

## SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 49

7 APRIL 2022 • ARTICLE



### WEEKLY ITALIAN LABOUR UPDATES

"Within 30 September 2022 businesses employing over 50 employees are required to file a two years report to the Ministry of Labour on the male and female work conditions. Inaccurate or misleading information can lead to an administrative fine."

#### **Interministerial Decree on modalities for drafting gender equality report signed**

The Interministerial Decree enabling the drafting of biennial reports on gender equality in the workplace for businesses employing over 50 employees has been published. For 2020/2021 only, the report must be delivered no later than 30/09/2022, after this the deadline will remain 30 April.

The report must indicate, among other information, the number of male and female employees, the number of male and female new hires and the salary gap between male and female employees. The report must be drafted and delivered electronically to the Ministry of Labour App and a copy delivered to the work council.

The National Labour Inspectorate will verify the accuracy of the reports and in cases of inaccurate or misleading data, a company may be fined between €1,000 and €5,000.

*Interministerial Decree (Ministry of Labour and Ministry of Gender Equality)*

29/03/2022

#### **Behaviour of an executive who harasses employees is considered stalking**

The Supreme Court found that the conduct of an executive who harassed employees with threats of disciplinary action which created a climate of fear within the company, constitutes aggravated stalking.

For stalking in the workplace to occur, the threatening and harassing conduct does not need to be directed towards a specific purpose, rather, it is sufficient that the behaviour causes anxiety, fear or a change in the employee's lifestyle. The acts carried out by this manager also constitute an aggravated offence within the meaning of Article 61, para. 11, of the Criminal Code since the offence was committed by abusing his power over his employees.

*Supreme Court 05/04/2022, No. 12827*

## **Incomplete communication on redundancy selection criteria triggers reinstatement**

If an employer does not outline in full the criteria by which they selected employees for redundancy in a timely manner (and pursuant to Article 4, paragraph 9 of Law 223/1991), all relevant dismissals are annulled and the employees be reinstated with compensation of up to a year's salary.

*Supreme Court 25/03/2022 No. 9800*

## **INPS instructions for Genoa Decree exemptions**

The INPS has provided clarifications on the exemptions from both the provision of severance pay and the payment of "redundancy tickets" for bankrupt companies or those in administration that have benefited from the CIGS (salary support scheme) pursuant to Article 43-bis of Decree-Law 109/2018 (known as the "Genoa Decree"). Following authorisation from the Ministry of Labour, companies looking for an exemption must submit an application to the INPS. The INPS specified that, where an exemption from the provision of severance pay relates to more than one production unit of the company in question, it is necessary to submit an application to them for each.

*INPS, Message 29/03/2022 No. 1400*

## **Work carried out digitally must be communicated by employer**

Work (including self-employed work) carried out via digital platforms must be communicated by employers as of 14 April 2022. For non-regular self-employed work, communication must be made within 20 days from the start of the month in which the working relationship begins. Communication must include the duration of the work and the type of contract it is carried out under. The compulsory notification covers work services that are carried out by through digital platforms which "...condition the manner in which they [tasks] are carried out, regardless of the contractual qualification of the relationship and the place where the service is provided".

*Ministry of Labour, Decree 23/03/2022 No. 31*

## **52 weeks of additional CIGS support after exceeding maximum usage**

The INPS has provided instructions for companies undergoing restructuring or financial difficulties on the use of an additional period of CIGS (salary support scheme) after the exceeding of the maximum amount available pursuant to Articles 4 and 24 of Legislative Decree 148/2015. The new measure was introduced by the Budget Law 2022 (art. 44, paragraph 11-ter, Legislative Decree 148/2015) and allows for 52 additional weeks of CIGS for companies which meet the aforementioned conditions and have exceeded 24 months (or 30 months for certain industries such as construction) of CIGS in the relevant five-year period.

*INPS, Message 31/03/2022 No. 1459*

## **Employee discount on company goods not taxable**

If the discount available to employees on company goods is lower than the average discount available to customers, the saving is not taxable. The Revenue Agency expressed this principle in the case of a company that applied a fixed discount of 5% on the purchase price of goods to its employees, which were bit cumulative with the (higher) discounts reserved for customers. The Revenue Agency confirmed that, in such cases, the fixed discount is allowed without time limits and is not taxable.

