SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 38

20 JANUARY 2022 • ARTICLE

WEEKLY ITALIAN LABOUR UPDATES

"If a company employing at least 250 employees closes a plant or an office and wants to make redundant no less than 50 employees, it is requested to start a preliminary consultancy procedure with a plan to reduce redundancies and verify alternative measures. "

New compulsory ITL communications

As of 21 December 2021, business owners must inform their local ITL employment inspectorate of any occasional consultancy contracts before they begin. The National Employment Inspectorate confirmed that companies can proceed with any delayed communications of this nature no later than 18 January 2022. Occasional contracts with self-employed individuals must be communicated to ITL under Article 2222 of the Italian Civil Code. Any other types of self-employed contracts (e.g. long-term/continuous consultancies or activities regulated by a digital platform) are not included in this requirement. Said communications to ITL can be done via email or text.

National Employment Inspectorate, Note 11/01/2022 No. 29

Excluding foreigners from maternity benefits is unconstitutional

The Constitutional Court deemed it unconstitutional to make foreign workers' access to the 'baby bonus' and maternity allowance subject to possession of a long-term residence permit. The maternity allowance and the 'baby bonus' aim to assist families (as provided for by Law No. 190/2014 and Legislative Decree No. 151/2001) and are included in Italy's social security system to which the right to equal treatment for all applies. As such, the court ruled that the benefits in question *are* available to foreign citizens, including non-EU citizens, that hold either a temporary or short-term residency permit. Judgment is yet to be published.

Constitutional Court, Press release 12/01/2022

"MoCoa" platform to monitor service contract compliance

In order to properly monitor the fulfilment of contractors' obligations towards their employees (social security contributions, pay, etc.), contracting companies can join the new "MoCoa" platform for employment compliance in contracts. The platform is managed by the INPS and businesses can access it on a voluntary basis by registering a contract in the MoCoa system and adding the relevant data. The system automatically generates a service contract identification code. Contractors are then bound to use the code to register the workers employed on the particular contract.

"MoCoa" platform introduced on 12/01/2022

Sale of IT business deemed genuine

The transfer of a business that lacks certain operational structures needed to properly function in the market (such as undertakings without a HR or accounts department etc.) was considered a genuine transfer of business pursuant to Article 2112 of the Italian Civil Code, according to the Tribunal of Genoa. A business' ability to function independently is linked to its ability to perform the specific service it has been assigned to do by the company it was bought by. On this basis, the Tribunal of Genoa deemed that the transfer of an IT company to a more complex business to be genuine.

Tribunal of Genova, 05/01/2022

Personal relationship between victim and aggressor eliminates workplace connection

An assault suffered by a female worker on her way to the office is not considered an accident 'in transit' due to the personal relationship the victim had with the aggressor. The personal nature of the relationship eliminated any connection to the workplace. In this case, the fact that a fatal assault occurred while the employee was on her way to work is a mere coincidence. As such, the employee's dependents are not entitled to the "in transit" accident allowance.

Supreme Court 03/11/2021 No. 31485

Collective agreement binding even after withdrawal from employers' association

Withdrawing from an employers' association that signed an intercompany collective agreement is not enough to prevent a company from paying their employees the various economic provisions provided for by said collective agreement even if they thereafter only continued to apply some (and not all) entitlements. The Supreme Court recently ruled that the continued application of some incentives and pay provided for by an intercompany collective agreement legitimises an employee's reliance on said agreement. In this case, given that the employer continued to apply part of the economic benefits provided for by the collective agreement, it is irrelevant whether the company had signed the collective agreement or not or whether it had withdrawn from the relevant employers' association.

Supreme Court 04/01/2022 No. 74

Holiday leave count as overtime

The provision of a collective agreement stating that hours of annual leave taken by employees in a specified month cannot be included as part of standard monthly working time when determining the amount of any overtime owed, violates EU laws. Accordingly, if the sum of hours' leave taken in a month and hours worked in the same month exceeds the employee's normal working hours they will be entitled to overtime. Any other option would run the risk of discouraging employees from using their annual leave during months where they have worked extra hours.

EU Court of Justice 13/01/2022 No. 514

Exclusion of trade union organisations from negotiations lawful

An employer can manage any trade union negotiations either through separate meetings with different unions or a joint one including all. An employer can also refuse to negotiate with any unions that choose not to participate in previous negotiations. On this basis, the Tribunal of Padua rejected a claim for anti-trade union behavior brought by a trade union organisation with which an employer refused to negotiate the renewal of performance bonuses.

Tribunal of Padua 30/12/2021

KEY CONTACTS

GIUSEPPE BULGARINI D'ELCI
PARTNER • MILAN

T: +39 02 721 7071
M: +39 347 26 86 664

gbulgarini@wfw.com

ROBERTA CRISTALDI
COUNSEL • MILAN

T: +39 02 721 7071
M: +39 344 0506106

rcristaldi@wfw.com