

SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 61

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WEEKLY ITALIAN LABOUR UPDATES

"In a collective redundancies process it is crucial to subdivide the employees based on their hiring date. Only employees hired before 7 March 2015 are subjected to Article 18 of the Workers' Statute regime."

Sums paid as amicable settlement during employment subject to ordinary taxation

Concerning waivers used to settle salary disputes in court, sums paid to an employee "by way of a general and novative transaction" during the course of their employment are subject to ordinary taxation and not to so-called separate taxation. Pursuant to Article 17(1) of the TUIR (Presidential Decree No. 917 of 22/12/1986), separate taxation applies to sums received once upon termination of an employment relationship, as well as those received as a result of a settlement relating to said termination.

Revenue Agency, Answer to Question No. 343/2022

Arrears paid during course of employment relationship subject to ordinary taxation

Similar to above, arrears for employment services that are paid during the employment, in consideration of mutual waivers and concessions, pursuant to a settlement agreement are subject to ordinary taxation and not to separate taxation. Unless other conditions apply, such as those set forth in Article 17(1)(b) of the TUIR, in order for separate taxation to be applicable the sums must be paid pursuant to a settlement agreement that terminates an employment relationship.

Revenue Agency, Answer to Question No. 344/2022

Official Journal publishes Simplification Decree

Decree-Law no. 73/2022 ("Simplification Decree") has been published in the Official Journal. It contains urgent measures concerning the authorisation of work permits for migrant workers in Italy. It notes that for applications submitted with reference to the DPCM 21 December 2021 (the "Decree Flussi" aimed to determine the number of non-EU employees in Italy in 2022) authorisation will be issued within 30 days from 22 June 2022 when the Simplification Decree enters into force. Among other measures, simplifications are introduced to verify compliance with the requirements of collective labour agreements and both the single and universal allowance is also extended to orphan families (i.e. families with children without parents).

Decree-Law 21/06/2022 No. 73

Proof of compliance fixed-term contract maximum limit lies with employer

If an employee deduces that a fixed-term employment took place as a result of exceeding the maximum number of fixed-term contracts they are entitled to undertake, it is the employer's responsibility to prove that the contingency clause on the maximum number of fixed-term contracts was respected. This is because it is the employer who has access to the relevant data. In the absence of proof, the termination clause is null and void and the employment relationship is converted into an open-ended contract.

Supreme Court 08/06/2022 no. 18490

No compensation for demotion without proof of damages

The Supreme Court ruled that damage to one's professional reputation such as being demoted or disqualified does not automatically give an employee the right to compensation for any resulting health and/or employment problems. With this in mind, an employee must outline any professional or economic damage they expect to incur as a result of being assigned a new position or following demotion – including loss of professional opportunities, loss of further earning opportunities, being unable to access bonus schemes etc.

Supreme Court 03/06/2022 no. 17975

Husband who gave advice via Skype considered a de-facto manager

The Criminal Supreme Court ruled that the husband of a company director who, via Skype, constantly provided his wife with advice on decisions affecting the company must be considered her de-facto manager. In this case, the husband falls within the definition of a manager in Article 2639(1) of the Civil Code, which equates a manager as – in the absence of a formal appointment – someone who exhibits the authority and behaviour associated with managing 'in an ongoing and significant manner'. A de-facto manager is also personally liable for crimes (corporate, tax and bankruptcy) attributable to the management of the company.

Criminal Supreme Court 10/05/2022 no. 18442

Partial transfer of company and employment relationships

If, following a partial transfer of a business, it emerges that assets and activities remaining with the transferring party do not constitute a functioning autonomous business, employees not included in the transfer are entitled to continue their employment relationship with the transferee party pursuant to Article 2112 of the Civil Code. The partial transfer of a business does not imply that the purchaser takes over all employment relationships across the entire business, but only if the business which has remained in the possession of the vendor is composed by structures, assets and services that allow an economic independent activity.

Tribunal of Busto Arsizio (Judge Fumagalli) 15/02/2022

New INPS instructions on "one-off" bonus

Employees must prove themselves that they meet the requirements to access the one-off €200 bonus provided for in Art. 31 Decree-Law 50/2022. Employees must submit a declaration to their employer in which they certify, among other conditions, that they are not pension holders or recipients of citizenship income. The INPS suggests attaching documents proving identity and note that inaccurate and incomplete declarations will result in the recovery of undue payments. Any such recovered payments will be sent to the employer in a pay slip and Uniemens.

INPS, Message 24/06/2022 n. 2559

KEY CONTACTS



**GIUSEPPE BULGARINI
D'ELCI**

PARTNER • MILAN

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

gbulgarini@wfw.com



ROBERTA CRISTALDI
COUNSEL • MILAN

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

rcristaldi@wfw.com

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