

## SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 40

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### WEEKLY ITALIAN LABOUR UPDATES

"Change of duties falling in the same rank and level always possible. Collective company agreements allow to regulate levels and duties to the specific needs of the business."

#### **Lawful to exclude trade unions from renewal negotiations**

A company may exclude a trade union from negotiations surrounding the renewal of a company collective agreement if said trade union did not sign the previous second-level collective agreement. This is the case even if the majority of the company's employees are union members. Recently, the Tribunal of Busto Arsizio concluded that only trade unions that have signed a collective agreement applied to a specific business unit or that have, at least, actively participated in relevant negotiations may enjoy the special protection provided by Article 19 of Law 300/1970. In the case in question, the trade union hadn't met the above requirements so its exclusion from negotiations was considered lawful.

*Tribunal of Busto Arsizio, 24/01/2022*

#### **Citizenship income available only with long-term residence permit**

The Constitutional Court recognised that the provision granting citizenship income to non-EU citizens in possession of a long-term EU residence permit is not unconstitutional. The Constitutional Court observed that the citizenship income is not only a welfare measure, but also a measure promoting re-employment policies and social inclusion. In this context, the possession of a long-term residence permit was deemed essential for re-employment and social inclusion measures to operate effectively.

*Constitutional Court, 25/01/2022 No. 19*

#### **Clarifications on compulsory occasional consultancies**

The obligation for employers to communicate occasional consultancies to the National Labour Inspectorate before they start entered into force on 21/12/2021 (Art. 13 of Law Decree 146/2021). The National Labour Inspectorate clarified that the new obligation only applies to entrepreneurs contracting companies. Non-commercial and third sector entities, for example, are excluded. There is no obligation to notify occasional services provided by business brokers, direct home sales, entertainment or 'strictly intellectual' services (e.g. proofreaders, graphic designers, speakers at conferences). A prior communication is also mandatory if the service is provided remotely.

*National Labour Inspectorate, Note 27/01/2022 n. 109*

## **Discriminatory dismissal for exceeding maximum sick leave**

In a case before the Supreme Court, an employee who was dismissed for exceeding their maximum sick leave allowance claimed that their dismissal was retaliatory and based on discriminatory reasons. In this case, the judge was required to admit the evidence relating to the alleged discriminatory nature which was related to the employee's trade union membership. Had the employee only argued that their dismissal was retaliatory, exceeding their sick leave would have overridden their counter-claim. Since, however, the discriminatory nature of the dismissal was also pleaded, exceeding sick leave was not the decisive factor so the employee must prove the alleged discriminatory nature of their dismissal.

*Supreme Court 27/01/2022 No. 2414*

## **Contribution exemptions for young people and women extended to June 2022**

In message no. 403 of 26/01/2022, the INPS announced that the exemptions from social security contributions for youth and female employment and the so-called "*Decontribuzione Sud*" (aimed at the most financially disadvantaged) have been extended until 30 June 2022.

The measures, which were contained in the 2021 Budget Law, were granted and authorised by the European Commission, which extended their applicability following a decision on 11 January 2022 which also raised the maximum amount of temporary aid that can be granted.

Consequently, the benefits can also be applied through various incentives, such as hiring employees aged under 36 or disadvantaged women or changing their existing fixed term contracts into open-ended ones. This will be available from 1 January to 30 June 2022, as well as the "*Decontribuzione Sud*", which can be applied until June 2022.

*INPS, Message 26/01/2022 No. 403*

## **INPS guidelines on Mocoa service contract monitoring platform outlined**

Mocoa, the new platform for monitoring employment adequacy in service contracts, can be accessed by all employers and their intermediaries (including SPID, CIE or CNS). Registration on the platform must be done by the contracting company, which is responsible for entering the relevant data. The contractors and subcontractors are then responsible for registering the number of employees used in the service contract (and the percentage of how much each worker is used). By comparing the data of the service contract with the data from the monthly Uniemens reports (the platform that employers use to send INPS salary data) that Mocoa produces a monthly document on employment contract congruity (Docoa). Anomalies and discrepancies are reported through a special "alert".

*INPS, Message 27/01/2022 No. 428*

## **Home isolation and quarantine excluded from maximum sick leave period**

It is unlawful to dismiss an employee for exceeding their maximum sick leave for days when isolated at home as a result of testing positive for Covid-19 which have been counted as part of that leave allowance. Any periods of home isolation – including having to quarantine as a result of coming into close contact with someone who has tested positive – cannot be included as part of an employee's sick leave. In a recent case, the Tribunal of Palmi ordered that an unlawfully dismissed employee be reinstated and paid their monthly salary and relevant social security contributions.

*Tribunal of Palmi, 13/01/2022*

## Employee's fragility irrelevant on harassment damages

The Supreme Court found that in a case of harassment in the workplace, the employer's liability is not mitigated by the fragility of the victim (in this instance, the employee with a personality disorder). The fact that a victim is more vulnerable than other employees of the same age and gender does not affect either the attribution of fault or the liquidation of damages. The principle applies whereby, when there is a combination of human causation and natural causes, an aggressor is liable for the entire damage suffered by a victim.

*Supreme Court 17/11/2021 No. 35061*

## Managers also entitled to health damages due to heavy workloa

A company must compensate senior managers for health damage due to excessive workload. The fact that a senior manager has the ability – thanks to their seniority – to manage their workload and performance and has control over their holidays and rest time, does not exclude their employer's liability to monitor and prevent damage to their employee's physical or mental health.

*Supreme Court 27/01/2022 No. 2403*

## INPS clarifications on social safety nets reform

Taking into account the relevant changes to the Budget Law 2022, INPS delivered a new explanatory circular addressing the provisions of Law Decree 27/01/2022 No. 4, among which is the possibility for specific businesses (that continue to be in a difficult condition) to apply for the standard salary support scheme period between 1st January and 31st March 2022 whilst remaining exempt from the additional contribution payments. This is not a renewal of the so-called "Cassa Covid" and therefore the beneficiary businesses have to follow the procedures required by the Legislative Decree No. 148/2015 on social safety nets.

*INPS, Circular 01/02/2022 No. 18*

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