

SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 79

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WEEKLY ITALIAN LABOUR UPDATES

"With the collective company agreement it is possible to customize the business reasons to use fixed term contracts."

Changing collective agreements

A collective agreement is considered an external source with respect to individual employment contracts and parties are free to amend applicable collective agreements, even if the agreement's provisions are considered worse than those in a previous agreement. The conditions in an agreement may legally be pejorative except for those relating to entitlements already accrued by employees such as remuneration for work already completed.

Supreme Court 21/10/2022 no. 31148

Altering vehicle tachograph can lead to imprisonment

Making alterations to a vehicle's tachograph to prevent its speed and active and inactive periods being recorded is a criminal offence. In a recent case before the criminal section of the Supreme Court, tachographs had been altered to allow a company's drivers to drive vehicles for a period of time exceeding the legal maximum without the mandatory rest period resulting in a greater risk of road accidents, thereby putting public safety at risk. In such cases, the employer is liable for the offence of damaging and removing accident prevention equipment (Article 437 of the Criminal Code), the penalty for which ranges from six months to five years' imprisonment.

Supreme Court (criminal section) 25/10/2022 no. 40187

Valid to dismiss employee who fails to communicate new employment whilst using CIGS

The dismissal of an employee who has failed to notify both their employer and INPS that they have started a new job whilst benefitting from the special salary support scheme "CIGS" is lawful. The obligation to make such a communication exists whenever a new role involves potentially remunerative activities, even if in practice the individual in question did not receive any payment. This is also the case for self-employed work. The obligation to communicate exists even if the time commitment guaranteed by the new job during the CIGS period is reduced. It is also irrelevant, whether the INPS had knowledge of the new role as a result of a report from the new employer, as the employee benefiting from CIGS has an obligation to provide information regardless.

Supreme Court (ord.) 21/10/2022 no. 31146

Collective dismissal procedures and final communications to trade unions

The final communication of a collective redundancy procedure (Article 4(9), Law 223/1991) where individual dismissals are communicated to employees at different times, cannot be limited to indicating the profiles of the employees dismissed at a specific juncture. The final communication must show the definitive list of all dismissed employees.

Supreme Court (ord.) 31/10/2022 no. 32114

All parties responsible for safety in intra-company tenders

In the case of intra-company tenders, the risk of 'interference' between the personnel of different companies operating in the same business environment must be managed correctly. The implementation of prevention and protection measures against the risk of work-related accidents involves all companies operating under the company contract and requires full cooperation between them. If safety measures are not implemented, all the companies involved may be sanctioned.

Supreme Court 12/10/2022 no. 38357

INPS clarifications on mandatory paternity leave

The INPS has provided operational clarifications on the new rules on parental leave, including compulsory paternity leave, introduced by Legislative Decree No. 105 of 30/06/2022. The new compulsory paternity leave (Art. 10), which replaces the previous regime of compulsory and optional leave for fathers, provides for 10 full days' leave in the period between two months before and five months after their child's birth. These compulsory leave days do not have to be taken contiguously. With multiple births, the number of leave days is doubled. The INPS has specified that all employees, including domestic servants and fixed-term agricultural employees, benefit from this leave. For these last two categories of workers however, entitlement to paternity leave presupposes that their employment relationship is in place when paternity leave is used. For all other employees, the leave may be granted even if their role has been terminated or suspended. Paternity leave may be taken at the same time as the mother's maternity leave.

INPS, Circular 27/10/2022 no. 122

Damages for psycho-physical exhaustion

The Court of Milan ruled that continuous daily working of 15 hours a day, seven days a week, falls under the definition of 'exhausting work' and requires compensation for psycho-physical damage. Such conduct from an employer constitutes a violation of Constitutional (Article 36 of the Constitution) and EU principles.

Court of Milan, Judge Tosoni, 08/08/2022

Unlawful to dismiss employees for absences due to illness near holiday and festival days

The disciplinary dismissal of an employee who is often absent from work due to illness in the days immediately preceding and following festivities, holidays and days off is unlawful. Such conduct is not indicative of behaviour contrary to the canons of fairness and good faith, since absences due to illness are to be framed under the special rules laid down by Article 2110 of the Civil Code, which prevail over the restrictive rules on individual dismissals. The only parameter to be considered for the dismissal of employees in relation to absences due to illness is that of exceeding of the maximum agreed period. In this context, the fact that absences due to illness occur close to holidays and other days off is totally irrelevant.

Court of Naples (ord.) 19/07/2022

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