

## SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 23

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### WEEKLY ITALIAN LABOUR UPDATES

"Starting from 15 October (up to the end of the year) employees who do not have a valid green pass are not allowed to access the business to perform their duties. The employee is not subject to disciplinary punishment, but it loses the right to be paid fixed and variable remuneration."

#### **When fixed term contract null and void only indemnity for damages for civil servants**

In the public sector, it is not possible to convert a voided fixed-term contract into an open-ended employment contract. Hiring someone on an open-ended contract in the public sector can only be done in accordance with Article 98 of the Italian Constitution. In light of this, that terms are deemed unlawful in a fixed-term contract cannot be used to convert a fixed-term employment into a permanent one. Employees whose fixed-term contract terms have been violated are entitled to compensation for damages.

*Supreme Court 15/09/2021 No. 24960*

#### **Green pass not required for employees working remotely**

Employees who work exclusively remotely are not subject to the Green Pass obligations, since it is required to "access the workplace". Nevertheless, smart or remote working cannot be used as an excuse to avoid Green Pass obligations entirely. This is made clear in the Italian Government's recent FAQs which state that,

if an employee needs to occasionally access their workplace, they must present their Green Pass when entering the premises.

*FAQ Italian government 28/09/2021*

#### **Social distancing measures remain mandatory in the workplace**

Measures adopted by companies to prevent the spread of Covid-19 remain valid. Employees with a valid Green Pass must still follow their workplace's social distancing guidelines and wear masks when required.

*FAQ Italian government 28/09/2021*

#### **Random spot-checks for Green Passes to avoid non-compliance sanctions**

A company can avoid sanctions for having employees working on their premises without a Green Pass by carrying out random spot-checks as part of a company-wide policy to enforce the use of Green Passes according to Law Decree No. 127/2021.

*FAQ Italian government 28/09/2021*

## **Waiters' tips considered employment income**

The Supreme Court has confirmed that all sums of money received – for whatever reason – when at work or in a working capacity are considered employment income pursuant to Article 51, paragraph 1 of the Italian Consolidated Income Tax Act. Tips received by waiters fall into this category because – even though they are not paid directly by the employer – they are linked to a waiter's employment and represent income they can reasonably rely on as an employee. As such, tips are subject to taxation.

*Supreme Court 30/09/2021 No. 26512*

## **Fines increased for companies not meeting quota for employees with disabilities**

The Ministry of Labour has increased the financial support paid for hiring employees with disabilities from €30.64 to €39.21 daily (Article 5, paragraph 3, Law No. 68/1999). The penalty for violating "reserved quota" obligations – the requirement that a certain percentage of a company's employees have disabilities pursuant to Article 3 of Law 68/1999) – has also increased by almost 30% from €153.20 to €196.05 daily.

*Ministry of Labour Decree 30/09/2021*

## **If TUPE unlawful employment continues with the vendor**

If a TUPE agreement is declared unlawful, any ongoing employment under said agreement with the transferee is to be considered valid on a mere factual perspective, since contractually their employment continues to be ongoing with the transferor. In a recent case, the Italian Supreme Court found that, legally, employees remain employed with a transferor as a TUPE agreement being deemed unlawful prevents the termination of said employees' contracts. Therefore, any dismissals made by the transferee are invalid. Dismissed employees must be re-employed by the transferor and paid for the time when they were out of employment.

*Supreme Court 28/09/2021 No. 26262*

## **Confindustria comments on mandatory Green Passes**

Confindustria has issued its own interpretation of the rules relating to the use of Green Passes by those working in the private sector, specifying that temporary work agencies must ensure that the employees they supply to businesses have a valid green pass – or be in breach of their contractual obligations. According to Confindustria, the process used to monitor employees' green pass use does not need to be included in any security measures taken to prevent the spread of Covid-19 in the workplace.

Confindustria also notes that despite employees without a valid Green Pass being considered absent with authorisation, they must nonetheless return to the workplace every day to comply with company monitoring procedures.

*Confindustria, Update Note on the Green Pass in private work*

## **End to general smart working for the public sector**

As of 15 October 2021, workers in the public sector will be expected to return to work following the (long) period of emergency remote working. Civil servants with 'front of house' duties will be expected to return to work immediately whilst a postponement until the end of October is possible for other employees. To avoid large gatherings at the entrances and exits, flexible start and finish times are planned.

*DPCM 23/09/2021*

## INAIL clarification on Covid-19 infections

INAIL has provided clarifications on how to manage periods of 'absolute temporary disability' (i.e. equivalent to an injury) due to contracting Covid-19. INAIL specifies that: (i) said period of disability begins the day an employee is unable to work; (ii) ends when an employee tests negative for Covid twice in a row and no longer shows any symptoms of the virus; and (iii) unless proven otherwise, those whose professions are likely to expose them to Covid-19 are considered high-risk.

*INAIL, Recommendations 05/10/2021 No. 5-2020 and 8-2020*

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