

## SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 52

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### WEEKLY ITALIAN LABOUR UPDATES

"The collective company agreement can provide for a flexible use of the work shifts also in part-time employments."

#### **Reinstatement remedy available for general clauses in National Collective Labour Agreements**

Article 18, paragraph 4 of Law 300/1970 states that if a National Collective Labour Agreement connects an employee's alleged wrongful behaviour within a disciplinary procedure to a conservative sanction then that employee's dismissal is unlawful and they must be reinstated. The Supreme Court recently clarified that this provision also applies to 'general clauses', i.e. clauses that do not refer to specific wrongful behaviour but to general misconduct.

*Supreme Court 21/04/2022 No. 12745*

#### **Construction managers liability for accidents at work**

In a recent case, the Supreme Court clarified construction managers' responsibilities regarding health and safety and preventing accidents at work. The Court highlighted that on a construction site, managers are responsible for the execution, progress and approval of works, but not responsible for organising work on site. Therefore, unless a site manager has taken on a specific task (either contractually or de facto) with respect to work carried out on a building site, they are not responsible for protecting employees' health and safety against the risk of accidents.

*Supreme Court 20/04/2022 No. 15157*

#### **Delivery riders considered subordinate employees**

Work carried out by delivery riders is considered subordinate if the delivery methods, hours and destinations are organised externally. The Tribunal of Milan noted that the manner in which deliveries are assigned (which is done via an algorithm) restrict a rider's freedom and cement their status as a subordinate employee. Riders should therefore be recognised as Level 6 graded workers as per the *CCNL Commercio* (National Collective Labour Agreement for commerce) which covers delivery riders and carriers.

*Tribunal of Milan 20/04/2022 No. 1018*

## **INL clarifications on sanctions for irregular work**

The National Labour Inspectorate (INL) has provided clarifications on the application of 'maxi-sanctions' for irregular work (Art. 3 of Law Decree 12/2002). Said sanctions apply to all private employers but do not cover domestic work. In cases where workers are paid in cash, the sanction for undeclared work and for failure to use traceable payment systems applies. The INL specified that 'maxi-sanctions' can be avoided if, following a warning to comply, an employee is hired on a permanent employment contract (including part-time) or if, in cases of hiring after a previous period of illegal employment, their employer retroactively regularizes the previous working relationship.

*INL, Note 19/04/2022 No. 856*

## **International pensions do not negate Italian pensions**

Revising a previous guideline, the INPS has clarified that, as is already the case for pensions paid by a foreign state, a pension which is paid by an international organisation can run concurrently with an Italian-based pension. The INPS also reiterated that insurance periods covered by contributions and accrued at international organisations resulting from employment relationships carried out in the EU or Switzerland can be cumulated with those where contributions were paid into Italian social security schemes.

*INPS, Circular 21/04/2022 No. 50*

## **New clarifications on universal single allowance**

The INPS provides further clarifications on the universal single allowance and the economic increases it offers. Among their various clarifications, it is important to note that for families where the children have different parents, the allowance increase is only available to those persons whose parental relationship with the children is established. The INPS also clarified that to determine the total number of children in a household, one must refer to the rules set by ISEE, the main tool used for assessing subsidised social benefits and bonuses available to families. If ISEE cannot be accessed, an individual can declare the make-up of their household themselves.

*INPS, Message 20/04/2022 n. 1714*

## **Failure to assess risks prevents signing of fixed-term contracts**

Employers who fail to carry out risk assessments are prohibited from entering into fixed-term employment contracts.

Article 20, paragraph 1, letter d of Legislative Decree No. 81/2015, which prohibits offending companies from signing fixed-term contracts is aimed at providing greater protection for employees with flexible working arrangements resulting in a lack of familiarity with their workplace and equipment. It is up to their employer to prove that a risk assessment has been carried out prior to them entering into a fixed-term contract.

*Tribunal of Latina 10/02/2022*

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## Legitimate in house contracts

In house contracts are unlawful if a contractor who is only responsible for administrative aspects such as salaries and holiday allowance to supply employees solely to one client. This is particularly the case if the contractor does not organise the work of the concerned employees and no economic risk is associated with the service contract. An in-house contract is lawful if the contractor employs a consistent number of employees and offers their services to more than one client as well as independently organising and managing them including their training and supplies their uniforms and individual PPE.

*Cass. (ord.) 10/03/2022 n. 7818*

## Unlawful possession of weapons justifies dismissal

Behaviour outside of work that conflicts with fundamental ethical principles and is symptomatic of possible connections with criminal circles constitute a breach of trust. The dismissal of an employee for the unlawful possession of two pistols and a rifle used in a robbery has therefore been deemed lawful by the Catanzaro Court of Appeal. The determining factor in such cases is the damage to a company's reputation.

*Court of Appeal Catanzaro 01/03/2022*

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