*Revenue Agency, response to ruling 25/03/2022 No. 158*

## Burden of proof of dismissal falls on employee

An employee who claims to have been verbally dismissed has the burden of proving that the termination of their employment was their employer's *intention*. It is not sufficient for the employee to simply prove that their employment has ended as this could be the result of various dismissal processes or even them choosing to quit their job. Therefore, an employee claiming to have been verbally dismissed must prove that the termination of their contract was their employer's choice.

*Tribunal of Foggia 25/03/2022 No. 1240*

## Actual total remuneration defined

Actual total remuneration – whereby an unlawfully dismissed individual receives compensation – refers to the amount that employee would have received if working excluding any compensation or payments of a non-salaried nature. As a result, the Supreme Court ruled that foreign service allowance should be excluded from actual total remuneration because it is solely intended to cover the costs of staying overseas for work and not considered part of an employee's 'normal' salary.

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

## Companies cannot deregister to avoid personal injury allegations

The Supreme Court ruled that removing a company that faces allegations of misconduct/wrongdoing relating to a personal injury offence from the companies' register does not negate the charges against them. As a result, the shareholders or quota holders of a company that allegedly committed a personal injury offence (under Article 25-septies, paragraph 3, of Legislative Decree no. 231/2001) who then deregistered are directly liable for any administrative sanctions as well as being responsible for the personal injury offence(s) against their employee.

*Supreme Court 17/03/2022, No. 9006*

## Operational protocol to combat illegal omission of social security payments

On 22 March 2022, the Public Prosecutor's Office of Milan and the NPS signed an operational protocol with the aim of combating illegal practices concerning the systematic omission of social security payments with specific reference to contracts managed by cooperatives. Specific operational procedures have been established to ensure better cooperation between the Public Prosecutor's Office of Milan and the Social Security Agency, based on a more functional exchange of data and information in their possession.

*Milan Public Prosecutor's Office and INPS, Protocol 22/03/2022*

## KEY CONTACTS



**GIUSEPPE BULGARINI  
D'ELCI**  
PARTNER • MILAN

T: +39 02 721 7071  
M: +39 347 26 86 664

[gbulgarini@wfw.com](mailto:gbulgarini@wfw.com)



**ROBERTA CRISTALDI**  
COUNSEL • MILAN

T: +39 02 721 7071  
M: +39 344 0506106

[rcristaldi@wfw.com](mailto:rcristaldi@wfw.com)

# WATSON FARLEY & WILLIAMS

## DISCLAIMER

Watson Farley & Williams is a sector specialist international law firm with a focus on the energy, infrastructure and transport sectors. With offices in Athens, Bangkok, Dubai, Dusseldorf, Frankfurt, Hamburg, Hanoi, Hong Kong, London, Madrid, Milan, Munich, New York, Paris, Rome, Seoul, Singapore, Sydney and Tokyo our 700+ lawyers work as integrated teams to provide practical, commercially focussed advice to our clients around the world.

All references to 'Watson Farley & Williams', 'WFW' and 'the firm' in this document mean Watson Farley & Williams LLP and/or its affiliated entities. Any reference to a 'partner' means a member of Watson Farley & Williams LLP, or a member, partner, employee or consultant with equivalent standing and qualification in WFW Affiliated Entities. A list of members of Watson Farley & Williams LLP and their professional qualifications is open to inspection on request.

Watson Farley & Williams LLP is a limited liability partnership registered in England and Wales with registered number OC312252. It is authorised and regulated by the Solicitors Regulation Authority and its members are solicitors or registered foreign lawyers.

The information provided in this publication (the "Information") is for general and illustrative purposes only and it is not intended to provide advice whether that advice is financial, legal, accounting, tax or any other type of advice, and should not be relied upon in that regard. While every reasonable effort is made to ensure that the Information provided is accurate at the time of publication, no representation or warranty, express or implied, is made as to the accuracy, timeliness, completeness, validity or currency of the Information and WFW assume no responsibility to you or any third party for the consequences of any errors or omissions. To the maximum extent permitted by law, WFW shall not be liable for indirect or consequential loss or damage, including without limitation any loss or damage whatsoever arising from any use of this publication or the Information.

This publication constitutes attorney advertising.