

## SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 41

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### WEEKLY ITALIAN LABOUR UPDATES

"With a collective company agreement is possible to customize the rules on fixed term contracts to the business needs. In this case, companies are required to transform part of fixed term into permanent."

#### **Managing directors can also be subordinate employees**

A managing director can also be hired by the company and perform as employee provided that the duties performed are different from those based on their role on the board of directors. Any such additional employment is subject to the instruction and control of a third party (individual or collective), since the employee cannot be subject to the direction and control of themselves. For the same reasons, someone who is the sole director of a company cannot take an employment role within said company.

*Supreme Court 27/01/2022 No. 2487*

#### **Collective transfer unlawful after smart working and voluntary redundancies**

The Tribunal of Bari ruled on a case involving a company with production plants abroad that undertook a collective transfer of employees. In this case, Judge Todisco

ruled that the collective transfer that took place after the implementation of a redundancy incentive plan involving dozens of employees was unlawful as it was misused and became a method of coercing employees into terminating their employment contracts. The unlawful nature of the transfers was confirmed by the fact that the company previously took advantage of smart working and was able to continue using it as an alternative to said collective transfer.

*Tribunal of Bari 23/01/2022, Judge Todisco*

#### **Fraudulent linking of companies with mixed use of employees**

The economic and functional link between companies in a larger group has no effect, per se, on the ownership of employment relationships. Each company remains the sole employer of the specific employment relationships attributable to it, unless the link between the companies involves:

- a joint organisational structure;
- the integration of their businesses;
- the pursuit of a common scope; and

- the joint use of employees.

*Supreme Court 24/01/2022 No. 2015*

## **Email justifies manager's dismissal**

The Supreme Court found that the dismissal of a manager who sent an email to the employer that included the line “*in light of a behaviour that I consider to be disgraceful*” was justified as it damaged trust and good faith in the manager and called their future ability to cope into question. The court ruled that even if the episode was isolated, the seniority of the manager and the intensity of the fiduciary bond made the dismissal consistent with principles of fairness and good faith. However, just cause for dismissal was excluded and the manager deemed entitled to compensation in lieu of notice.

*Supreme Court 26/01/2022 No. 2246*

## **Client company responsible for contractor employees' health and safety**

In the context of service contracts, when a contractor's employee suffers an accident, the responsibility lies with the client company since it is up to them to adopt the necessary measures to protect the health and safety of all employees (including contractor's employees). Even in cases of culpable conduct on the part of an injured employee, the client company's liability is not diminished. To exclude liability, there must be an abnormal, unforeseeable and extreme action on the part of a contractor's employee that eliminates any link between the accident and work activity.

*Supreme Court 18/11/2021 No. 35364*

## **Employer mistreatment considered abuse of employee**

Instances of habitual mistreatment in which an employee endures physical, verbal or psychological attacks are considered workplace abuse. This definition of abuse can also be the result of repeated insults or derogatory language – particularly if they occur in the presence of colleagues or customers – as this affects the dignity and reputation of the mistreated individual. With this in mind, the Supreme Court recently found that an employer that offended an employee in the presence of others, thereby damaging her dignity, is considered to have abused her.

*Supreme Court 20/01/2022 No. 2368*

## **Dismissal for theft unlawful after three years**

Dismissing an employee for stealing company assets is unlawful if three years have passed since the theft.

Failure to notify an employee of disciplinary action in good time leads to an assumption that their employer waived the dismissal, did not consider the employee's conduct to be serious, or that said behaviour did not merit the maximum sanction of dismissal. Additionally, a significant and unjustified delay in initiating disciplinary proceedings compromises an employee's ability to build a defense.

*Supreme Court 31/01/2022 No. 2869*

## **Ensuring correct use of protective equipment employer's duty**

An employer is liable for any accident an employee suffers as a result of not being correctly protected when using machinery. The employer is not only obliged to take all necessary measures to protect the physical wellbeing of their employees, but to also ensure that safety regulations are properly followed. For the purposes of accident prevention, it is not enough for an employer to simply fulfil their training obligations on the correct usage of work equipment, they should also actively ensure that their employees understand the correct way to use said equipment.

*Supreme Court 02/02/2022 No. 3167*

## **Unlimited Green Pass after third vaccination**

As of 7 February 2022, individuals who have received their third dose of the Covid-19 vaccine and those who have recovered from Covid-19 after completion of the primary vaccination cycle will have an unlimited Green Pass rather than one with a six-month time limit.

Quarantine is no longer expected in the event of close contact with a person who has tested positive, even for those who have recovered from Covid-19 after the completion of the primary vaccination course. Self-monitoring for five days and the compulsory use of an FFP2 face mask is sufficient for non-high-risk individuals.

*Decree-Law 04/07/ 2022 No. 5*

## **New ministerial guidance on quarantine and self-surveillance for high risk individuals**

The Ministry of Health has updated the quarantine and self-monitoring measures for high-risk individuals who come into close contact with someone who has tested positive for Covid-19. Specifically, it has been established that in cases of close contact with a positive subject:

1. asymptomatic individuals who have not been vaccinated, or who have received only one of the two required vaccination doses, or who have completed the primary vaccination cycle fewer than 14 days ago; and
2. asymptomatic individuals who have completed the primary vaccination cycle or have recovered from Covid-19 for over 120 days;

the length of the quarantine is reduced from ten to five days from the last positive contact. Quarantine cannot end however until the individual produces a negative test result.

Quarantine is not required and only five-day self-monitoring applies to asymptomatic subjects who:

1. have received the booster dose;
2. have completed the primary vaccination within the preceding 120 days;
3. have recovered from SARS-CoV-2 infection within the preceding 120 days; or
4. have recovered after completion of basic treatment.

*Ministry of Health, Circular 04/02/2022 No. 9498*

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