SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 74

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> "If a transfer of business occurs within a bankruptcy, the trade union agreement can provide that not all the affected employees continue their employments with the purchaser."

The Aiuti-ter decree tightens process for collective transfers of employees

The Aiuti-ter Decree Law has tightened up the process for the collective transfers of employees (Law 234/2021, Art. 1, paragraphs 224-236), for companies with at least 250 employees that aren't in crisis but want to reduce their workforce by at least 50 employees due to the closure of a plant or company department. The process requires employers to notify local trade union organisations and relevant council members (RSU or RSA), local authorities, the MEF, the Ministry of Labour and ANPAL of their intention to close, in part or in full, the business and then, within the following 60 days, present a plan on how they will deal with the consequences of said closure. At this point, a consultation phase with trade union counterparts opens, the duration of which has been increased by the Aiuti-ter Decree from 30 days to 120 days. This is a major change as it means that a company, in the absence of a trade union agreement, will not be able to initiate the collective dismissal procedure until the final term of 120 days has expired. A further important change is the reintroduction of a 75-day term for redundancy procedures, which Law 234/2021 had previously reduced to 30 days. This is noteworthy as it means that a company will not be able to effectively announce collective redundancies until approximately eight months after the start of the entire process, considering the total duration of all stages (255 days). Finally, it is stipulated that in the absence of a trade union agreement, any redundancies contribution is raised fivefold and that, if the number of dismissals exceeds 40% of the total workforce, the company must return all state benefits received over the last 10 years.

Decree-Law No. 144/2022

Aiuti-Bis Decree converted into law

Law No. 142 of 21 September 2022, which converts (with amendments) Decree-Law No. 115/2022 (the so-called "Decreto Aiuti-bis"), was published in the Official Journal. In particular, the Conversion Law extended the following until 31 December 2022:

- simplified smart working, which allows agile employment relationships without an individual written agreement between the parties; and
- the right to work agilely for "vulnerable" employees and employees with children under the age of 14.

It was then confirmed, without amendment, that the cap for company welfare measures has increased to €600 for the 2022 tax period. This includes the value of goods sold and services rendered to employees as well as sums paid or reimbursed by employers to employees to pay for water, electricity, gas and domestic utilities which do not contribute to employee income. Finally, a change has been introduced to the pension cap which can be enforced to repay debts, with the amount now corresponding to twice the maximum monthly amount of social allowance, at a minimum of €1,000.
Law No. 142 of 21/09/2022

Company not liable for offence committed by health and safety officer

A company is not liable for any unintentional personal injury attributable to its delegated health and safety officer. A company would be liable if offence was committed by a senior figure in a managerial role, as provided for in Article 5(a) of Legislative Decree 231/2001. This rule was referred to in a recent case in the Supreme Court where a company was found not liable for the injuries caused – unintentionally – by its delegated health and safety officer.
Supreme Court, Criminal Section, 21/09/2022 no. 34943

Statute of limitations no longer applicable during employments

Following the reform of Article 18 of Law 300/1970 by Law 92/2012 (the so called "Fornero Law"), the statute of limitations for employment claims no longer accrues during the employment relationship. Under the current wording of Article 18 of Law 300/1970, reinstatement follows only in some cases, while in others the judge will only provide economic compensation to an unlawfully dismissed employee. As a result of the aforementioned reform, even employment relationships falling under Article 18 of Law 300/1970 may be affected and an employee may fear loss when challenging issues with their contract. For this reason, for all claims arising after the Fornero Law, the statute of limitations begins to run only upon termination of the employment relationship.
Court of Milan, 08/09/2022 no. 1990

Reinstatement following dismissal for exceeding sick leave entitlement applies to smaller companies

The reinstatement protection pursuant to Article 18, paragraph four, of Law 300/1970 also applies to companies that do not have the size requirements provided for by the Statute of Employees in cases when the rules concerning sick leave entitlement have been violated. If an employer dismisses an employee for exceeding the sick leave period due to a wrongful calculation of the days of absence has been ascertained, a judge can order the employee's reinstatement with compensation of up to 12 months' salary.
Supreme Court 16/09/2022 no. 27334

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