SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 86

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WEEKLY ITALIAN LABOUR UPDATES

"Smart working and four days' work per week without reduction in salary allow to face energetic costs increase."

Mass collection of employees' email metadata unlawful

The mass collection and conservation of employee's email metadata is not necessary to monitor that they are properly performing their roles and doing so could be deemed to be indirectly attempting to control their performance. If that is the case, the provisions set forth in Article four of the Workers' Statute apply, meaning that it is not sufficient that business safety concerns can justify collecting said metadata, since it is also necessary to follow the Workers' Stature procedure requiring the signature of a trade union agreement or authorisation from the Labour Inspectorate). Therefore, said activity is unlawful.

Privacy Authority, Press Release 19/12/2022

Equal treatment for temporary staff in employment contracts

In order for a provision in a collective agreement which grants temporary agency workers a lower salary than a company's own employees engaged in the same task, not to violate the principle of equal treatment all of its other provisions must ensure appropriate compensation and equal treatment is provided for said temporary agency workers. Article 5 of EU Directive 2008/104 establishes the principle of equal treatment for temporary agency workers, but this does not prevent collective agreements in a Member State from assigning them a lower salary than employees directly hired by the employer. This presupposes however that the collective agreement has other provisions according to which temporary agency workers are compensated for this discrepancy in salary in other areas (more holidays, paid overtime, longer rest periods etc.), so that equal treatment of all workers in terms of benefits and remuneration overall is assumed.

Court of Justice of the European Union, 15/12/2022 (Case C-311/21)

Unlawful to dismiss employee for disruption caused by sick leave

An employer cannot lawfully dismiss an employee for objective reasons whilst they are on sick leave, even if this is justified by disruption due to their absence. The special provisions set forth in Article 2110 of the Civil Code, according to which employees have the right to remain in employment whilst on sick leave up to the maximum time limit agreed in their company's collective agreements, covers such instances. Therefore, in such cases, employers cannot dismiss employees for productivity or organisational reasons until the final term of absence for sick leave has expired. Said provision also applies when a dismissal is based on poor performance and disruption caused by the absence from work of an employee on sick leave.

Supreme Court 12/12/2022 No. 36188

Bureaucracy reduced to access Air Transport Solidarity Fund benefits

Land-based employees of air transport and airport companies may continue to access the supplementary benefits of the Air Transport Solidarity Fund (FSTA) without having to submit an 'SR85' form. This exemption from submitting takes effect retroactively from 1 January 2022 and also for applications already submitted. The payment of supplementary benefits also no longer requires prior assessment of an "SR85" form. The obligation to submit the form in order to access the funds benefits remains in force however for seafaring employees. Finally, the obligation to submit the 'SR83' form remains in force for all employees, both land-based and seafaring, in cases of re-employment abroad that are protected by the supplementary benefits guaranteed by the FSTA.

INPS, Message 14/12/2022 no. 4498

'Info Cig' service now available to companies

The 'Info Cig' service on the INPS website, whereby employees can keep up to date on the progress of their salary support integration application for direct payment from the Social Security Institute, is now also accessible to employers and their intermediaries. The channel allows any concerns identified by the INPS in a application to be resolved by an online 'chat'. The service is available on the employer's side to a company owners, legal representatives and external consultants.

INPS, Message 14/12/2022 no. 4497

Employers criminally liable for delaying calling for medical assistance for workplace accidents

An employer who fails to immediately notify the health authorities following a workplace accident resulting in an injury to an employee is criminally liable for failure to render assistance, even if other persons were present at the scene. Said liability is considered breach of duty of care as per Article 593, paragraph 2 of the Italian Criminal Code, in which a person who fails to immediately notify the relevant authorities of 'a person who is injured or otherwise in danger' is liable to imprisonment of up to one year or a fine of up to €2,500. An employer's liability for failure to provide assistance falls within the mandatory duties of social solidarity laid down in Article 2 of the Constitution, which require citizens to provide direct assistance to any person in a state of presumed or ascertainable danger.

Supreme Court, Criminal section, 14/12/2022 no. 47322

EU Whistleblowing Directive

The Italian Council of Ministers has approved the decree (which now has to be approved by the Parliament) transposing into Italian law EU Directive 2019/1937 of 23 October 2019 (the so-called "Whistleblowing Directive" or "Directive") which mandates a common framework for both the public and private sector to protect whistleblowers who report threats or harm to the public interest they find out during the course of their professional activities. The new decree transposes into Italian law only violations of EU regulations that cover those sectors specifically mentioned in the Directive, including public procurement, financial services, product and transportation safety, environment, food, public health, privacy, IT systems security, and competition. Among the minimum new standards of protection, we highlight: (i) an obligation of confidentiality regarding the identity of the whistleblower, the persons involved and the person reported on; (ii) the introduction of an illustrative list of retaliatory cases covered by the Directive; (iii) the provision of support measures for whistleblower, such as access to legal aid and the possibility of receiving information, assistance and advice free of charge.

Press release, Council of Ministers, 9/12/2022, No. 9

Collective redundancies across group of companies

When companies within the same group regularly use the same employees when conducting business, as well as sharing other close connections such as having the same directors and integrated technical, financial and production structures, all their employment relations are deemed to belong to the group as a whole. It therefore follows that, in the event that one of the group's companies begins a collective redundancy procedure following a decision to terminate its business activities, all employees employed across the group must be taken into consideration when determining the criteria for redundancy. Any redundancies made without doing so are considered void and the employees in question must be reinstated in roles within other companies within the group upon the closure of the closure of the company that formally employed them.

Judge Ottoni, (ord.) 05/12/2022

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