

## SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 69

25 AUGUST 2022 • ARTICLE



### WEEKLY ITALIAN LABOUR UPDATES

**"Variable remuneration can be attributed based on the parameter of absence from work."**

#### Back to compulsory smart working rules

The Ministry of Labour has confirmed that from 1 September 2022, to access smart working it is once again necessary for employer and employee to have entered into a special individual agreement in which the conditions set out in Article 19(1) of Law 81/2017 are met. The conditions must be set out in writing and include how the employee's tasks will be fulfilled whilst smart working, managerial and supervisory expectations, rest times and action plans for any technological issues that may affect the ability to work effectively, including compulsory disconnection from electronic

tools and devices.

*Ministry of Employment Decree 22/08/2022 no. 149*

#### Rules on attendance bonus

The mechanism whereby a part of a performance bonus is paid only to employees who have not exceeded 15 days absence per year is a valid indicator of productivity, to which tax benefits and contribution exemptions are linked. The "attendance bonus" fulfils the conditions laid down by law for tax exclusions based on performance-related pay linked to productivity increases as fewer days absent directly link to higher company productivity. The contrary argument expressed by the INPS, according to which the attendance bonus does not fall within the scope of productivity bonuses, was rejected.

*Supreme Court 16/08/2022 no. 24814*

#### Sanctions for breaching Transparency Decree

The Study Foundation of Labour Consultants has provided an initial interpretation of the penalty provisions for failure to comply with the new disclosure obligations introduced by the Transparency Decree (Legislative Decree 104/2022). It should be noted that, in cases of failing to communicate information to employees, the sanctions range from a minimum of €250 to a maximum of €1,500 per employee. If non-compliance involves automated decision-making and monitoring systems, the sanction ranges as follows:

- for each month of non-compliance between €100 to €750;
- if the breach concerns up to five employees; €400 to 1,500 if it concerns up to 10 employees; and

- €1,000-5,000 if the breach concerns more than 10 employees.

If retaliatory conduct against an employee who has invoked the application of the rules of the Transparency Decree is proven, the employer or principal is liable to a penalty of between €5,000 and €10,000. In response to the Labour Inspectorate's warning, the Foundation states that the deadline for rectifying the breach is 30 days, while the payment of the administrative penalty in the minimum amount must be made within the following 15 days.

*Study Foundation of Labour Consultants, Circular 11/08/2022 no. 11*

## **Employer responsibilities during high temperatures**

Employers must comply with all health and safety regulations regarding dealing with high temperatures. This is particularly important for those running home delivery services where the workforce is largely made up of delivery cyclists. Employers should provide adequate training and information on the risks related to physical activity during prolonged exposure to sunlight and heat. Furthermore, the employer must provide employees with at least one litre of water for each hour exposed to the sun, as well as mineral salt supplements, protective sunscreen, and wet wipes.

*Court of Palermo (ord.) 18/08/2022*

## **Dismissal for breach of fundamental duties**

If disciplinary breaches alleged against an employee do not relate to conduct that is contrary to 'fundamental duties' or 'minimum ethical standards', any dismissal imposed on them is void if the disciplinary code has not been previously made available. The Supreme Court ruled that dismissal for "intentional slowness in carrying out entrusted tasks", after a series of previous warnings relating to "insufficient performance", is considered an infringement of company orders and *not* of fundamental duties or conduct contrary to minimum ethical standards. Employers should make employees aware of the company disciplinary code so that they fully understand the scope of company directives and the disciplinary consequences arising from their violation.

*Supreme Court 11/08/2022 no. 24722*

## **DISCLAIMER**

Watson Farley & Williams is a sector specialist international law firm with a focus on the energy, infrastructure and transport sectors. With offices in Athens, Bangkok, Dubai, Dusseldorf, Frankfurt, Hamburg, Hanoi, Hong Kong, London, Madrid, Milan, Munich, New York, Paris, Rome, Seoul, Singapore, Sydney and Tokyo our 700+ lawyers work as integrated teams to provide practical, commercially focussed advice to our clients around the world.

All references to 'Watson Farley & Williams', 'WFW' and 'the firm' in this document mean Watson Farley & Williams LLP and/or its affiliated entities. Any reference to a 'partner' means a member of Watson Farley & Williams LLP, or a member, partner, employee or consultant with equivalent standing and qualification in WFW Affiliated Entities. A list of members of Watson Farley & Williams LLP and their professional qualifications is open to inspection on request.

Watson Farley & Williams LLP is a limited liability partnership registered in England and Wales with registered number OC312252. It is authorised and regulated by the Solicitors Regulation Authority and its members are solicitors or registered foreign lawyers.

The information provided in this publication (the "Information") is for general and illustrative purposes only and it is not intended to provide advice whether that advice is financial, legal, accounting, tax or any other type of advice, and should not be relied upon in that regard. While every reasonable effort is made to ensure that the Information provided is accurate at the time of publication, no representation or warranty, express or implied, is made as to the accuracy, timeliness, completeness, validity or currency of the Information and WFW assume no responsibility to you or any third party for the consequences of any errors or omissions. To the maximum extent permitted by law, WFW shall not be liable for indirect or consequential loss or damage, including without limitation any loss or damage whatsoever arising from any use of this publication or the Information.

This publication constitutes attorney advertising.