# SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 76

13 OCTOBER 2022 • ARTICLE

## WEEKLY ITALIAN LABOUR UPDATES

"The dismissal for exceeding the maximum sick leave does not require the employer to alert the employee about the impending deadline, unless the NCLA specifies to do so."

**Invalid company transfers and employee retirement**

If the transfer of a business unit has been declared unlawful for not meeting the conditions set forth in Article 2112 of the Italian Civil Code, the consensual termination of any employment relationship with a de facto transferee and the payment to said employee of an incentive to leave do not prevent the same employee from requesting payment of all outstanding salaries to the transferor company. The right to receive from the transferor any wages accrued in the interim period remains even if, in the meantime, the employee retired. This conclusion was reached because the rules on the incompatibility between the receipt of employment income and pension payments are not available to the parties of an employment relationship.

*Supreme Court 4/10/2022 no. 28824*

**Certified tender contracts require Revenue Agency to bring action before employment tribunals**

If a tender contract for the provision of services has been certified under the special procedure introduced by the Biagi Law (Legislative Decree 276/2003), the Revenue Agency cannot unilaterally requalify said contract as one that provides an irregular supply of manpower. The certification of a tender contract also requires the Revenue Agency to follow the special procedure (Article 80 of Legislative Decree 276/2003) on certified contracts, given that third parties in respect of whom the certification produce applies are also public authorities. Therefore, if it considers that it is contesting an irregular supply, the Revenue Agency must first appeal to an employment tribunal judge and challenge the validity of the contract there. Only if the employment judge recognises the contract as invalid will the Revenue Agency be entitled to challenge the company for irregular supply and request an adjustment of the taxation for VAT and IRAP.

*Tax Court of Second Instance of Emilia-Romagna, 03/10/2022 no. 1115*

**Interpretation of unclear clauses in collective agreements**

If unclear clauses are included in a collective agreement, the common will of the parties must be sought by determining the literal meaning of the expressions used by the contracting parties and the scope that inspires the contractual rules are to be interpreted. The two above parameters are not one hierarchically subordinated to another and they must be used jointly as to provide a common understanding of the rule. The literal meaning of the words must not be sought through an isolated interpretation of individual rules, but through a reading that embraces the entire text of the collective agreement and allows an inclusive interpretation to be reached, with same meaning to be attributed to the similar wording. Finally, the correct interpretation of unclear clauses cannot disregard the assessment of the conduct of the parties involved after the conclusion of a collective agreement.

*Supreme Court 30/09/2022 No. 28550*

**Validity of successive collective agreements**

Where collective agreements have been amended successively over time, any changes that are detrimental fto employees at the time of renewal are always valid and admissible, except for those that refer to acquired rights. The term “vested rights” refers to benefits that have accrued to employees prior to the signing of the new contract (e.g. salary increases under a previous collective agreement for activities performed prior to renewal etc.). Without prejudice to any vested rights, an employee may not claim that a more favourable treatment ensured under a terminated collective agreement is maintained notwithstanding the fact that the new collective agreement provides for less beneficial specified contractual rights. The criterion of permanence for more favourable rights applies in the relationship between a collective agreement and an individual agreement but does not apply to succeeding collective agreements.

*Supreme Court 30/09/2022 no. 28549*

**Payment of non-compete clauses in during employment relationships**

A non-compete clause may be paid during the course of an employment relationship and doing so does not affect its validity, as this is consistent with the requirements underlying the clause that remuneration increases in relation to the duration of employment. The provision of remuneration paid on a periodic basis during an employment relationship satisfies the interest of both parties, as any increase in said remuneration is determined by the length of the employment relationship and corresponding greater experience of the employee. A progressive increase in the remuneration of non-compete clause offsets and the greater difficulty an employee may encounter in relocating to sectors other than those prohibited in any agreement counterbalance to employer’s interest in preventing the employee from working for competitors following the termination of their employment relationship.

*Court of Appeal of Milan, 13/09/2022, Rel. Bertoli*

**Retaliatory motive entails nullity of dismissal only if exclusive**

The nullity of dismissal for an unlawful reason presupposes that the employee in question can prove that retaliatory intent was the exclusive and determining reason for their employer's decision to terminate their employment relationship. If there are other reasons which, as well as any unlawful motive, also influenced the employer's decision, such as a just cause or a justified reason for dismissal, the retaliatory factor, even if present, is not capable of determining a sanction of nullity and the consequent application of the protection regime, i.e. reinstatement in service and compensation for damages equal to the whole of the non-worked period. The burden of proof of the retaliatory nature of the dismissal falls entirely on the employee, but it may be proved by means of serious and precise presumptions.

*Supreme Court 07/09/2022 no. 26395*

**Viral infection contracted at work qualifies as professional illness**

Infections contracted at work, including Hepatitis C, are to be considered an illness related to the performance of the activity, thereby entitling employees to INAIL cover even if the location of the infectious event cannot be proven. A professional illness can be generated by both bacteria or viruses penetrating an employee's body and altering their anatomo-physiological balance. For contracting a virus to be considered an illness related to the performance of work activity, a causal relationship with the performance of work activity is required, which may, however, also emerge as a result of simple presumptions. For this purpose, it is irrelevant that a viral infection manifests itself after a certain period of time or that there was no specific infectious episode or contact in the workplace that led to the infection.

*Supreme Court (ord.) 19/09/2022 no. 29435*

**Settlement agreement valid also without signature**

A settlement agreement providing for the payment to an employee in "satisfaction of any and all claims, actual and potential" in exchange for the employee's waiver of the nullity of an apprenticeship contract and the illegitimacy of the subsequent dismissal, as well as any other claim related to the employment relationship, is valid and binding even if the employee has not signed the agreement. If all the parties have fulfilled their obligations according to the settlement agreement, as evidenced by an exchange of emails and/or messages on WhatsApp, this negates the need for a signature and confirms the validity of the agreement itself, including full waivers towards any possible claim for the benefit of the employer.

*Court of Avellino, Judge Luce, 08/09/2022*