

SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 73

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WEEKLY ITALIAN LABOUR UPDATES

"The Italian Parliament backs down and allows the use of smart working without the need to stipulate a written agreement until end 2022."

New clarifications on Transparency Decree

The Ministry of Labour has provided further clarifications regarding the previous circular of the National Labour Inspectorate (10 August 2022, no. 4) on the information requirements introduced by Legislative Decree no. 104 of 27 June 2022 (the so-called Transparency Decree) on what constitutes transparent and predictable working conditions.

In particular, the Ministry specified that:

- an employer may limit itself to providing an employee with “basic information referring to individual institutions”, referring to collective bargaining or company documents for more detailed information;
- the information provided must be concrete and focus on specific aspects of the employment relationship;
- details on holidays and periods of leave are exclusively those with pay provided for by law and by collective bargaining;
- the obligation to provide information on remuneration refers to all remuneration that can be objectively determined, otherwise welfare and meal vouchers are subject to disclosure if approved by collective bargaining and company policy;
- information on working hours must include the conditions for shift changes and the modalities and limits for overtime work. Foreseeable working hours includes shift work, multi-period work and discontinuous work;
- the employer must inform the employee about the specific forms of social security and assistance provided for in any collective bargaining agreement relevant to their employment relationship, informing the employee, for example, of the possibility of joining supplementary company or sector-based social security funds;
- automated decision-making or monitoring systems, for the purposes of disclosure, are those tools capable of generating automated decisions, even if not fully automated. Examples include the use of ‘chatbots’ during interviews, automated profiling of candidates, screening of CVs, use of recognition software and psycho-aptitude tests. In addition, automated job and shift changes and the use of statistical analysis, data analytics or machine learning tools, neural networks and deep learning to manage various stages of employment relationships are covered;
- there is no obligation to provide information in the case of fully automated systems for recording incoming and outgoing attendance; and
- there is an obligation to provide information in cases of the use of automated systems, such as tablets, portable devices, GPS systems, facial recognition systems, rating and ranking systems, as well as the use of automated decision-making or monitoring systems integrated in the tools used by the employee to perform the work performance.

Ministry of Labour, Circular 20/09/2022 no. 19

Smart working without written agreement until end of 2022

Parliament takes a step back on re revising smart working regulations and, as an amendment to the previous rules, reintroduced the simplified form for establishing smart working. As of 1 September 2022, after the emergency pandemic phase had passed, Article 19 Law 81/2017, which requires an individual written agreement between parties in order to enter into smart working, came back into force. During the Senate’s revision of Decree “Aiuti-bis” (Decree-Law 115/2022), it was decided that the simplified form would be reintroduced until the end of 2022 meaning there would be no need for a written agreement until 31 December of this year.

Decree-Law 115/2022, revision by the Senate

Contribution exemption for mothers returning to work

A 50% contribution exemption for mothers returning from maternity leave is now available. This was clarified by the INPS, stating that the 50% exemption from social security contributions applies not only to those returning from compulsory maternity leave (Article 1, paragraph 137, Law 234/2021), but also to those returning from a period of optional absence (parental leave etc.), provided that the return to service occurs by 31 December 2022. The contribution exemption is valid for the current year and applies to employees in the private sector, including those in domestic service, apprentices, on call workers and supply of manpower. The contribution discount does not extend to employers.

INPS, Circular 19/09/2022 no. 102

Procedure against relocations tightened up

The Aiuti-ter decree-law, currently under approval, modifies the existing procedure against relocations (Law 234/2021, art. 1, paragraphs 224-236) aimed at companies with at least 250 employees that are not in financial 'crisis' and wish to reduce their workforce by at least 50 units due to the closing of a plant or a company department. The provision stipulated that redundancies for financial reasons and collective redundancies announced in the absence of notice of notification of the start of procedures against relocation or before the 90-day deadline are null and void. The 90-day deadline has been replaced by the provision that dismissals are null and void if announced before the completion of the procedure. The provision previously stipulated that an employer's plan to limit the employment and financial effects of a closure must be discussed with trade unions within a period of 30 days – this has been increased to 120 days. If, following the procedure, an employer does not sign an agreement with trade unions, the redundancy fee is increased fivefold. Finally, if the redundancies affects more than 40% of employees, the employer must return any state benefits received in the previous ten years.

Decree-Law Aiuti-ter (draft)

New Skills Fund restarts

The Minister of Labour has signed a measure allocating €1bn to the New Skills Fund for employee training and is now awaiting signature from the Ministry of Finance. Access to the fund presupposes the signing of a company agreement to reshape working hours for employee training, the scope of which is now restricted to the acquisition of digital and green skills. The fund will continue to cover 100% of social security and welfare contributions, while the cost of remuneration will be up to 60% of the trainee's hourly wage. However, if company agreements provide for a structural reduction in working time for the same wage, the financing of training will revert to 100%. Finally, the party submitting the application for access to the New Skills Fund to ANPAL may not also provide the training.

Measure by the Ministry of Labour and MEF for new financing of the New Skills Fund (draft)

National Collective Labour Agreement ("CCNL") required by parties even if it does not correspond to relevant sector

A collective agreement applicable to an employment relationship must be sought on the basis of the economic and legal provisions applied by the employer. In other words, an employment relationship is governed by the collective agreement adopted by the company. The contrary opinion, by which the application of a collective agreement is determined according to the activity actually exercised by an employer has no place in the Italian legal system. Therefore, an employee's claim to receive a status and salary based on the CCNL for activity in which their company operates must be rejected, given that the parties have applied a different collective agreement to the employment relationship.

Court of Cosenza, Judge Lo Feudo, 14/09/2022

Sick leave entitlement includes time off attributable to disability

The dismissal of a disabled employee for exceeding the maximum period of sick leave is lawful and it is irrelevant that their period of absence includes days of time off attributable to their disability. For the purpose of calculating the excess time that can be taken off, the distinction between employees with a disability and those without is irrelevant. A disabled employee is not considered a sick employee nor does disability equate to sickness. Therefore, all of a disabled person's sick days off are counted regardless of whether they are attributable to their disability or not.

Court of Lodi, Judge Giuppi, 12/09/2022 no. 19

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Timeline for disciplinary dismissals

The principle of timeliness for disciplinary charges should be considered in a relative and not absolute sense, as they must relate to the time required for investigation preparation, the size of the company and the complexity of its organisational structure. Faced with a due to the falsification of a medical certificate recognising 10 days of absence, a period of two months before initiating disciplinary proceedings was deemed appropriate, given the need to reliably ascertain the employee's responsibility and taking into account the size of the company. On these grounds, the legitimacy of the dismissal was confirmed.

Supreme Court 08/08/2022 no. 24452

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