

SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 67

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WEEKLY ITALIAN LABOUR UPDATES

"The new obligations to inform employees set forth by the Transparency Decree are binding as of Saturday 13 August and do not apply only to subordinate employments, but also to other types (such as contracts for services onto a continuous basis)."

INL issues first clarification on Transparency Decree

The National Employment Inspectorate (INL) has confirmed that the new disclosure obligations pursuant to the Transparency Decree (Legislative Decree No. 104/2022) enter into force from 13 August 2022. Delays will not be accepted. The INL declared that the new detailed and analytic information obligations (as set forth by the amended Article 1 of Legislative Decree 152/1997, as modified by the Transparency Decree) can be fulfilled by indicating in an employment contract (or a copy of the communication on the start of the employment) the "main content" which includes salary and working hours. More detailed information can be delivered by making reference to the applicable employment collective agreement or to other relevant documents.

INL, Circular 10/08/2022 No. 4

New maternity and paternity leave incoming

As of 13 August 2022, employees who are parents can ask their employers for

compulsory parental leave according to new rules set out in the so-called Balance Decree (Legislative Decree No. 105/2022). The administrative requirements that employers must fulfil in order for their employees to enjoy this new extended leave can be made through an application on the INPS website, which is in the process of being updated to allow this.

INPS, Message 04/08/2022 No. 3066

New INAIL guidelines re employees managed by co-employers

INAIL has published its new guidelines on the insurance and social security obligations that employers must fulfil in relation to employees that are managed by co-employers. In terms of the protocols concerning accidents at work and illness, these are the responsibility of the business that is noted as the individual's 'reference employer'. The 'reference employer' is the business to which employees managed by co-employers are referred to in order to comply with insurance and social security issues.

INAIL, Circular 03/08/2022 No. 31

Executives not included in ban on dismissals

The ban on individual dismissals for organisational and financial reasons, which was introduced during the pandemic on a temporary basis by Article 46 of Decree No. 18/2000 (Cura Italia Decree), does not apply to executives. The provision must be interpreted as a prohibition which refers only to dismissals specifically included in the perimeter of Article 3 of Law No. 604/1966. Since executives are not included in the perimeter of Article 3, they are also not included in the ban on individual economic dismissals.

Tribunal of Naples, Judge, 03/08/2022

Executives included in ban on economic dismissals

Since the ban on collective dismissals applies to executives, there are no plausible reasons why the same ban should not be extended to executives with regards to *individual* dismissals for financial reasons. It is irrelevant that the rule prohibiting dismissals during the pandemic (Article 46 of the “Cura Italia” Decree) refers to the ban of individual dismissals under Article 3 of Law 604/1966. Although Article 3 doesn’t specifically include the dismissal of executives, the provision should not be read literally, since it refers to any individual dismissal which is grounded in financial or organisational reasons. Therefore, executives are included in the prohibition.

Court of Appeal of Rome 27/07/2022 no. 2712

Milage refunds are tax free

Milage refunds linked to an employee’s commute from home to work, are tax free if their calculation was made with objective criteria and specifically documented. These refunds take into account the milage and fuel costs that employees incur while commuting. Money received is considered compensation for expenses rather than payment.

Supreme Court 28/07/2022 No. 23634

Employers responsible for cash and travel allowances

Cash and travel allowances are subject to the ‘solidarity obligation’ pursuant to Article 29 of Legislative Decree no. 276/2003, whereby an employee working into a service contract may claim payment of the relevant sums directly from the principal if their employer (i.e. the contractor within the service contract) has failed to make the payment. It was argued in a case before the Court of Appeal of Bologna that the payment of the aforementioned allowances is not the principal’s responsibility because they do not constitute part of the employee’s fixed monthly pay. Whilst this is true, they *are* linked to the way in which the employment is carried out. Therefore, if the contractor fails to pay these items, the principal is liable.

Court of Appeal of Bologna 14/07/2022 n. 500

Legitimate dismissal of employee working for competitor company

The dismissal of an employee who, during a period of suspension from work and with access to ordinary salary support fund, worked for a competing company is legitimate. Even during a period of suspension, the duty of loyalty pursuant to Article 2105 of the Civil Code applies, whereby an employee is prohibited from working for or with industry competitors.

Tribunal of Milan 12/07/2022 no. 473

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