

SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 24

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WEEKLY ITALIAN LABOUR UPDATES

"To safeguard the efficient organization of the business, the employer is authorized to request the employees to communicate in advance (up to 48 hours before) if they have the green certificate."

Prime Minister signs guidelines for compulsory Green Pass decree

The Prime Minister has signed a decree providing practical guidelines to properly use a valid Green Pass to access the workplace. In summary, such checks can be made via the VerificaC-19 App, currently used to access restaurants and trains, as well as other electronic apps including: the INPS website's *Sogei* platform which uses employees' tax code; the national DGC platform; and the NoiPA, and other software used in turnstiles when accessing buildings. In certain cases – such as shift work or essential services – advanced checks are permitted up to 48 hours before an employee's shift begins. While keeping employees' QR codes is prohibited, keeping records indicating which checks have been conducted are permitted. Paper 'certificates' will be accepted and random checks should cover no less than 30-35% of all employed personnel per day.

Decree of the Prime Minister 12/10/2021

Subcontracted employees entitled to same employment terms as contractor's employees

In public administration contracts, subcontractors must apply the same contractual and financial terms to their employees as contractors do to theirs. All subcontracted activities must be included in the tender specifications governing the services and works commissioned by the relevant public authority. If it is ascertained that a subcontractor pays their employee less than the contractors, the Labour Inspectorate can increase the payment of the subcontracted employees to match those of the contractor's employees, including social security contributions. In such cases, joint liability pursuant to art. 29 of Legislative Decree 276/2003 is applied.

National Labor Inspectorate, Note 06/10/2021 No. 1507

Green passes issued by foreign countries valid in Italy

The Ministry of Health has confirmed that overseas certificates of vaccination will be recognised as valid in Italy provided they relate to vaccines on the Ministry's approved list. Similarly, overseas Covid-19 passes/certificates issued by the relevant competent authorities are recognised as a valid alternative to Italy's Green Pass provided they have been drawn up in Italian, English, French, German or Spanish. If the certificate is written in another language, its validity in Italy is subject to the document being translated.

Ministry of Health, Circular 09/23/2021 no. 42957

Employers' responsible for accidents caused by employee negligence

The Supreme Court has ruled that in cases of accidents at work, the employer is responsible even if the accident was caused by the negligence, imprudence or inexperience of the employee. The employer's liability is only excluded if it can be proven that all safety measures aimed at preventing accidents at work were correctly implemented. These measures must include provisions to protect against employee negligence and/or inexperience.

Supreme Court 27/09/2021 No. 26165

Suspension of holiday allowance until Covid-19 pandemic crisis is over legal

The clause in the National Collective Labour Agreement suspending the payment of holiday allowance and provides for its reallocation to employees once the current Covid-19 pandemic crisis is over is valid according to a decision by the Supreme Court. An employer is, therefore, entitled to suspend the payment of said allowance while the current economic crisis continues. The court did not agree with the argument that the clause constitutes an arbitrary condition, or one that can be left to be determined solely by an employer, as addressing the impact of the current crisis must be deemed a suspensive condition linked to an objective event.

Supreme Court 10/09/2021 No. 24483

Fixed reimbursement of expenses constitutes employment not volunteering

If a volunteer for a non-profit organisation is paid a fixed reimbursement for expenses and performs their activities exclusively, and without any shift work, for said organisation the relationship between them must be considered as constituting one of *employment* rather than volunteer work. In order for their activities to be considered genuine volunteer work, they must be carried out on a personal, spontaneous and **unpaid** basis, with the sole exception of being reimbursed for relevant documented expenses. If these requirements are not fulfilled, said work must be considered paid employment.

Rome Court of Appeal No. 3209/2021

Green Pass can be checked prior to starting work

Employees may be asked to notify their employer as to whether they have a valid Green Pass before they begin working their shift in order to meet organisational needs. This measure was provided for by the new decree concerning the reopening of theatres and nightclubs and the requirement for a Green Pass check to access them. The employees who do not fulfil this requirement lose their right to remuneration.

Decree Law 08/10/2021 No. 139

INPS clarifications on “under 36” hirings

The INPS has issued clarifications regarding the operational steps that companies must comply with in order to benefit from the contribution incentive in case of “under 36” age employees hiring and conversion of fixed-term contracts signed by employees under 36 years old into permanent ones.

The contribution exemption, which was provided for by Law No. 178/2020, refers to the conversion of fixed-term contracts into open-ended employments ones during 2021 (EU authorisation for 2022 is pending) and allows the recovery of arrears as a 1st January 2021 via a monthly registration process enabling the INPS to determine the amounts owed.

INPS Message 07/10/2021 No. 3389

Contribution reductions for companies using job security agreements

Companies that have made use of “job security agreements” in the last year are eligible to apply for a contribution reduction (equal to 35%) between 30 November and 10 December 2021. The contribution reduction (Article 6, paragraph 4, Law Decree No. 510/1996) can be requested for a maximum of 24 months and concerns employees who were included in a working hours reduction plan as part of such a job security agreement. An essential condition is that the reduction in the employees’ working hours in the plan was more than 20% of their normal agreed working hours.

Ministry of Labour, Message 06/10/2021

Application of existing company safety measures against Covid does not prevent use of further measures

The Tribunal of Bergamo found that an employer is responsible for the health of their employees while at work and, therefore, is entitled to use additional measures to prevent the spread of Covid-19 in addition to any safety measures already provided for by the company’s protocols. In fact, an employer can combat the spread of the virus through more ways than just the emergency legislation in place and can lawfully request their employees comply with any additional measures to diminish the risk of contagion.

Tribunal of Bergamo 27/09/2021 No. 4318

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