

SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 9

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WEEKLY ITALIAN LABOUR UPDATES

"Post-pandemic smart working needs requires to be regulated by policy or company agreement for fully efficient use."

Redundancy ban extended for selected industries including textiles

The ban on both collective and individual redundancies for financial reasons has been extended 17 weeks from 1st July to 31st October 2021 for textile, clothing and footwear manufacturing companies only as these are deemed to be sectors facing particular challenges in the current economic climate.

Law Decree 30/06/2021

14-supplementary month salary exemption for companies based in southern Italy

Companies based in the eight regions comprising southern Italy are entitled to a 30% exemption on their contributions to additional monthly salaries as per Article 1, paragraph 161, Law 178/2020. The Italian Social Security Authority previously held that the 13-month salary contribution exemption only applied for three twelfths of said period, equal to the months following the entry in force of the law. They have now modified this interpretation, recognising that 14-supplementary month's salary are subject to a reduction in contributions for the full amount (i.e. twelve twelfths of additional monthly salary).

INPS, Message 28/06/2021 no. 2434

Application of Article 18 to fixed-term contracts converted after Jobs Act

The Jobs Act (Article 1, paragraph 2, Legislative Decree no. 23/2015), which extends the increasing protection regime (only based on economic indemnity) for employees hired under fixed-term contracts before 7th March 2015 and then converted into open-ended employment relationship starting from the aforementioned date, is against the EU's non-discrimination principle (between fixed term and permanent employees). Article 18 of the Workers' Statute also applies to fixed-term employees if the original start date of the employment contract was prior to the entry into force of the "increased protection regime" on unlawful dismissals. It is therefore debatable that the "increased protection" regime proved to be a useful legal discipline to incentivise new permanent hires, as experience to date suggests this is not happened.

Court of Milan, 31/05/2021

Public and private construction works require conformity assessments on required workforce

The Ministry of Labour has signed a decree outlining the verification process for assessing the workforce required for both public and private construction works. For private contracts, this new verification process applies only to construction works valued more than €70,000+. It is also subject to specific parameters annexed to the national collective employment agreement dated 10/09/2020. The “Cassa Edili” (Construction Fund) provides contractors providing workers for construction projects a certificate of assessment, the lack of which may prevent a DURC certificate – which confirms the regular payment of social security charges – being granted.

Decree of the Ministry of Labour 25/05/2021

Evidence collected during preliminary investigations can be used to determine compensation for damages against employees

Businesses can use information collected during the preliminary investigation phase of criminal proceedings to request compensation for damages against an employee. In this respect, employment tribunal judges in civil proceedings can independently evaluate any evidence collected during the preliminary investigation of a parallel criminal proceeding, regardless of the outcome (conviction, acquittal, etc.) of said latter proceeding.

Supreme Court (order) 17/06/2021 no. 17343.

Final communications of collective redundancy procedures invalid without selection criteria

The final communication of collective redundancy procedures to trade unions and local authorities must provide the selection criteria for redundancy, along with a list of the entire workforce and the score of each employee as against said selection criteria. If the employer omits this information, the redundancy process is deemed unlawful and affected employees are entitled to reinstatement in employment. The fact that an employee may have been made aware of said criteria at a later date is irrelevant.

Supreme Court 31/05/2021, no. 15119

Dismissal of employee lawful if, while claiming sick leave, they worked in a bakery owned by their spouse

If it is proved that while off claiming sick leave an employee continuously – not occasionally – worked in a bakery owned by their spouse, it is fully lawful to dismiss them. The performance of an activity comparable in terms of time commitment to those in an employment contract represents, in this context conduct inconsistent with genuine sickness and therefore a fraudulent reason for not being present at work.

Supreme Court 03/06/2021 no. 15465

Disciplinary actions based on e-mail communication with trade union mailing list lawful

Information included in e-mail communications between an employee and their trade union mailing list can be used in disciplinary proceedings against the former, if their employer was informed of them by a third party.

No breach of data protection regulations is deemed to have occurred as the information in question was acquired via external reporting and the employer merely used said information for the purpose of the disciplinary action, without retaining or processing it.

Supreme Court 31/05/2021 no. 15161

Executives excluded the ban on redundancies during epidemiological emergencies

Executives are not included in the ban on individual redundancies for reasons of financial distress introduced by Article 46 of Decree “Cura Italia” and reiterated in subsequent emergency decrees. The emergency regulations’ reference to Article 3 of Law 604/1966 outlining the objective justified reasons to enable individual dismissals excludes executives to whom they do not apply. One of the reasons the ban on individual dismissals does not include executives is that they cannot participate in the wage guarantee fund instituted to mitigate the economic impact of the Covid-19 pandemic. The Court of Milan thus hereby expresses its disagreement with that case law that argues the individual dismissals ban should also extend to executives.

Court of Milan (order) 17/06/2021

Online tracking of employees unlawful without impact assessment and policy

having an agreement with relevant trade unions and authorisation from the National Labour Office does not allow employers to use monitoring programmes that track the web browsing history of their employees, nor process or collect said data. It is essential that employers provide their employees with a clear and specific privacy disclaimer (or company policy covered the same) in which they list any monitoring programmes used in a work context, their operational criteria, control methods and frequency of use. Furthermore, if a monitoring programme implies a high risk to employees’ rights and freedoms, the employer is required to implement both technical and organisational measures to reduce this risk.

Privacy Authority, Provision dated 13/05/2021

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