

SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 48

31 MARCH 2022 • ARTICLE



WEEKLY ITALIAN LABOUR UPDATES

"It is appropriate that recruitment processes include the hiring of a percentage of pregnant employees aligned to the national statistical data of births."

New employment measures announced to tackle impact of Ukraine crisis

With Decree-Law No. 21 of 21 March 2022, the Italian government has introduced new employment law provisions to tackle the economic impact of the crisis in Ukraine. These include:

- For 2022 only, petrol vouchers or similar benefits provided free of charge by private companies to employees for the purchase of fuel will not count as part of their income to a maximum of €200 per individual;
 - Also for 2022 only, up to twenty-six weeks of ordinary wage subsidies for employers who have reached the maximum limits of eligibility has been agreed with a maximum of €150m support available;
 - Again for 2022 only, employers with up to 15 employees who have Ateco codes as per the annex to the new decree – and who fall under the scope of a bilateral solidarity fund or under the Wage Supplementation Fund (FIS) or the Territorial Fund of the Provinces of Trento and Bolzano – have been granted an eight week extension of relevant salary support provided they have already reached the previous maximum limit of said support;
 - Employers in the steel, wood, ceramics, automotive and agribusiness sectors are exempt from paying additional contributions for reduction or suspension of work from 22 March 2022 until 31 May 2022;
 - the 100% exemption from social security contributions for a maximum of thirty-six months and €6000 py, has been extended to the hiring on open-ended contracts of employees made redundant in the previous six months by companies participating in crisis negotiations or of employees employed in business units transferred by said companies. This exemption cannot be cumulated with the separate benefit provided for employers hiring on an open-ended basis employee benefiting from NASPI.
- Decree-Law 21/03/2022 No. 21*

New measures on Green Pass and smart working come into force

Decree-Law 24/2022, which covers the gradual phasing out of the Green Pass, has been published in the Official Journal. Among the measures directly applicable to employment relationships, it is worth mentioning:

- Employees aged over 50 are still required to be vaccinated until 15 June 2022. They can, however, access work with a basic Green Pass (i.e. by means of a simple certificate issued with a negative swab result);
- until 30 April 2022, employees without a Green Pass remain suspended from work without pay. In addition, if they access their workplace without a Green Pass, a fine of €600-1500 continues to apply and disciplinary action may be taken;
- from 1 April 2022, isolation/quarantine is only required for those testing positive. For close contacts of someone who tests positive, self-monitoring is required for 10 days, with an obligation to wear an FFP2 mask indoors and to take a swab after five days (or sooner if symptoms appear);
- until 30 April 2022, a mask is compulsory if it is not possible to observe social distancing regulations. A surgical mask is sufficient in the workplace;
- the right to simplified smart working, i.e. without the need (among other things) for an individual written agreement, is extended to 30 June 2022;
- compulsory vaccination is extended until 31 December 2022 for healthcare and nursing home personnel (“RSA”); and
- compulsory vaccination is required until 15 June 2022 for teaching and educational staff in schools. However, unvaccinated teachers will no longer be suspended from duty without pay, but rather assigned to support activities.

Decree-Law 24/03/2022 No. 24

Portal for communicating start of occasional work now operational

A new app is now available on the Ministry of Labour’s Employment Services portal to allow principals to make their (mandatory) communication of occasional work relationships. Notwithstanding the one month period of grace allowing the old procedure, from 1 May 2022, communicating the start of occasional work relationships to the Territorial Labour Inspectorate via e-mail will no longer be allowed. Communications via the new app must be submitted before the start of the occasional work. The new app can be accessed via the Employment Services portal through Public Digital Identity System (“SPID”) or an electron identity card (“CIE”).

INL, Note 28/03/2022 n. 573

Unlawful to withdraw social security benefits for formal irregularities

Failure to submit monthly returns, which constitutes a purely formal omission, cannot give rise to the recovery by the INPS of any social security benefits enjoyed by a company. In the absence of a substantive breach of non-payment of contributions, the INPS cannot withdraw any relief enjoyed by a company. Similarly, the INPS is precluded from withdrawing any benefits enjoyed by a company during the periods in which it was in possession of a regular DURC, since the irregularity of that document cannot have retroactive effects.

Tribunal of Rome 11/03/2022 No. 66

Smart workers in Italy for foreign employers entitled to inpatriate tax regime

The more favourable inpatriate tax regime applies to employees of international companies smart working in Italy, even if their work continues to be performed for the benefit of said overseas employer. The principle underlying this decision is that residence coincides with the place where an employee has their habitual abode and constitutes a factual situation which presupposes: (i) actual residence during the relevant time period and (ii) the intention to live there permanently. If these conditions are met while smart working in Italy for an overseas company, the inpatriate tax regime is available.

Revenue Agency, Response to ruling, No. 157/2022

Excluding pregnant candidates from recruitment process is discriminatory behavior

Discriminatory conduct is committed by an employer who carries out a recruitment process which completely excludes pregnant candidates. To assess whether discrimination exists, statistical data from demographic studies on the ratio of the female population of child-bearing age (15-49) to the number of births, among other factors, is helpful. Given that said data published by ISTAT indicates that there is one birth for every 30 women of child-bearing age, a selection procedure which resulted in the recruitment of 412 non-pregnant women and 343 men was held to confirm discriminatory conduct. The company involved in this case was ordered to pay damages for loss of opportunity to the amount of 15 months' salary and the judge recognised its express dissuasive value.

Tribunal of Rome 23/03/2022 (Judge Cottatellucci)

Employer's liability for health and safety not objective

An employer's liability to protect their employees' health and prevent accidents in the workplace is not objective but linked to the violation of obligations imposed by law or arising from experimental or technical knowledge specific to a particular moment. The onus is therefore on an employee who complains of damage to his health to provide proof of the harmfulness of their working environment and its incidence in determining the alleged damage to their health. In such a case, their employer may be released from liability if they can prove that they took all necessary precautions to prevent said damage from occurring.

Supreme Court 03/03/2022 No. 7058

Plurality of reasons for initiating fixed-term contract lawful

Having a plurality of business needs to protect the activation of a fixed-term contract is lawful if there is no intrinsic contradiction or incompatibility between said needs. In the case in question, the clause of a fixed-term contract was held to be valid as it linked a replacement requirement to a specific production function (and not an individual) as well as the start of a reorganisation process and experimenting with new technology as the company's reasons for activating the fixed-term contract.

Supreme Court 18/02/2022 No. 5408

Periods of quarantine and isolation following a positive Covid test result do not count in calculating if maximum sick leave exceeded

Periods of quarantine or fiduciary self-isolation cannot be considered when calculating the maximum period of sick leave, not only for those who have had close contact with confirmed cases of infection or following their return from epidemiological risk areas, but also for those who have tested positive for Covid-19.

With Article 26, paragraph 1 of Decree Law 18/2020, the legislature aims to protect employees from work due to being in quarantine following close contact with a positive case or in fiduciary self-isolation following a return from an area at risk of contagion, thereby giving economic parity for such absences with time taken off due to illness and excluding the possibility of them counting towards the calculation of maximum sick leave.

In the view of the Tribunal of Asti, this provision of the legislation also covers self-isolation of Covid positive employees.

Tribunal of Asti 05/01/2022

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