

SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 11

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WEEKLY ITALIAN LABOUR UPDATES

"The use of remote working once pandemic is over requires to adopt common rules for the staff. Collective company agreement proof to be very useful, since it allows a remote work discipline tailored on company needs."

Supreme Court renews parameters of subordinate employment

In order to distinguish subordinate from self-employed employment, the Supreme Court of Cassation renewed the criteria that define the former such as a fixed monthly salary, predefined working hours, continuity of service and connection with the company's needs and reporting to and being part of its organisational structure.

Supreme Court (ord.) 05/07/2021 No. 18943

Pension damages awarded due to employer's failure to pay contributions subject to conditions

Pension damages awarded due to an employer's failure to pay the relevant contributions imply that the employee in question had accrued the requisite to access said social security benefits and, moreover, that the time limit on omitted contributions had come into effect. Both conditions must be met for compensatory

damages to be awarded pursuant to Article 2115, paragraph 2, of Italian Civil Code.

Supreme Court (order) 08/06/2021 No. 15947

Executive redundancies fall under Covid-19 collective redundancy ban

Making more than four executives individually redundant within 120 days represents a breach of the provisions provided for by Articles 4, 5 and 24 of Law No. 223/1991, which mandates that executive redundancies follow the relevant collective procedures. That said redundancies may have been subsequently revoked by the employer or that the employment relationship was terminated by mutual consent is not relevant. Since the ban on collective redundancies introduced through emergency legislation during the Covid-19 pandemic also applied to executives, the right to reinstatement in the workplace and indemnity for damages in an amount equal to the non-work period apply.

Court of Milan (order) 02/07/2021

When social security contributions paid to different pension funds are unified, no interest is due in case of delay

If an employee chooses to unify their pension contributions into one fund while their social security contributions are paid to different pension funds, responsibility for the transfer of said contributions lies with acquiring pension fund. Pension funds are bound to transfer social security contributions with an increased interest rate of 4.5% per annum. The Italian social security authority (“INPS”) stated that, in cases where social security contributions are paid into a private pension fund, delay by the acquiring fund in managing the transfer of contributions means the INPS need not pay any additional interest.

INPS Message 09/07/2021 No. 2552

INPS clarifies Italian stance on EU/UK social security protocol post-Brexit

Jointly with the Ministry of Labour, the INPS clarified Italy’s stance on the application of the social security protocol signed between the United Kingdom and the European Union to regulate social and welfare measures after Brexit. Among other provisions, it has been stated that EU rules on the coordination of social security systems will continue to apply (sine die) after the end of the transition period (1st February – 31st December 2020) to all people whose, prior to that date, social security payments involved both the United Kingdom and the European Union.

INPS Circular 08/07/2021 No. 98

Injuries that take place while employees are between work sites also to be indemnified

Workplace injuries are also to be indemnified in cases of “improper risk”, which occur when an employee is carrying out an activity preparatory or ancillary to the tasks he has to perform according to his employment contract. Insurance protection against accidents at work also includes “occasional risk” linked to activities that are ancillary to an employee’s primary role. Therefore, accidents that occur while an employee is moving between work sites have to be indemnified.

Supreme Court 17/06/2021 No. 17336

Trade union agreements to reduce notice lawful

An agreement signed with a trade union at the conclusion of a redundancy procedure providing for the halving of any indemnities in lieu of notice is lawful, if it is aimed to safeguard the continuity of a company’s business activities and existing employment levels. This represents an exception to the general rule according to which employees are entitled to payment in full of their notice period indemnity but does not violate Italian constitutional and EU principles since it allows for a reduced number of redundancies than initially anticipated. In such cases, said trade union agreement is to be considered a special collective company agreement (a so-called “accordo di prossimità”) according to Article 8 of the Law No. 138/2011, which allows a derogation of the usual legal provisions where this might reduce redundancies.

Supreme Court 15/06/2021 n. 16917

Constitutional Court challenges lack of time limits on injunction orders

The lack of a requirement for a final term to deliver an injunction order or dismissal in cases of administrative breach represents an anachronistic legacy of the former legal supremacy of the public administration. Therefore, it is of the utmost importance that a specific time limit notifying of any such sanction is made to ensure a timely conclusion to proceedings and satisfy legal equity. For these reasons, the Constitutional Court urged Italian lawmakers to amend Article 18 of the Law No. 689/1981, since it does not provide for such a deadline and is merely subject to five-year limitation of actions.

Constitutional Court 12/07/2021 n. 151

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