

## SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 84

9 DECEMBER 2022 • ARTICLE



### WEEKLY ITALIAN LABOUR UPDATES

"The company agreement facilitates the use of flexible working hours outside the more strict schemes of the national contract."

#### **Reinstatement for unsubstantiated dismissals**

If the business reasons underlying a dismissal are unsubstantiated, a judge must apply the remedy for employees falling within the scope of Article 18 of Law 300/1970 of reinstatement in the workplace. There is no longer any latitude to apply an order for economic protection (i.e. an indemnity of between 12-24 months' salary pursuant to Article 18, paragraph 5, Law 300/1970) in lieu of reinstatement. In light of most recent decisions of the Constitutional Court, if a judge ascertains that the 'fact' justifying a dismissal does not exist, whether it is unfounded, or a lack of proof, reinstatement must follow.

*Supreme Court 02/12/2022 no. 35496*

#### **Labour inspectors delegated to investigate harassment, negligence and threats at work**

The National Labour Inspectorate and the General Prosecutor's Office of the Supreme Court have reached an agreement for cooperation between prosecutors' offices and territorial labour inspectorates when investigating offences related to employment relations. In particular, the public prosecutor's offices can delegate investigations into personal injuries caused by harassment, violence and threats in the workplace to territorial labour inspectors, as well as investigations into injuries caused by negligence. Labour inspectors, as part of their investigative activities, have the power to suspend, in whole or in part, a company's activities pursuant to Article 14 of Legislative Decree No. 81/2008. The General Prosecutor's Office at the Supreme Court and the National Labour Inspectorate have identified the scope and methods required for said investigations.

*National Labour Inspectorate, Note 02/12/2022 No. 474*

#### **Refusing meetings on company premises not anti-trade union conduct if non-authorised external participants involved**

An employer may legitimately refuse to grant company premises for trade union meetings if they require the participation of individuals who are not authorised to do so under Article 20 of the Workers' Statute and the CCNL regulations. In a case before the Court of Venice it was deemed that an employer who allowed their employees to take part in a trade union meeting during working hours *outside* the company premises, but refused to allow the meeting to take place on company premises was not open to censure since this did not harm the trade union's interests.

*Court of Venice, Judge Menegazzo, 21/11/2022*

## **Exemption from CIGS additional contributions for sectors most affected by Russian invasion of Ukraine**

The European Union confirmed that the exemption from payment of additional contributions for salary support scheme (Articles 5, 29 and 33 of Legislative Decree 148/2015) for employers in the steel, lumber, ceramic, automotive and agriculture/food sectors applies throughout 2023. Being able to claim the exemption is dependent on the suspension or reduction of work activity between 22 March and 31 December 2022 resulting from the impact of the Russian invasion of Ukraine. The sectors for which the exemption is provided are those most affected by this crisis. Any sum paid by an employer as an additional contribution prior to this decision will be reimbursed by the INPS.

*European Union Commission, Decision 24/11/2022 no. 8662*

## **Recognition of financial contribution for employees on leave whilst seeking political office**

The INPS has changed the procedures for requesting recognition of financial contributions during periods of leave for political or trade union offices. A single digital access point has been set up for employees in the private and public sectors. Telematic applications will continue to be submitted through the usual channels (INPS website, the multi-channel contact centre, patronages etc.). Interested employees must submit their application by accessing a specific section for notional credits on the “Performance and Services” portal. Applicant employees are required to check their social security position on the portal and to confirm the data therein.

*INPS, Circular 28/11/2022 no. 129*

## **“Generational turnover” possible without full retirement**

The “generational turnover” policy, which allows for the retirement of older employees when simultaneously hiring an employee under 35 for a minimum of three years, can be used even if the employee close to retirement does not immediately leave their job. Article 26, paragraph 9, letter c-bis, of Legislative Decree 148/2015 allows the Bilateral Solidarity Fund to pay social security contributions to employees who are no more than 36 months away from accruing an old age or early retirement pensions with the hiring of an employee under 35. These costs are entirely borne by the employer, who must pay the Bilateral Fund the required sum. The Ministry of Labour has specified that the older employee does not have to terminate their employment relationship immediately but can continue to work in the company with a maximum reduction of 50% of working hours in order to transfer their professional skills to the newly hired employee.

*Ministry of Labour, Response to question time 29/11/2022*

## **Burden of proof for damage to health from overwork on employee**

It is an employee’s responsibility to prove that they have been subjected to an unsustainable workload as a result of their employer’s failure to organise shifts and workloads. They also bear the burden of proof that said unsustainable workload caused damage to their health when claiming compensation. Employers are liable if they can prove that the workloads and schedules were consistent with the guidelines for a safe working environment.

*Supreme Court (ord.) 28/11/2022 no. 34968*

## KEY CONTACTS



**GIUSEPPE BULGARINI  
D'ELCI**

PARTNER • MILAN

T: +39 02 721 7071  
M: +39 347 26 86 664

[gbulgarini@wfw.com](mailto:gbulgarini@wfw.com)



**ROBERTA CRISTALDI**

COUNSEL • MILAN

T: +39 02 721 7071  
M: +39 344 0506106

[rcristaldi@wfw.com](mailto:rcristaldi@wfw.com)

### DISCLAIMER

Watson Farley & Williams is a sector specialist international law firm with a focus on the energy, infrastructure and transport sectors. With offices in Athens, Bangkok, Dubai, Dusseldorf, Frankfurt, Hamburg, Hanoi, Hong Kong, London, Madrid, Milan, Munich, New York, Paris, Rome, Seoul, Singapore, Sydney and Tokyo our 700+ lawyers work as integrated teams to provide practical, commercially focussed advice to our clients around the world.

All references to 'Watson Farley & Williams', 'WFW' and 'the firm' in this document mean Watson Farley & Williams LLP and/or its affiliated entities. Any reference to a 'partner' means a member of Watson Farley & Williams LLP, or a member, partner, employee or consultant with equivalent standing and qualification in WFW Affiliated Entities. A list of members of Watson Farley & Williams LLP and their professional qualifications is open to inspection on request.

Watson Farley & Williams LLP is a limited liability partnership registered in England and Wales with registered number OC312252. It is authorised and regulated by the Solicitors Regulation Authority and its members are solicitors or registered foreign lawyers.

The information provided in this publication (the "Information") is for general and illustrative purposes only and it is not intended to provide advice whether that advice is financial, legal, accounting, tax or any other type of advice, and should not be relied upon in that regard. While every reasonable effort is made to ensure that the Information provided is accurate at the time of publication, no representation or warranty, express or implied, is made as to the accuracy, timeliness, completeness, validity or currency of the Information and WFW assume no responsibility to you or any third party for the consequences of any errors or omissions. To the maximum extent permitted by law, WFW shall not be liable for indirect or consequential loss or damage, including without limitation any loss or damage whatsoever arising from any use of this publication or the Information.

This publication constitutes attorney advertising.