

SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 82

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WEEKLY ITALIAN LABOUR UPDATES

"If the employer uses aptitude tests through electronic platforms, employees are entitled to receive any information on their use and scope."

Unlawful to make employee redundant without verifying professional requalification as an alternative option

The validity of redundancies triggered by a company restructuring presupposes not only verifying that affected employees could not be assigned to alternative tasks, but also whether they could not undergo professional training to requalify in a role still needed post-restructuring. In a case before the Court of Lecco, an employer had not demonstrated that it was impossible, nor financially unaffordable, for an employee made redundant to undergo retraining so their dismissal was deemed unlawful. The employee was entitled to reinstatement and full payment of the monthly salaries for the period they were out of work.

Court of Lecco 31/10/2022 no. 159

Collective redundancy selection criteria must be objective

In collective redundancy procedures, the selection criteria agreed upon with trade unions (as an alternative to those provided for by law) must be objective and cannot contain criteria determined at the employer's discretion. Therefore, a trade union agreement to select employees for redundancy based on their employer's assessment of them as either 'mediocre', 'sufficient', 'good' or 'excellent' is invalid.

Supreme Court 15/11/2022 no. 33623

Reinstatement required if repechage requirements not met

If an individual redundancy is held to be invalid for violating the requirement for repechage, the employee must, in addition to receiving compensation for damages as outlined in Art. 18, paragraph 4, Law 300/1970, also be reinstated in their role. The original wording of said law provided for reinstatement in cases with a "manifest absence" of any objective justification for dismissal, but the Constitutional Court, in ruling no. 125/2022, removed the reference to "manifest" absence from the provision. For this reason, the law deems dismissals unlawful if no evidence was provided as to why the employee in question could not be reassigned to a different role within the company.

Supreme Court (ord.) 11/11/2022 n.33341

Collective redundancies and subsequent transfer of undertaking

If the redundancies are made at the end of a collective redundancy procedure due to the definitive cessation of business activities of a company unit but one month later the unit is transferred via a rental to a successor, then the dismissals are unlawful and the employees continue their employment with the entering company. Employment relationships unlawfully terminated prior to the transfer of the company branch are deemed to be legally existing at the time the rental contract is entered into. It follows that, pursuant to Article 2112 of the Civil Code, dismissals are ineffective when the business continues thanks to the transfer of the company branch.

Supreme Court 14/11/2022 no. 33492

Decree Aiuti-quater published in Official Journal

The provisions of the Aiuti-quater Decree (Decree-Law No. 176 of 18/11/2022) that raise the limit of tax-free fringe benefits employers can grant employees for the 2022 tax year, ranging from €600 to €3,000 have been published in the Official Journal. Tax-free fringe benefits include benefits that companies grant to employees during said tax period in order to pay for electricity, gas and water utilities. Employers can assign said fringe benefits no later than 12 January 2023.

Decree-Law No. 176 of 18/11/2022

Sectors with high gender disparity identified

The Ministry of Labour and the Ministry of Economy and Finance ("MEF") have identified a list of sectors and professions with a high gender employment disparity in 2022 (the list published at www.lavoro.gov.it). This assessment impacts the contribution relief provided for hiring female employees who have not been in regular paid employment for at least six months to the identified sectors and professions. For 2023, the exemption will be equal to 50% of contribution payments and will apply for a maximum of 12 months in the case of fixed-term contracts, and up to a maximum of 18 months for open-ended contracts (including the conversion of fixed-term employment relationships into open-ended ones).

Ministry of Labour Decree 16/11/2022 No. 327

Contributions relief for companies benefiting from solidarity

The list of companies that used the CIGS allowance in the period ending 31 March 2022 has been published and can be found in Annex 1 of INPS Message No. 4135/2022. The listed companies are eligible for a contribution relief of 35% of the social security and welfare contributions of employees whose working hours were reduced by more than 20% as a result of solidarity (Article 6, paragraphs 4 and 4-bis, Decree-Law 510/1996). Accessing said relief presupposes that the beneficiary company has not enjoyed any other form of contributions relief and, in addition, that it is up-to-date on its contribution payments and has complied with the payment of the wages set forth by the applicable collective agreements.

INPS, Message 16/11/2022 no. 4135

INPS clarifications on €150 one-off payments

In the case of an employee who was employed by more than one company in November 2022, their request for the €150 one-off bonus provided for by Article 18 of Decree-Law 144/2022 can be made to either of their employers at their discretion. The amount for calculating whether or not the one-off bonus is due should not be calculated by totalling the various employment relationships, but on the taxable social security paid by the employer that the employee submits the request for payment was made to. The taxable income for the month of November must not exceed €1,538 and no 13th month payment is included.

INPS, Message 17/11/2022 no. 4159

Differing employment relationships can co-exist in same company between same parties

It is possible that two distinct employment relationships between the same employee and employer can occur within the same company (security guard and sales manager, for example). In order for the court to declare the coexistence of two such employment relationships, the actual manner in which the two services are carried out, the constraints in terms of working hours and data on the employee's official position(s) within the company and their managers/supervisors are required.

Court of Nocera Inferiore 05/10/2022 no. 1423

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