

SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 50

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WEEKLY ITALIAN LABOUR UPDATES

"Using collective company agreement is possible to customize the work shifts of the part-time employees to changing business needs."

ATECO code updates

Based on recent ISTAT (Italian Institute of Statistics) updates concerning the classification of economic activity, the INPS has updated its list of ATECO codes used for that purpose in Italy. The changes are effective as of 2022 and affect the previous ATECO 2007 classifications. The INPS update concerns both the creation of new codes and the modification of existing ones.

INPS, Message 07/04/2022 n. 1560

Criticism shared on WhatsApp does not result in disciplinary action

The Supreme Court found that Whatsapp messages of a critical and disparaging nature shared between colleagues about their company's management amounted to *private content* and were not just cause for dismissal. The Court noted that comments made on a private chat platform fall within an employee's right to privacy of correspondence. It was further noted that the comments were not in breach of the principles of fairness and good faith that employees are expected to adhere to, nor can Whatsapp be considered a platform that enables the spread of criticism in comparison to other modes of communication.

Supreme Court 11/04/2022 No. 11665

Training under apprenticeship contracts

Basic training under an apprenticeship contract – aimed at acquiring general skills for various workplaces – can be provided through distance learning. Training can also be provided via e-learning, which allows further interaction between teachers, tutors and other students. The e-learning method has the advantage of allowing students to track their progress and access online materials.

INL, Circular 07/04/2022 n. 2

Dismissal unlawful following ‘de facto’ transfer of undertaking

If a so-called ‘de facto’ transfer of undertaking takes place, any subsequent dismissals by the transferor company are invalid even in the absence of a formal transfer document. A de facto transfer of a business unit involves the hiring of workers and their continued use of existing services – using the same equipment, computer systems, retaining passwords etc. – and the maintenance of their previous working structure (keeping the same work shifts for example). In such transfers, it is irrelevant whether the transfer had been contested or if no formal deed of transfer can be found.

Due to the de facto transfer of a business unit, the company that ordered the dismissal was no longer in charge of the employment and the employee had the right to continue the employment with the transferee company – albeit only de facto.

Tribunal of Cosenza 05/04/2022 (Judge Vaccarella)

Company liable under Legislative Decree 231/2001 even if no profit made

A company is liable under Legislative Decree 231/2001 for an offence committed by a director even if only a small saving of expenditure was made. An offence is deemed to have been committed in the interest of the company even if the money made by a director does not outweigh expenses incurred for maintenance and safety. On the basis of this principle, ruling on a case that originated from an accident at work, the Supreme Court rejected the argument that, since the expenses incurred for maintenance and safety had been far greater than the savings made by the company as a result of the offence committed by their director who had health and safety responsibilities within the workplace, , liability under Legislative Decree 231/2001 was excluded.

Supreme Court 07/04/2022 No. 13218

Employer liable for accident at work

The Supreme Court recently found an employer liable for the accident suffered by their employee who handled heavy equipment over 25 kg alone, despite guidance stating that the equipment should be handled by two employees. Liability arises under the principle of “*culpa in vigilando*”, which makes it the employer’s responsibility to prevent such behaviour.

Supreme Court 06/04/2022 No. 11227

Late justifications must be examined prior to disciplinary dismissal

When an employer imposes a disciplinary dismissal without evaluating any justifications – even those made past the deadline for doing so – made by the employee, the dismissal is considered defective. In such a case, the dismissal is confirmed, but the employee is entitled to compensation of between six and twelve-months’ pay under Article 18, paragraph 6, of Law 300/1970. The Supreme Court points out that the stricter compensation allowance of between twelve and twenty-four months’ pay provided for by article 18, paragraph 5, does not apply in the event of unlawful dismissal.

Supreme Court 07/03/2022 No. 7392

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