

SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 39

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WEEKLY ITALIAN LABOUR UPDATES

"Collective transfer of employees to be managed carefully. According to recent case law employers are requested to start a consultation phase with trade unions as provided for collective redundancies."

Deadlines announced for APE Sociale applications

The current 2022 deadlines to submit an application for APE Sociale (the INPS allowance available to certain employees) are 31 March, 15 July and 30 November. Recipients are employees aged 63 or over who fall into one of four categories:

1. those unemployed following dismissal or resignation with just cause;
2. employees who lives with and assist a family member with a severe disability;
3. disabled employees whose working capacity has been reduced by 74% or more due to their condition; and
4. employees engaged in activities that are considered 'heavy-duty' or hazardous.

There are minimum contribution time requirements – reduced for female employees by a year for each child they have for a maximum reduction of two years. The monthly amount of the allowance cannot exceed €1,500 gross.

INPS, Message 20/01/2022 No. 274

Collective transfers equate to collective redundancies

The collective transfer of employees from a site being closed down to a new site owned by the same company that is 600km or further from the original site must be considered a collective redundancy. Since a transfer of this nature involves substantial changes to an employee's working conditions, we fall into the EU notion of collective redundancies. Therefore, the employer should have activated a previous consultation phase in order for such a move be considered lawful. On this basis, the judge at the Tribunal of Naples declared such measures taken to transfer employees ineffective.

Tribunal of Naples, 04/01/2022

‘Repêchage’ checked against date of dismissal

When a justified dismissal for objective reasons occurs, a ‘repêchage’ obligation is only considered to have been fulfilled if the employer proves that there were no alternative placements for the employee at the time of their dismissal and not at a later date. The decisive point is the date on which the notice of dismissal was given, any subsequent organisational changes are irrelevant for the purposes of proving ‘repêchage’.

Supreme Court 18/01/2022 No. 1386

New list of activities where Green Pass is no longer required

The Presidency of the Council of Ministers has identified a number of indoor services and activities for which a basic Green Pass is no longer required, as extended by Decree-Law 7 January 2022 No. 1 to include commercial activities and personal services. The Prime Ministerial Decree (“DPCM”), which will be effective from 1 February 2022, allows access to the following indoor services without a Green Pass;

- Food and basic needs – access without a Green Pass is allowed to access: sites selling food and beverages (however a Green Pass is still required to eat/drink on the premises); frozen produce; pet products and food; fuel for vehicles; hygiene and sanitary items; medicines in specialised establishments (pharmacies and other specialised non-prescription medicine establishments); medical and orthopaedic items; eyewear and eyecare products; and fuel for domestic use and heating;
- Health needs: access is permitted in order to obtain medicines and medical devices, as well as for accessing health and social care facilities and veterinary services;
- Security needs: access to public police offices is allowed for essential activities and emergencies;
- Judicial needs: access to judicial offices and social and health services exclusively for the immediate and urgent submission of complaints by victims of crime or requests for judicial intervention to protect minors or incapacitated persons is permitted, as well as for the performance of investigative or judicial activities where a person’s physical presence is necessary.

Compliance will be ensured by business owners and by those in charge of the services mentioned above by means of checks.

DPCM 21/01/2022

Suspension of unvaccinated nurse on leave unlawful

It is unlawful to suspend an employee for failure to comply with vaccination obligations where the employee is already on paid leave due to other reasons under Law 104/1992. The Tribunal of Milan noted, in a case involving a nurse who was suspended from work, that the rule stating that healthcare workers must either be vaccinated or be suspended without pay cannot affect un-vaccinated employees when they are not working *at that time*.

Tribunal of Milan, 26/11/2021

Compulsory vaccination of healthcare personnel legitimate

The Tribunal of Catanzaro found that the compulsory vaccination of healthcare employees – introduced by Article 4 of Law-Decree No. 44/2021 (converted into Law No. 76/2021) – cannot be considered unconstitutional under Article 32 of the Constitution. This is because compulsory vaccination is intended not only to improve or preserve the health of employees, but also that of those they come into contact with at work, i.e. colleagues and patients.

Tribunal of Catanzaro, 17/12/2021

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