

## SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 54

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### WEEKLY ITALIAN LABOUR UPDATES

"Companies have to consider the hiring date of their employees in case of redundancies, since hiring's from 7 March 2015 are no longer subject to Article 18 of the Statute of Workers."

#### **Withdrawing employees' rights lawful if transfer of business is part of pre-pack procedure**

If a transfer of business occurs as part of a liquidation procedure whose aim is to satisfy creditors and safeguard employment levels (known as a 'pre-pack' procedure), it is lawful to apply less favourable conditions to any transferred employees. This is only the case in instances where, according to the EU Court of Justice, the pre-pack procedure is regulated by legal provisions. Moreover, the withdrawal of employees' rights requires that the exiting company is subject to bankruptcy or similar insolvency procedure, the aim of which is to liquidate the assets of the company under the supervision of a competent public authority.

*EU Court of Justice 28/04/2022 (claim C-237/20)*

#### **Employer responsible for accidents at work if violations are not punished**

An employer is responsible for employee workplace accidents in cases where the injured party previously breached the same safety requirements and they were not disciplined for doing so. In a recent case before the Supreme Court, a worker was injured when handling heavy loads by themselves without the assistance of a second worker as required. The employer had not acted to prevent or punish this happening previously and so they were deemed responsible for the accident.

*Supreme Court 06/04/2022 No. 11227*

#### **Employment contracts in the healthcare system**

The provision of the Lazio Region (art. 9, paragraph 1, Law No. 13/2018) whereby those working in private healthcare facilities must be hired on a subordinate employment contract violates Articles 3 and 41 of the Italian Constitution. This is because healthcare personnel can also be self-employed or work as part of a contract.

*Constitutional Court 09/05/2022 No. 113*

## **Judicial claim can be filed if welfare benefit cancelled**

A beneficiary is entitled to directly file a judicial claim to ascertain that the requirements to access welfare benefits are still valid, if the INPS has cancelled the welfare benefit on the assumption that the relevant conditions had expired. The Supreme Court reached this conclusion in a plenary session and modified an existing interpretation according to which a beneficiary had to present a new administrative application if their welfare benefits were cancelled.

*Supreme Court, plenary session, 09/05/2022 No. 14561*

## **Redundancies involving two companies**

If two independent companies are part of the same organisation and their employee relationships are jointly managed, any collective dismissal procedure activated by one of the two must take both businesses into consideration. In a recent case, the Supreme Court clarified that in order to verify whether redundancies are valid, an investigation cannot be limited to just the company that begins the redundancy process but must also include the employees of the second company. Both companies are jointly liable for the reinstatements and payment for damages.

*Supreme Court 11/04/2022 No. 11638*

## **RSPPs cannot be company managers**

The Supreme Court clarified that a Prevention and Protection Services Manager ("RSPP") is a consultative role aimed at supporting employers and therefore cannot also have a managerial role within the company or be its legal representative.

*Supreme Court 29/04/2022 No. 16562*

## **Additional probation period following fixed-term employment is valid**

It is legal to introduce a probation period following the signing of an open-ended employment contract even when the employee had previously worked on a fixed-term contract with the same employer and had completed a previous probation/trial period. The need for a second probationary period is a result of requirements from the national collective labour agreement which states that employment on a permanent basis is subject to a mandatory probation period.

*Tribunal of Lodi 21/04/2022 No. 81*

## **Salary payments through bank transfer or full receipt delivery only**

An employer is obliged to open a bank account and make monthly salary payments by bank transfer or to obtain a written receipt from their employees when paying in cash. If an employee claims that they have not received their monthly pay and the employer neither set up the bank transfer or asked the employee for a receipt, the employer cannot ask the court to prove with witnesses that the payment took place.

*Tribunal of Ancona 27/03/2022 (Judge De Sabbata)*

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