

SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 65

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WEEKLY ITALIAN LABOUR UPDATES

"If outside temperature is too hot, employers may consider the temporary suspension of their activities and the use of a standard shock absorber."

Constitutional Court increasing protection against dismissals in smaller companies

The Constitutional Court confirmed that the compensation provided for by Legislative Decree 23/2015 for cases of unlawful dismissal by smaller companies (those with no more than 15 employees in a single production unit or 60 in total), which varies from three to six months' salary, does not reflect an adequate remedy with respect to the unfairness inflicted on the employee nor does it act as a deterrent to the employer. Given the growth of technology and the transformation of business processes, the decision to connect the compensation to the employment levels of companies doesn't provide a proper indication on the effective economic capacity of the business. For these reasons, the Court invited Parliamentary

intervention to ensure adequate protection in companies with lower employment requirements.

Constitutional Court, Statement 22/07/2022

Important clarifications by INPS on expansion agreement

The INPS has indicated that, with a collective trade union expansion agreement (aimed at substituting those willing to retire with new employees), one can provide a single date for the exit of senior employees with a new "window" to early retirement. Only in exceptional circumstances, when a very large number of employees are involved, can one provide two redundancy plans in the same year. The INPS also clarified that access to the "window" does not require the opening of a collective redundancy procedure and that a consensual termination of the employment relationship concerned is sufficient. The expansion agreement does not cover access to the old-age pension with requirements other than the standard ones (e.g. early old-age pension for travelling personnel is excluded). With reference to both the years 2022 and 2023, it clarified that the termination date cannot exceed 30 November.

INPS, Circular 25/07/2022 no. 88

Use of CIG possible when temperature is over 35 degrees

If the temperature exceeds 35 degrees, employers who suspended or reduced the work time of their employees can apply for the standard salary support scheme ("CIGO") citing a 'meteo' event. This statement was made by the INPS and INAIL in a joint message indicating that such temperatures affect work performed outdoors and which requires protective clothing be worn. This also applies to work carried out in locations where no protection from the sun is available, as well as work requiring the use of materials that cannot tolerate high temperatures.

INPS and INAIL, Joint Message 26/07/2022

INPS clarifications on bilateral solidarity funds

The INPS has clarified the nature and purpose of bilateral solidarity funds in a message which summarises their function. Bilateral solidarity funds are designed to meet both ordinary needs linked to, for example, a temporary suspension of activity, as well as extraordinary ones linked to a major company-wide crisis. Companies that fall under the protection of the funds (Articles 26, 27 and 40 of Legislative Decree 148/2015) are excluded from classic shock absorbers (CIGO/CIGS) and are not subject to the relevant contributions. Such companies will now receive full coverage from the bilateral solidarity funds.

INPS, Message 22/07/2022 no. 2936

Knowledge of employee difficulties does not amount to exploitation

Knowledge of an employee's difficult economic situation is not a sufficient condition in and of itself to conclude that they have been exploited if the pay and hours linked to their employment relationship were respected and safety measures guaranteed.

Supreme Court, Criminal Section, 19/07/2022 no. 28289

Unequal treatment in disciplinary dismissal requires specific proof

An employee who alleges unequal treatment because he was dismissed, while others were sanctioned with lesser measures for similar misconduct, must present specific allegations in court in order to enable the judge to undertake a factual investigation and make a proper comparison.

Supreme Court (ord.) 13/07/2022 no. 22115

Public authorities must provide reasons for management level appointments

Appointments to management positions in the public sector are acts that public authorities undertake as private employers. The assignment of management level appointments must therefore be made through a comparative assessment, following a selection process that identifies the most suitable candidates for the role. It is not sufficient for public authorities to simply focus on the qualities of the person selected, the reasons why other candidates were not chosen must also be explained.

Supreme Court 13/07/2022 no. 22150

All employees protected by provisions against accidents

An employer is liable for any accident suffered by an employee even if the contractual relationship binding the parties is not of a dependent nature. The notion of “employee” taken as a reference by the Safety Act (Article 2, Legislative Decree 81/2008) is not limited to subordinate employees, but refers to persons who, regardless of the type of contract, carry out a work activity within an employer’s organisation, with or without remuneration. It doesn’t matter whether the employee was regularly employed or not when the accident occurred because the protections against accidents at work apply, more generally, to employees who work at an employer’s request, using the tools made available by the employer and at the place indicated by the employer.

Supreme Court, Criminal Section, 21/06/2022 no. 23809

Receipt of payment in full and final settlement is not equivalent to a final settlement

A written statement in which an employee accepts the payment of a sum in respect of outstanding monthly salary claims ‘in full and final settlement’, declaring that he or she has ‘no further claims’, cannot be considered to be a waiver or settlement and, therefore, cannot prevent any other claims against the employer.

Court of Palermo, 07/04/2022 no. 1162

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