

## SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 19

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### WEEKLY ITALIAN LABOUR UPDATES

"With the end of the year the simplified remote work activation due to pandemic will end. Therefore, employers should prepare in advance a company policy (or negotiate a company agreement with the work council) aimed to regulate smart working according to the needs of the business."

#### **Equal treatment third country nationals**

Third country nationals who are in Italy legally and hold a work permit are entitled to both childbirth and maternity allowance even if they do not have long-term residential status. The EU Court of Justice has specified that these payments fall under social security allowances which third country nationals are also entitled to according to Article 12 of EU Directive 2011/98 – the right to equal treatment. This principle cannot be limited because a third country national does not have long-term residential status.

*EU Court of Justice 02/09/2021 (claim C-350/20)*

#### **Non-compete clauses remain**

In addition to the specific duties assigned to an employee's role, a non-compete clause can cover other tasks that may be expected from an employer. In other words, a non-compete clause may extend to tasks which do not fall under duties listed in an employee's job description but are still part of the wider business of the employer. However, the scope of non-compete clauses should not be so vast that an

employee's ability to find new work is totally compromised.

*Supreme Court 25/08/2021 No. 23418*

#### **Possible extension of Green Pass obligations**

The Italian Government is considering extending Green Pass obligations to employees that work in sectors where it is compulsory for clients and customers to present one (restaurants, theatres, cinemas, gyms, public transport etc.). In doing so, the number of employees obliged to show the Green Pass to access their workplace will extend beyond those sectors where being vaccinated against Covid-19 is a requirement.

## **Withdrawal clause from a non-compete contract is null and void**

The clause in a non-compete contract that enables an employer to withdraw from it prior to the termination of an employee's employment is null and void. The court deemed that by signing a non-compete contract, an employee loses the freedom to protect their professional future. As a result, the withdrawal clause from a non-compete contract – which is assigned at the sole discretion of the employer – is null and void and the employee is entitled to the relevant compensation.

*Supreme Court (ord.) 01/09/2021 No. 23723*

## **Fatal injury not indemnified**

The family of an employee who suffered a fatal injury whilst accompanying a colleague home is not entitled to compensation. The employee's decision (which was done for personal reasons) to take a different path home at the end of his shift to the one required is considered an "elective risk". In such instances, the "elective risk" is the risk generated by employee's behaviour which is unrelated to their work and considered an arbitrary decision on their part.

*Supreme Court 03/08/2021 No. 22180*

## **Disciplinary sanction more severe in case of wrongful behaviour**

In cases of dismissal, both the company environment and the employee's position should be taken into account when deciding whether the maximum disciplinary measures are proportionate to the facts raised during the disciplinary proceeding. If the behaviour of an employee is considered inappropriate and discourages other employees from fulfilling their duties due to disruptive behaviour the filing of more severe disciplinary measures is justified.

*Supreme Court 10/08/2021 No. 22592*

## **CEO of parent company responsible for accidents in subsidiaries**

The legal autonomy of the directors of a subsidiary does not prevent a parallel liability from arising on the part of the CEO of the parent company for having approved of any initiatives that are in breach of accidents at work prevention guidelines. This is the case when the statute of the parent company expressly provides that the subsidiary is in charge of operational and management activities as well as shareholder ones.

*Supreme Court 06/09/2021 n. 32899*

## 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)

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