

## SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 14

5 AUGUST 2021 • ARTICLE



### WEEKLY ITALIAN LABOUR UPDATES

"The refusal of the employee to be vaccinated against Covid-19, according to case law, allows the employer to suspend it from work and remuneration, if no alternative duties are available which do not require to interact with other people."

#### Ascertained facts in plea bargaining in criminal proceedings to be used for disciplinary actions

So-called "plea bargaining" in criminal proceedings is *res judicata*. Therefore, facts which have been ascertained in proceedings, their criminal importance, and the responsibility for them of the employee who accepted the plea bargain are all elements that can be used to support disciplinary action ending in dismissal. This also applies if disciplinary proceedings began before the conclusion of the criminal proceeding that involved the plea bargaining.

*Supreme Court 19/07/2021 No. 20560*

#### Calculation of trade unions electoral capacity has begun

The collection of trade union electoral data has finally begun. The agreement – between the INPS, INAIL, Confindustria, CGIL, CISL and UIL – to collect trade unions' membership numbers, as well as the electoral data from works council elections needed to verify their actual representative capacity, was signed on 19/09/2019. The

National Employment Inspectorate has now started the process of collecting and analyzing said data. In its first phase, the assessment is restricted to NCLAs in the manufacturing, chemical and pharmaceutical sectors. This first phase will be completed by the end of 2021. The data collection process will be extended to other NCLAs next year and will also include the trade unions' proxies.

*National Employment Inspectorate, Letter 21/07/2021 No. 5331*

#### Inter-ministerial decree on self-employed contribution exemption published

The inter-ministerial decree on the partial exemption of INPS-enrolled self-employed individuals from paying social security contributions in 2021 has been published. The maximum exemption of €3,000 per year will be re-assessed on a monthly basis. The exemption requires that, in the 2019 tax period, beneficiary self-employees accrued income of no more than €50,000. A decrease in the revenue of the self-employed individual's business in 2020 of no less than 33% – compared to 2019 – is also required to qualify for the exemption.

Being in subordinate employment prevents an individual from benefitting from this social security exemption, as do pension entitlements, except as relating to disability checks.

*Decree of the Ministry of Labour and of the Ministry of Finance published on 28/07/2021*

## **Retroactive classification of business activity**

According to the INPS, it is only possible to obtain a retroactive classification of the field a company operates in if the statements communicated when the business was set-up were inaccurate. If, however, the change in classification is the result of a change in the business' focus that was not communicated by the company, a new classification cannot be claimed retroactively.

*INPS Circular 28/07/2021 No. 113*

## **Scoring connected to work time could entail gender discrimination**

Using a scoring system based on hours worked to determine a full or part-time employee's promotion could be deemed indirect gender discrimination if it primarily impacts female members of staff. To ascertain if the criteria adopted to determine promotions is discriminatory, it should not be limited to rules adopted by the employer, but also extend to the results the application of said rules would have on a company's employees. By applying this principle, gender discrimination may arise if a promotion is connected to the hours worked by an employee where the majority of female staff work part-time, thereby placing them at a disadvantage.

*Supreme Court 29/07/2021 No. 21801*

## **Inactivity from a director not a silent waiver for remuneration**

Lack of communication or inactivity on the part of a director, even for a lengthy period of time, is not enough to infer a waiver on remuneration for the office and membership of the board of directors. A directorship can be unpaid, either as part of a written clause in the company's statute or as a waiver, explicit or silent, of the director's right to any remuneration. However, such a silent waiver requires specified behaviour on the part of the director to infer a material waiver of remuneration. Mere silence or inactivity is not sufficient.

*Supreme Court (ord.) 23/07/2021 No. 21172*

## **INPS instructions on re-employment contracts**

Re-employment contracts (introduced in Law Decree No. 73/2021) provide for a six-month training programme to upgrade newly hired employees' professional skills with a corresponding social security exemption for their employer of €500 maximum per month. Re-employment contracts can be made between 1st July and 31st October 2021 and exemptions requested from September onwards. Re-employment contracts are only available to the unemployed and do not extend to individuals whose contracts have changed from permanent to fixed term. An employee cannot be sacked during the six-month training period.

*INPS, Circular 02/08/2021 No. 115*

# WATSON FARLEY & WILLIAMS

## Unlawful transfer of business means right to continued employment with transferor

Article 2112 of the Civil Code applies when a transfer of business encompasses all material and immaterial elements (people, tools, knowledge, etc.) needed for an autonomous and structured business to operate. A business' autonomous status must predate the transfer being undertaken. If said criteria are not met, an employee is entitled to continue their employment with the transferor. An employee's right to continued employment with the transferor is not negated by the fact that they have up to then been performing work activities for the transferee.

*Supreme Court 05/07/2021 n. 18948*

## Unlawful transfer of business means right to be paid wage arrears

If the conditions for the transfer of a business according to Article 2112 of the Civil Code do not apply, an employee is also entitled to wages due from the transferor if they have continued to carry out their working responsibilities for the transferee. Such a payment is deemed remuneration and not compensation for damages. Therefore, it is not possible to deduct the remuneration the employee was paid for while working for the transferee from any such payment.

*Supreme Court 08/07/2021 n. 19526*

## KEY CONTACTS



**GIUSEPPE BULGARINI  
D'ELCI**  
PARTNER • MILAN

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

[gbulgarini@wfw.com](mailto:gbulgarini@wfw.com)



**ROBERTA CRISTALDI**  
COUNSEL • MILAN

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

[rcristaldi@wfw.com](mailto:rcristaldi@wfw.com)

## DISCLAIMER

Watson Farley & Williams is a sector specialist international law firm with a focus on the energy, infrastructure and transport sectors. With offices in Athens, Bangkok, Dubai, Dusseldorf, Frankfurt, Hamburg, Hanoi, Hong Kong, London, Madrid, Milan, Munich, New York, Paris, Rome, Seoul, Singapore, Sydney and Tokyo our 700+ lawyers work as integrated teams to provide practical, commercially focussed advice to our clients around the world.

All references to 'Watson Farley & Williams', 'WFW' and 'the firm' in this document mean Watson Farley & Williams LLP and/or its affiliated entities. Any reference to a 'partner' means a member of Watson Farley & Williams LLP, or a member, partner, employee or consultant with equivalent standing and qualification in WFW Affiliated Entities. A list of members of Watson Farley & Williams LLP and their professional qualifications is open to inspection on request.

Watson Farley & Williams LLP is a limited liability partnership registered in England and Wales with registered number OC312252. It is authorised and regulated by the Solicitors Regulation Authority and its members are solicitors or registered foreign lawyers.

The information provided in this publication (the "Information") is for general and illustrative purposes only and it is not intended to provide advice whether that advice is financial, legal, accounting, tax or any other type of advice, and should not be relied upon in that regard. While every reasonable effort is made to ensure that the Information provided is accurate at the time of publication, no representation or warranty, express or implied, is made as to the accuracy, timeliness, completeness, validity or currency of the Information and WFW assume no responsibility to you or any third party for the consequences of any errors or omissions. To the maximum extent permitted by law, WFW shall not be liable for indirect or consequential loss or damage, including without limitation any loss or damage whatsoever arising from any use of this publication or the Information.

This publication constitutes attorney advertising.