

SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 85

16 DECEMBER 2022 • ARTICLE



WEEKLY ITALIAN LABOUR UPDATES

"If indicated in a company agreement, variable remuneration can be connected to waste reduction (including energy costs)."

New online formats for mass communication of smart working relationships available

The new method of communication for informing the Ministry of Labour on mass smart working arrangements have been published. The new procedure can be used as of Thursday 15 December 2022 and will be binding for all companies undertaking agile work from 1 January 2023. The new procedure requires processing and sending an Excel file indicating which of company's employment relationships benefit from smart working. This new format contains special columns to indicate the type of employment contract (fixed-term, open-ended, apprenticeship, full-time, part-time etc.), start date, the type of smart working agreement (fixed-term or open-ended)

and the date it was signed. It is no longer necessary to transmit each individual smart working agreement, being now sufficient to fill in the column with the relevant data.

Ministry of Labour, 09/12/2022

New clarifications for accessing the New Skills Fund

The Extraordinary Commissioner of ANPAL has supplemented the provisions for accessing the New Skills Fund set out in Notice no. 320 of 10/11/2022. Firstly, an employer may opt to carry out training within the first 110 days of an application's approval and then provide the relevant reports in the following 40 days. This is in addition to the previous regulation, according to which training activities and reporting must be carried out and completed within 150 days from the date an application was approved. Secondly, employers must use the Interprofessional Fund, even if the coverage of costs is partial, provided that all training, including that not financed by the fund, is carried out according to its rules. Employers that do not have access to interprofessional funds may access the New Skills Fund through third-party training providers.

ANPAL, Extraordinary Commissioner Decree 12/12/2022

Sending trade union communications via company emails permitted

The use of e-mail to transmit trade union communications to employees cannot be prevented by an employer, unless doing so during work hours has a significant adverse effect on the normal conduct of company business. Using a company email for such purposes is all the more legitimate if the company has not created dedicated digital channels for trade union communications. On the basis of these principles, a disciplinary sanction imposed on a member of the RSU trade union for having sent union related communications to the company emails of colleagues during working hours was declared illegitimate.

Supreme Court 05/12/2022 no. 35643

Definition of “mobbing” at work

Not every harassing action suffered by an employee at work can be classed as “mobbing”. Mobbing is considered a case of progressive harassment defined by four conditions that the Supreme Court recently clarified. The first requirement is a series of upsetting behaviour and actions which are systematically and repeatedly carried out by an employer or other employees. The second requirement is a persecutory intent in said behaviour and actions to marginalise or exclude the victim. The third and fourth requirements involve negative changes to the victim’s mental and/or physical wellbeing and a link between the damage to wellbeing and the aggressor’s persecutory behaviour. Persecutory intent can be established even if the actions against the victim are in themselves legitimate (e.g. change of duties, disciplinary actions, transfer of location, change of shifts, etc.), but the overall assessment indicates a systemic intent to marginalise and/or exclude the victim.

Supreme Court (ord.) 30/11/2022 no. 35235

Immediate action not required in economic dismissals

Immediate action applies to disciplinary dismissals since there is a need to ensure an employee can fully exercise their defence rights but it does not extend to dismissals for objective justifications. In such cases, productivity, financial and organisational reasons must form the basis of an employer’s termination and timeliness is not a requirement. In this context, the dismissal of a caretaker of a building under reconstruction motivated by an opportunity to streamline resources and costs was deemed legitimate.

Supreme Court 14/11/2022 no. 33477

Conditions for refusing access to company premises for trade union meetings

An employer can refuse to grant access to company premises to hold a trade union meeting during working hours if the request is made by an RSU representative who is not affiliated with a trade union signatory of the company’s collective agreements pursuant to Article 19 of Law 300/1970, or who has not actively participated in the negotiation of at least one of the aforementioned collective agreements. The right to conduct paid meetings applies not only to the RSU as a whole, but also to its individual members. With this in mind, an employer who denied a paid meeting to a member of the RSU who was not affiliated with any of the trade union signatories of the company’s collective agreements and had not actively participated in relative negotiations is exempt from censure.

Supreme Court 10/11/2022 no. 33240

KEY CONTACTS



**GIUSEPPE BULGARINI
D'ELCI**

PARTNER • MILAN

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

gbulgarini@wfw.com



ROBERTA CRISTALDI
COUNSEL • MILAN

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

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.