

## SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 46

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### WEEKLY ITALIAN LABOUR UPDATES

"As of first April the use of smart working requires the signing of an individual agreement indicating (among others) the modalities through which powers of direction and control are done."

#### **Foreign service allowance not included in overall remuneration**

The foreign service allowance cannot be included when calculating the overall remuneration owed to an employee, as set forth by Article 18 of the Workers Statute, following an unlawful dismissal. That allowance is solely intended to cover costs arising from an overseas placement and is not part of an employee's normal remuneration. The Supreme Court confirmed that, in such cases, only allowances derived from an employee's normal work can be used to determine the total remuneration owed.

*Supreme Court 11/03/2022 No. 8040*

#### **INPS clarification on protection of vulnerable individuals**

The INPS has clarified the social security protections available for vulnerable employees in the private sector available from 1 January 2022 to 31 March 2022, as

per the latest legislative changes (Article 17, paragraph 3-bis, Law No. 11/2022, converting Law Decree No. 221/2021). With regards to converting periods of quarantine/isolation to economic treatment of official sick leave, the INPS has confirmed that there is no extension to 31 December 2021 deadline for the current rules provided by Art. 26, para. 1 of Law Decree No. 18/2020.

*INPS, Message 11/03/2022 No. 1126*

#### **Washing and maintenance of work clothing is employer's responsibility**

It is an employer's obligation to provide and maintain work clothing if it falls into the category of personal protective equipment ("PPE"). Equipment or accessory that can concretely constitute a protective barrier against any risk to the health and safety of the employee is to be considered a PPE and it fulfils the requirements of Article 2087 of the Civil Code. In a recent case, the Supreme Court confirmed that overalls with reflectors used by refuse collectors fall into the category of PPE because they protect against dangers associated with collecting refuse whilst vehicles are in motion and it is therefore the employer's responsibility to maintain and wash them.

*Supreme Court 11/03/2022 No. 8042*

## **Employer liability for fatal accident excluded**

The Supreme Court found that an employer was not liable for the death of an employee despite not having the required DURC documents from their contractor. DURC is the documentation that must be presented by companies to certify their contributions to various social security and welfare institutions – including INPS and INAIL. In order to establish the liability of an employer, it is necessary to verify in concrete terms what affect their conduct might have had in causing an accident. In this case, the Court found that absence of evidence of any technical or professional unsuitability of the contractor, together with the fact that the dangerous situation was caused by the employee who failed to wear protective equipment, excludes the employer – who was not present on site and had no obligation to be there – from any liability for causing the accident.

*Supreme Court 14/03/2022 No. 8462*

## **Green Pass obligations not legally binding prior to 15 October 2021**

The obligation to possess and display a Green Pass in order to access workplaces was introduced on 15 October 2021 (Law Decree No. 105/2021). Prior to this, an employer could not refuse the service of an employee without a Green Pass. Some employers required a Green Pass to attend the workplace before 15 October 2021, however since it was not a legal obligation at the time these rules were not binding. The Tribunal of Florence therefore found that an employer's refusal to pay an employee who did not have a Green Pass in the period before it became legally binding was unlawful and the employee is entitled to damages for the amount of remuneration not received until 15 October 2021.

*Tribunal of Florence 04/03/2022 No. 155*

## **Disproportionate sanctions not enforceable**

If financial penalties are disproportionate in relation to the scale of an infringement of employment obligations, the national court may find them non-applicable. In the case under consideration, the financial penalty related to the failure to comply with obligations relating to maintaining wage and social security records. The Court of Justice of the European Union observed that the EU provision that sanctions in the field of employment must be proportionate to the gravity of infringements (Article 20 of Directive 2014/67) has immediate effect and can be directly invoked against an EU Member State which does not apply them correctly.

*EU Court of Justice 08/03/2022 (case C-205/20)*

## **First operating instructions for accessing pensions under “Quota 102”**

The INPS has issued its first clarifications on accessing pensions under “Quota 102”. Employees who reach the double requirement of 38 years of paid contributions and 64 years of age in 2022 will be able to retire by the end of the year. It is specified that contributions made across all INPS schemes can be included in order to achieve the required 38 years of contributions. Once “Quota 102” requirements have been met, there must be an interval of three months for private sector employees and six months for public sector employees before access to the pension can begin. The INPS circular contains further detailed information.

*INPS, Circular 08/03/2022 No. 38*

## Contesting dismissals and/or transfer of business must be within time limit

An employee dismissed prior to the transfer of a business may only request the continuation of their employment relationship with the transferee under Art. 2112 of the Civil Code if they have contested their dismissal within the legal time limit of 60 days. This principle also applies in cases of a transfer of a business unit.

*Supreme Court 11/03/2022 No. 8039*

## Employees must be informed of email checks

Dismissal for sharing company e-mails with highly confidential content with third parties is unlawful if an employer failed to inform their employees of the limits and purposes of possible e-mail checks. It is not sufficient that the check on the company's e-mail address was carried out following a well-founded suspicion that the employee had committed unlawful acts, because even in the case of so-called defensive checks it is always necessary for the employee to be informed in advance of such checks and under what conditions they may occur.

*Tribunal of Genoa 14/12/2021*

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