

## SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 42

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### WEEKLY ITALIAN LABOUR UPDATES

"Due to recent case law, the collective transfer of the employees should (prudently) require a preliminary information to the trade unions and a following consultation phase."

#### Dismissal of employee refusing transfer lawful

The dismissal of an employee who was transferred to another site for organisational reasons and then failed to report to their new workplace is lawful, according to the Supreme Court. Whilst the possible failure of the employer to comply with duties imposed by Article 2103 of the Italian Civil Code was raised, the court ruled that this did not justify the employee's refusal to work at the new location. In such cases, an employee may apply to the courts for a declaration that their transfer is unlawful, but cannot refuse to perform their duties without a judge's order.

*Supreme Court 10/02/2022 No. 4404*

#### No compensation for falling downstairs

An employee who fell downstairs – although wearing non-slip shoes – is not entitled to compensation. The Supreme Court ruled that their employer could not be held liable for the accident as the employee was equipped with accident prevention equipment and that – in all probability – the provision of additional safety features such as anti-slip strips on the steps or a central handrail would not have prevented the fall.

*Supreme Court 09/02/2022 No. 4210*

#### Inhouse company recruitment procedures

Failure to comply with competitive and selective procedures prevents the conversion of fixed-term employment relationships into permanent ones, even in the case of inhouse companies (those that belong entirely to the Italian Government or local public bodies). The provisions that establish prohibitions or limitations on the recruitment of civil servants also apply to companies with total local public shareholdings (or controlling shareholdings) which:

- are directly entrusted with local public services without tenders;
- carry out functions aimed at satisfying general interest needs that are not of an industrial or commercial nature; or
- carry out activities in support of administrative functions of a public nature.

*Supreme Court 07/02/2022 No. 3768*

## **INPS payments owed despite employer-employee settlement**

In the event of a judgment ordering the reinstatement of an unlawfully dismissed employee (pursuant to Article 18 of Law No. 300/1970), the subsequent amicable settlement between them and their employer does not prevent INPS from recovering the omitted contributions relating to the period between the date of dismissal and the settlement agreement. A judgment calling for an employee's reinstatement legally reactivates their employment relationship and, therefore, their employer is obliged to pay social security contributions for the period between the dismissal and the order to reinstate, regardless of whether the employee waived their right to their wages.

*Supreme Court 03/02/2022 No. 3425*

## **Dismissal due to inability to work lawful**

If an employee develops an unforeseen inability to perform their duties, their employer is required to carry out appropriate measures and undertake reasonable accommodations to safeguard the continuation of their employment relationship. Such measures may include changing the employee's place of work, assigning them different tasks, having them participate in various training activities or changing shifts and working patterns. Such measures are not required, however, if their application would lead to a disproportionate burden on the company's organisation and, in a recent case, the European Court of Justice deemed the dismissal of an employee on the grounds of incapacity to perform his duties to be lawful.

*Court of Justice EU 10/02/2022 (Case C-485/20)*

## **INPS clarifications on new social nets usage**

An issue concerning the prior completion of the information and joint examination procedure (Article 14 of Legislative Decree 148/2015) has arisen amongst companies that have access to the salary support scheme measures in place since the beginning of January thanks to the new provisions of the 2022 Budget Law.

To clarify, INPS has specified that applications referring to periods of suspension or reduction of work activity between 1 January and 7 February 2022 can be sent to them by 23 February 2022. In addition, if a trade union has declared that the information and joint examination procedure has been properly performed, companies are exempted from the requirement of proof of prior communication.

*INPS, Message 08/02/2022 No. 606*

## **Secondment v transfer: what's the difference?**

The Supreme Court has clarified the difference between secondments and transfers. Secondments and transfers are different concepts and meet different business needs. A secondment involves the temporary assignment of an employee to a place other than their usual place of work, whereas a transfer involves a permanent change of place of work. Employee consent is not required in either case.

*Supreme Court 03/12/2021 No. 38340*

## Substitute tax on foreign income

The income of “new resident” managers from stock options is subject to substitute taxation if it is attributable to overseas work. For this purpose, overseas secondments are not included. The substitute tax (Article 24-bis TUIR) is applied with reference to all foreign income regardless of the amount or nature of said income, which is why the remuneration of managers linked to incentive plans is included.

*Italian Tax Body, Answer to question 14/02/2022 No. 83*

## Vulnerable individuals and smart working

A new Interministerial Decree states that individuals suffering from various chronic medical conditions that have low clinical chance of recovery/improvement or are of a particular degree of seriousness (requiring life-saving therapies, transplants, immunosuppression conditions, cancer etc.), may perform their work remotely until 28 February 2022. Smart work can also be done through the assignment of different tasks appropriate to the employee’s rank and area of expertise, or through the performance of specific professional training activities. Any medical conditions must be certified by the employee’s GP.

*Interministerial Decree (Health, Labour and Social Policy, Public Administration) 03/02/2022*

## No economic allowances for quarantine periods

Until 31 December 2021, for the purposes of economic allowances, periods spent in quarantine or enforced home working by private sector employees equated to illness, whilst periods of absence from work of vulnerable individuals, where the work could not be performed remotely equated to hospitalisation (Article 26, paragraphs 1-2, Decree Law No. 18/2020).

The INPS confirmed that, for 2022, economic benefits are not recognised for private sector employees relating to periods of quarantine or enforced home-working nor for so-called ‘frail employees’ who are unable to carry out smart working. For events occurring between 2021 and 2022, recognition of the above indemnities may be assured within the limits of the resources available for the 2021 days only.

*INPS, Message 11/02/2022 No. 679*

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