

SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 55

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WEEKLY ITALIAN LABOUR UPDATES

"No later than 30 September 2022 employers with 50+ employees are expected to file the two year report on gender equality in the workplace."

Decree on biennial report on gender equality in the workplace

On 17 May 2022, an inter-ministerial decree from the Ministries of Labour and of Equal Opportunities published their guidelines on completing the required biennial report on the different treatment of male and female employees at workplaces with 50+ employees. Companies must deliver their report electronically through the Ministry of Labour's online portal which is expected to be available from 23 June 2022. Reports must not identify employees but make reference to their gender. For 2020-2021, the deadline for filing reports is 30 September 2022. For each following two year period, the deadline will be 30 April. For companies that must file a report for the first time, it must include all staff as of 31 December 2021.

Inter-ministerial decree (Ministries of Labour and Equal Opportunities) published on

17/05/2022

Unfair treatment for agency workers

A national ruling which provides different and less favourable criteria for calculating agency workers' leave and remuneration for any unused holidays constitutes unequal treatment when compared to those directly employed by the company has been deemed unfair by the EU Court of Justice. The court noted that any mechanism that disadvantages agency workers in terms of remuneration compared to non-agency workers doing the same tasks is prohibited as holidays are considered a 'basic working condition' under Directive 2008/104/EC.

EU Court of Justice 12/05/2022 (Case C-426/20)

Whistleblower procedures must guarantee secrecy and anonymity

Companies that, in line with Legislative Decree No. 231/2001, implement IT whistleblower systems in order to allow employees to report wrongdoing must comply with privacy rules. In particular, companies must set up a service that ensures the confidentiality of any reports and the anonymity of the reporting individual. These requirements and the obligation to provide any information on the processing of personal data must be respected even if the company uses an external provider for the management of their whistleblower service.

Privacy Officer, Note 11/05/2022 n. 488

Vulnerable migrants to be employed in construction sector

The Ministries of Labour and of the Interior, together with employers construction association Ance and the Fillea-Cgil, Filca-Cisl and Feneal-Uil trade unions, have signed a national protocol for three thousand vulnerable migrant workers with international protection to be employed in the construction sector. The protocol provides training courses coordinated by Formedil, the professional education and construction training body, through internships in constructions companies.

National Protocol, Ministries of Labour and Ance, Fillea-Cgil, Filca-Cisl, Feneal-Uil 16/05/2022

Employer liable for workplace accident if precautions not in place

Employers are liable for any accident caused by an employee's reckless conduct unless they can prove they implemented all required safety measures to prevent accidents at work.

Supreme Court 06/05/2022 No. 18059

Compensation for loss of professional opportunities not taxable

Sums awarded to a group of employees as compensation for damages caused by their employer's failure to allocate targets to contribute towards performance reviews, as set out in a collective agreement, should not be taxed. By violating the provisions of the collective agreement, an employer puts their employee at a disadvantage via 'loss of opportunity'. In such instances, it is not a question of restoring lost income, but of compensating for potential loss.

Supreme Court. 05/05/2022 No. 14344

Validity of settlement agreements

If a trade union representative responsible for overseeing the signing of an employee's settlement agreement pursuant to Article 2113, paragraph 4 of the Civil Code does not belong to the trade union to which the employee is affiliated, the settlement agreement is null and void. Only trade union representatives affiliated to trade union organizations to which also the employee belongs can lawfully assist said employee in the signing of the settlement agreement in a protected venue. This condition is not met if the employee appoints the trade union representative when he materially signs the settlement agreement.

Court of Bari 06/04/2022 (Judge Tedesco)

New rules for protecting employees against exposure to ionising radiation

New parameters have been introduced to regulate the levels of ionising radiation employees can be exposed to. Employees subject to such radiation exposure in both healthcare and industrial fields must undergo education and training programs on preventative procedures and protective equipment. The new provisions integrate these programs and set out other specific actions to be implemented in order to limit exposure to ionising radiation, as well as providing a list of the occupations most exposed to radiation.

Interministerial Decree (Ministries of the Interior, Health, Labour and Ecological Transition) 22/04/2022, published in the Official Journal 06/05/2022)

Dismissal for being rude to customer unlawful

The Supreme Court ruled that the dismissal of an employee who addressed a customer in a rude manner using inappropriate language, resulting in the customer deciding not to complete the purchase, was unlawful. The seriousness of the employee's misconduct was mitigated by the fact that they had not received any previous disciplinary sanctions, that it was an isolated incident and that the episode had gone unnoticed by others in the store, both other customers and colleagues. The dismissal was annulled and the employee reinstated.

Supreme Court 02/05/2022 no. 13774

Dismissal for smoking in company toilets unlawful

An employer's dismissal of an employee for going into the women's toilet to have a cup of coffee and smoke a cigarette, thereby compromising the company's safety, was unlawful. Since expert opinion given to the judge showed that the risk of fire was "particularly low and comparable to that of a private home", the charge underlying the disciplinary dismissal was unfounded. The judge ordered the reinstatement of the employee pursuant to Article 18, paragraph 4, of the Workers' Statute.

Court of Vicenza 15/04/2022 (Judge Ms. Beltrame)

Lawful to withdraw from collective company agreement

An employer may legitimately withdraw from a collective company agreement and stop paying any additional remuneration provided for therein. However, the validity of their withdrawal presupposes that the company agreement is not subject to a fixed-term duration, in which case the interruption of the contract will only be completed at the end of the agreed term.

Moreover, employees vested rights are unaffected.

Supreme Court 11/05/2022 No. 14961

Genuine tenders and selection of employees

The tender of works and services is considered genuine pursuant to art. 29 D.Lgs. 276/2003 if a contractor has been entrusted with the final outcome of the project and is the sole individual responsible for the project's organisation, management, identification of business risks and control of employees. If the organization and the control over the employees is done by the principal, instead, there is an irregular supply of manpower and such conclusion is not modified if the contractor had previously selected the employees.

Supreme Court 27/04/2022 No. 13182

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