreement are more and more strategic tools to efficiently manage remote working of employees."

No right to unemployment for consultants if their principal did not pay social security charges

Consultants hired on a continuous basis are not entitled to the unemployment indemnity provided for by Article 19 of Law Decree No. 185/2008 (now replaced by the Jobs Act "Dis-coll") if their principal did not pay social security charges. The rule according to which social security contributions are automatically applied to subordinate employees is not extended to freelance workers nor to consultants hired on a continuous basis. If their principal did not comply with their obligation to pay social charges on top of the compensation paid to a consultant, the latter are bound to pay said social security charges directly themselves. Therefore, if social charges have not been paid, the consultant is not entitled to the unemployment indemnity.

Supreme Court 30/04/2021 No. 11430

Shareholder profits exempt from social security charges

Profits accrued by the shareholders of limited liability companies do not confer an obligation to pay charges to special social security entities for artisans and merchants, if theydo not perform working activities in said company. This decision has been made by the Italian Social Security Body ("Inps") in line with the most recent case law interpretation, according to which profits deriving from participation in joint stock companies by shareholders who do not perform any work activity i said company are exemptfrom social security charges.

Inps, Message 10/06/2021 No. 84

Smart workers to be included in disabled employee headcount calculation

Employees who work remotely have to be included in employee head count calculations aimed at hiring from protected categories. While home-based employees ("Telelavoro") are not included in the minimum employee headcount over which an employer is bound to hire disabled employees, smart working employees must be included in overall employee headcount calculations. This decision relies on the assumption that there is no legal provision which excludes smart working employees from the calculation, while home-based employees are excluded by Article 23 of legislative Decree No. 80/2015.

Ministry of Labour, Answer to Interrogation 09/06/2021 No. 3

Temporary allowance for minor children

In line with the special, universal allowance for families with children under 21 years of age, a temporary allowance for minor children will also be available as of 1st July 2021. This temporary allowance is available to families that do not receive the standard family allowance if they meet several conditions including being an Italian citizen or a citizen of an EU member State who has lived in Italy for at least two years. The allowance is a temporary measure (it will be applied until the 31st December 2021) and entails a monthly monetary subsidy based on the number of minor children and the family's financial circumstances as certified by ISEE (Equivalent Economic Situation Indicator).

Law Decree 08/06/2021 no. 79

No automatic damages for demotions

When an employee is demoted, the right to claim compensation for damages is not automatic but requires specific reasons be given for said compensation request. Breaching contractual obligations (including those relating to Article 2103 of the Italian Civil Code on the assignment and the change of task) does not automatically allow for a claim for damages, which must be considered potential only if evidence of actual damages can be supplied.

Supreme Court 18/05/2021 no. 13536

Transferee responsible for demotion even in case of invalid transfer

In case of an invalid transfer of undertaking, a transferee is responsible for assigning disqualifying tasks to an employee for the entire period in which the latter materially performed the activity for said (fictitious) transferee, even if the employment relationship continues to be legally binging on the transferor company. In such instances, there is no contextual responsibility on the part of the transferor as the effective continuation of the employment relationship with the transferee (only), although involving an invalid transfer of undertaking, places on said transferee the obligations arising from the actual employee's performance.

Supreme Court 20/05/2021 no. 13787

Employees to be reinstated if final communication on collective redundancy process did not include selection criteria for redundancy

Collective redundancy procedures end with a final communication to trade unions including all redundant employees and the selection criteria for them being selected. If such a final communication is held to breach said requirement to include the selection criteria for redundancy, there is no simple procedural breach from which an indemnity for damages (only) could be derived of 12 (min) -24 (max) months' salary. In such cases, the omitted information prevents trade unions from verifying compliance with the selection criteria and therefore leads to a material procedural breach, for which the remedy of reinstatement to the workplace – plus compensation equal to a maximum of 12 month' salaries – applies.

Supreme Court 24/05/2021 no. 14180

Redundancy deemed retaliatory if related to an employee refusing a pay-cut

If connected to an employee's previous refusal to accept a proposal of contractual novation with a reduction in salary, any subsequent redundancy proceeding initiated against said employee is deemed retaliatory on their employer's part. If the reasons according to which the redundancy was served were inconsistent, the employee's previous refusal to accept a reduction in the financial compensation in their employment contract allows the conclusion that the employers' decision to terminate the employment is due to retaliation. This results in the reinstatement to the workplace of the employee and full compensation for damages of a minimum of five months' salary.

Supreme Court 20/05/2021 no. 13781

Time to wear work clothes is not remunerated

f the employer does not specify a policy regarding changing into and out of work clothes (and any other needed protective equipment), the time spent by an employee doing so is not deemed to be work and therefore will not be remunerated. The time spent doing so is only deemed work and therefore to be remunerated only if said work clothes and other personal protective equipment must be changed into in an official company dressing room in accordance with specific company guidelines.

Supreme Court 07/06/2021 n. 15763

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