SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 30

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WEEKLY ITALIAN LABOUR UPDATES

"Social clauses of the collective agreements allow to regulate the transfer of the employees form the exiting service provider to the entering provider. This way is useful to prevent claims against redundancies."

Green Pass Decree converted into law

Decree No. 127/2021, according to which a Green Pass is compulsory to access the workplace as of 15 October 2021, has been converted into law. The previous regulations have been confirmed and the following new provisions added:

(i) Employees can deliver their Green Pass to their employer. In such cases, the periodic control of green certificates when an employee accesses the workplace is no longer required;

(ii) Employers with fewer than 15 employees can use fixed term contracts to substitute employees without a Green Pass. The previous 10 days limit (renewable only once) has been removed. Meanwhile, if the original employee then presents a Green Pass, they will remain absent from work until their replacement's contract expires;

(iii) If a Green Pass expires during working hours, the affected employee can continue to work until their shift ends; and

(iv) In cases of manpower supply, the obligation to verity Green Passes lies with the company an employee is posted to. However, employment agencies must inform employees that to access their posting workplace, they will need a valid Green Pass.

Law 19/11/2021 No. 165

Strict defensive measures not subject to Art. 4 Statute of Workers

The Supreme Court has ruled that broad defensive measures must be distinguished from strict defensive measures. Broad defensive measures are those that involve all employees working with company goods. The lawfulness of these measures requires a previous collective trade union agreement or the authorisation of the local employment office (Art. 4 of the Statute of Workers). Strict measures concern specific employees suspected of an illicit behaviour or action. In cases involving strict measures, the provisions of Art. 4 of the Statute of Workers do not apply.

Supreme Court 12/11/2021 No. 34092

INPS instructions on "Cassa Covid" extension period

Article 11 of Decree Law No, 146/2021 confirms that employers unable to access normal salary support schemes can access available special salary support schemes ("CIGD" and "check salary support") for an additional 13 weeks in light of Covid-19. INPS clarified that applications can also be filed if they had not full authorized the previous 28 weeks, since the fulfilment of said requirement will be verified a second time in an investigation. It has also been confirmed that an additional nine weeks of the normal salary support scheme ("CIGO") are available for industries in specified fields strongly hit by the pandemic (textiles, clothing, etc.). Finally, the INPS also confirmed that in all the above cases, the ban on dismissals for financial reasons is in place for the entire period businesses use the salary support scheme.

INPS Message 18/11/2021 No. 4034

New quarantine applications now possible

The INPS has confirmed that it will re-examine Covid-19 related applications for financial support due to quarantine which resulted in individuals not being paid owing to a lack of financial coverage. The INPS recognises that Law Decree No. 146/2021 extended sick leave economic support until 31 December 2021 to benefit those in quarantine or obliged to stay at home due to Covid-19, as well as vulnerable or high-risk employees unable to work.

Since measures have been refinanced, a new test will be carried out based on the chronology of an individual's illness in the period between January and December 2021.

INPS Message 18.11.2021 No. 4027

Law on gender equality in the workplace published in the Official Journal

Law 5 November 2021 No. 162 has been published in the Official Journal integrating and amending the gender equality code and introducing specific provisions on gender equality in the workplace. Among the new measures, a notable provision is that, every two years, businesses with 50+ employees are required to draft a report on the working conditions of both their male and female personnel. In cases of incomplete or inaccurate data, employers are subject to a fine of €1000-5000, by the Employment Inspectorate. Businesses that obtain a gender equality certificate (which are regulated by a Decree of the Prime Minister), have access to a 1% contribution exemption (up to a maximum of €50,000).

Law 05/11/2021 No. 162, published in the Official Journal 18/11/2021

Indictment not sufficient to dismiss executives

The Supreme Court recently found that involvement in a criminal investigation for fraudulent insolvency is not enough – on its own – to justify the dismissal of an executive. In such instances, for a dismissal to be justified, the individual must be found to be actually responsible for the alleged illegal behaviour. If there is no such proof, the indictment does not constitute a breach of their employment relationship even if the individual is *linked* to very serious crimes.

Supreme Court 16/11/2021 No. 34720

Legal to access private documents to prove illegal activity on part of executives

The Supreme Court ruled in favour of an employer that used private documents taken from an executive's PC after it had been returned to the company following his dismissal, as proof that he had been acting illegally in related civil proceedings. The Court argued that when the confidentiality of personal data and the right to properly defend one's business interest in court conflict, the latter prevails. Therefore, employers can use information collected through employee PC screenings as legal evidence if it shows that a dismissed employee was engaging surreptitiously with competing businesses during the duration of their employment.

Supreme Court 12/11/2021 No. 33809

Medical Commission assessments not binding in dismissals for unfitness for work

According to the Supreme Court, dismissals for 'unexpected unfitness for work' served based on judgements by the Medical Commission can be revoked by a judge if they consider them unreliable. Judges have the power and obligation to verify the reliability of healthcare investigations made by the Medical Commission. Therefore, if a technical consultation requested by a judge shows an intrinsic contradiction with the outcome of the Commission's findings, a judge can declare the dismissal unlawful and order the reinstatement of the employee in question pursuant to Art. 18, par. 4, of the Statute of Workers.

Supreme Court 29/10/2021 No. 30932

Dismissal for business reasons of employee in elected trade union office lawful

The Supreme Court found that the protection offered to workers on leave in order to stand for trade union office allows for their employment to be suspended for the duration of the elections, but does not prevent an employer from dismissing them entirely. If an employer reorganises their business and dissolves the absent employee's role, the redundancy is lawful with immediate effect. In summary, being elected to trade union office does not prevent immediate termination of employment, which is not subject to the conclusion of said office.

Supreme Court 28.10.2021 No. 30495

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