

SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 72

15 SEPTEMBER 2022 • ARTICLE



WEEKLY ITALIAN LABOUR UPDATES

"Fragile employees and parents with kids under fourteen are entitled to do smart working until end of 2022."

Smart working extended to end of year for vulnerable employees and those with children under 14

An amendment to the law converting the Aiuti-bis decree (Decree-Law 115/2022) has extended the right to smart working for vulnerable employees and employees with children under the age of 14 until 31 December 2022. Employees who are immunosuppressed, suffering from serious illnesses, are undergoing life-saving therapies or are severely disabled fall into the category of vulnerable employees.

The right to smart working varies for vulnerable employees and those with children

under 14. Vulnerable employees can be assigned different tasks if their current duties are incompatible with smart working, whereas for parents, this is only the case in instances where there is nobody else who can look after the children *and* the task is not suited to smart working.

Law converting Decree-Law 115/2022, pending publication in the Official Journal

Dismissal legitimate for using trade union leave day for personal activities

The dismissal of an employee for using a day of trade union leave to carry out personal activities is lawful. Doing so constitutes a breach of privileges and can irreparably damage the trust between employer and employee. However, it does not count only as an unjustified absence and it is therefore irrelevant if the collective agreement equates the breach to an unjustified absence of five days. The crucial element is the employee's abuse of privileges.

Supreme Court (ord.) 06/09/2022 no. 26198

Refusing medical examination just cause for dismissal

The dismissal of an employee who, after being assigned new duties, refused to undergo a medical examination in protest at what they perceived as an alleged demotion, was justified. A medical examination is a legal obligation (Article 41, paragraph 2, letter d), of Legislative Decree 81/2008) both for the employer ordering a change of duties and the employee to whom they are assigned. The employee's refusal to undergo a medical examination did not constitute a legitimate refusal to work pursuant to Article 1460 of the Italian Civil Code, as she could have challenged its outcome and the alleged job demotion in court.

Supreme Court (ord.) 06/09/2022 no. 26199

INPS rules on contribution exemptions

The INPS has confirmed the rules regarding contribution exemptions for employers who hire employees from companies being managed by the special ministerial structure set up for businesses in crisis (art. 1, paragraph 852, Law 296/2006). The exemption is equal to 100% of the employer's contributions for a period of 36 months, with an annual ceiling of €6,000 (equating to €500 per month). Apprentices, executives and on-call employees are excluded from the exemption. The contribution relief presupposes that the employer is up to date with its contribution payments. The exemption also applies to the hiring of employees made redundant by companies in crisis in the previous six months and to the hiring of employees working in company branches transferred by companies in crisis.

INPS, Circular 07/09/2022 no. 99

TFR accrues even during so-called "CIG in deroga"

The Standard Salary Support Fund ("CIG in deroga") is an examples of employment suspension covered by Article 2120, paragraph 3, of the Italian Civil Code for which employees' TFR (severance pay) accrues entirely. The rule provides that, in the event of total or partial suspension of employment with wage supplementation, the basis for calculating the TFR is the full salary to which the employee would have been entitled if the employment relationship had not been suspended. The principle also applies if the suspension or reduction of employment occurs with access to CIG in deroga, since, even in such cases, TFR is calculated on the full remuneration that the employee would have received if they had continued their normal employment.

Supreme Court (ord.) 01/09/2022 no. 25847

Dismissal null and void if it results from a retaliatory transfer

In the event of an unlawful transfer, if the judge finds it is of a retaliatory nature, the subsequent dismissal of an employee who then refused to take up employment in their new place of work is null and void. The refusal to go to said new place of employment, which was the subject of the retaliatory transfer, is legitimate and their subsequent dismissal is unlawful. The employee must be reinstated in service and the employer ordered to pay all monthly salaries from the date of dismissal to the date of the re-establishment of the contractual relationship.

Supreme Court 07/09/2022 no. 26395

Latest INL notes on new parental leave and permits

Implementing Directive (EU) 2019/1158 on work-life balance for parents and caregivers, Legislative Decree No. 105 of 30 June 2022 was adopted and entered into force on 13 August 2022. By a note dated 6 September 2022, the National Labour Inspectorate clarified that the new rules also apply to public sector employees, with the main changes being:

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- new compulsory paternity leave of 10 working days (not divisible into hours) which can also be taken on a non-continuous basis between the two months preceding their child's presumed date of birth and the following five months. This leave is compulsory even in the event of the prenatal death of the child. In the case of multiple births, the duration of leave is increased to 20 working days. The employee must give notice to take leave at least five days before the due date and the corresponding allowance is 100% of salary;
- parental leave up to the child's 12th birthday is fixed at three non-transferable months for each parent for a total overall period of six months, to which a further period of leave of three months is added, transferable between the parents and taken alternatively, with an allowance equal to 30% of salary;
- the total duration of the right to parental leave for a lone parent, or in cases of sole custody, is increased from 10 to 11 months;
- parental leave periods are included in length of service and do not entail any reduction of holidays, rest and additional monthly payments, except for accessory emoluments related to actual presence in service, unless otherwise provided for in a collective agreement;
- the allowance available to parents, alternatively, for a period of up to three years of parental leave, taken to assist their severely disabled child is equal to 30% of salary. As an alternative to the extension, parents may request two hours paid daily leave from their respective employers until their child's third birthday;
- a cohabiting spouse of a severely disabled person is entitled to two years' special leave, within 30 days of making a request. A party to a civil partnership and a cohabiting partner is treated in the same way as the cohabiting spouse;
- the principle of a "single care giver" for helping a disabled person no longer applies. More than one person is now entitled to take the leave pursuant to Article 33, Law 104/1992, to care for a disabled person; and in the event of a spouse suffering from cancer or other serious illness (including civil unions and cohabiting partners), the employee has the opportunity to transition from full-time to part-time and will have priority over others in undertaking this change.

National Labour Inspectorate Note No. 9550 of 6 September 2022

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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