SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 21

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WEEKLY ITALIAN LABOUR UPDATES

> "From 15 December the employees are required to show the green pass to access the workplace and perform their tasks. The employer is required to organize the modalities through with the control is done, including the identification of the persons in charge."

Suspension without renumeration for those without Green Pass

Employees will no longer be able to access their place of work without a Green Pass. The obligation to show a Green Pass has been extended to all workers, including both civil servants and those working in the private sector. Employees who refuse to present a Green Pass are considered unjustified absent from work and lose the right to any renumeration. However, the lack of a Green Pass does not permit an employer to start disciplinary action, nor can it be used as grounds for termination. The requirement to show a Green Pass starts on 15 October 2021 and lasts until 31 December 2021. It is the employer's responsibility to enforce the use of Green Passes and they will be subject to a fine of between €400-1000 if they do not do so. Companies are required to officially communicate who will be responsible for monitoring their employees' Green Pass use and to organize the procedure they will use to do so. An employee that accesses their workplace without a Green Pass will be subject to a fine of between €600-1500 and to disciplinary measures.

Law Decree 21/09/2021 No. 127

Green Pass valid for another 12 months

For those who have recovered from Covid-19, the validity of their Green Pass starts immediately after having receiving a vaccination and there will no longer be a delay of 15 days after receiving their first dose. For those already vaccinated, the Green Pass will be extended for another 12 months.

Law Decree 21/09/2021 No. 127

'Return home' bonus available with smart working

The tax exemptions in place for expatriate employees that return home also apply to Italian citizens employed by a foreign company who opt to live in Italy and work remotely ('smart working'). The Tax Agency has confirmed that the conditions required to benefit from this exemption include transferring tax residence to Italy, a previous period of foreign residence and for the employee to have worked in Italy for more than six months of the year. The latter condition can be satisfied if the employee works in smart working.

Tax Agency, Answer to Question 16/09/2021 No. 596

No conventional remuneration in foreign secondment cases involving smart working

If an Italian employee is seconded abroad and is occasionally authorised to work from Italy in smart working modality, those working days cannot be counted as time working abroad. Therefore, if subtracting the days the employee worked remotely from Italy shows that they did not stay in the country of t secondment for more than 183 days over a 12 months period (as required by Article 51, paragraph 8-bis, TUIR), then the conventional remuneration regime used to determine employment income for tax purposes will not apply.

Tax Agency, Answer to Question 15/09/2021 No. 590

Complementary social security paid by employer is not taxable income

Social security contributions paid by an employer to their company's supplementary pension fund are not considered part of the income earned by employees. As such, the employer (as withholding agent) doesn't have to increase the taxable income of their employees when adding the contributions it has paid to the supplementary pension fund (up to a maximum of €5,164.57).

Tax Agency, Answer to Question 15/09/2021 No. 589

Stability covenant with penalty for agent only null and void

The stability clause in an agency contract which provides for an additional penalty to be paid by the agent alone in cases of a failure to comply with a notice period or in cases of early termination of agency contract, has been deemed null and void. The provision of the penalty alters the parity of the contractual parties in cases of withdrawal. This principle is provided for by Article 1750, paragraph 4, of the Civil Code.

Supreme Court 10/09/2021 No. 24478

INPS clarifications about "dismissal ticket"

INPS delivered clarifications on the calculation of the amount due in cases of both individual and collective dismissals. It considers such contributions should be determined in accordance with the maximum monthly amount of NASPI (unemployment indemnity) available and, therefore, it is not connected to the redundant employee's monthly salary (the contribution is the same whether the employment is part-time or full-time). The contribution is calculated proportionally to the employee's monthly service with a maximum limit of three years. If the employment lasted less than a year, the contribution is calculated proportionally to the months during which the employment was ongoing. It must be noted that the dismissal ticket is triplicated in cases of collective redundancies were the procedure ends without a trade union agreement.

INPS, Circular 17/09/2021 No. 137

Flexibility around immediacy of a disciplinary claim

The notion of 'immediacy' with regards to disciplinary claims must be given a flexible interpretation since such claims involve complex investigations and vary according to the size of the business involved. According to the Supreme Court, initiating disciplinary action several months after establishing the facts of the claim is lawful in instances where the internal investigations are lengthy and complex. Since the immediacy of a claim is a relative concept, a wide gap between the moment the incident occurred and the start of the disciplinary process can be justified.

Supreme Court 24/08/2021 No. 23332

Dismissal lawful if surfing on personal websites caused hacker intrusions

The Tribunal of Venice declared it lawful to dismiss an employee whose internet use resulted in his workplace suffering a severe IT breach as a result of him accessing websites unrelated to his working activity. In the case reviewed, multiple visits to websites and personal apps during working hours resulted in a malware infection of the employee's company's computer network causing the system to shut down and enabling hackers to steal company data. The company carried out a subsequent track of employees' web surfing activity and found enough evidence to dismiss the employee with immediate effect.

Tribunal of Venice 06/08/2021 No. 494