

## SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 92

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### WEEKLY ITALIAN LABOUR UPDATES

"With collective  
company agreements it  
is possible to adopt a  
flexible working time."

#### **Investigations against trade-union delegate discriminatory**

In a recent Supreme Court case the dismissal of a work council member without colleagues performing a similar role also being considered for dismissal, was deemed discriminatory and the individual entitled to reinstatement. The employee's working environment involved major trade union conflicts and the fact that investigations, which pertained to contractual issues involving numerous employees, were conducted only against said employee as a trade union delegate was deemed

confirming the discrimination.

*Supreme Court 27/01/2023 No. 2606*

#### **Limits to salary and social security contribution refunds**

The refunding by social security bodies of excess remuneration and social security contribution payments to individuals is lawful but must be made in a way that protects the interests of the recipient. The starting point is Article 2033 of the Civil Code, pursuant to which an individual who has made an excess payment is entitled to recover what they have paid. The Constitutional Court confirmed the legitimacy of this rule and set certain limits within which, in order to protect the recipients of excess payments, the refunding of excess sums paid towards salary and social security contributions covers: (i) the creditor's duty to pay back the amount in instalments; (ii) the temporary write-off of credit in certain instances based on personal matters relating to the debtor; and (iii) the recipient's access to compensation protection against the relevant public body in the presence of the latter's pre-contractual liability.

*Constitutional Court 27/01/2023 no. 8*

## **Privacy Authority comments on Transparency Decree**

The Privacy Authority has issued specific clarifications on Legislative Decree No. 104/2022 pertaining to transparent working conditions. The Authority highlighted that, given the new compulsory information required in employment contracts, employers must pay particular attention to the new rules covering employees' personal data. It is now mandatory to adhere to the principles of lawfulness, fairness and transparency provided for by EU Regulation No. 2016/679 ("GDPR"). The Privacy Authority also focussed on the use of certain automated systems outlined in Article 1-bis of Legislative Decree No. 152/1997 (introduced by Article 4 of Legislative Decree No. 104/2022), confirming that the wording of this legal provision was unclear and generic.

*Privacy Authority, Circular 25/01/2023*

## **Taxation of employee incentive plans**

The Italian Revenue Agency ("Agenzia delle Entrate") has clarified that, regarding employee incentive plans involving buying shares for the purposes of determining the taxation of employee income, the normal value of the shares granted (pursuant to Article 9 of TUIR) should be determined based on the date they were bought. The Agenzia delle Entrate made this ruling in a case where two employees had exercised their option, following the listing on the stock exchange of the shares included in the employee incentive plan (a so-called "virtual share incentive plan") of which they were part. The listed company decided to operate a "pay-out" for the option exercised by the employees by transferring to them a portion of shares, rather than a direct payment of a sum of money. The Agenzia delle Entrate determined that, in this case, the normal value of the shares granted be determined for tax purposes on the date on which the physical transfer of the shares took place.

*Revenue Agency, Answer to question 26/01/2023 no. 168*

## **Freelance or subordinate employment**

Even if the day-to-day performance of an employee's role does not involve subordination to their employer's power of direction and control, this does not mean that their employment relationship is not of a subordinate nature. Other circumstances common to employment relationships may amount to subordination and could lead a judge to view a technically freelance role as subordinate employment. These circumstances include continuity of service, observance of a fixed working time and payment of a fixed monthly fee.

*Supreme Court (ord.) 16/01/2023 no. 1095*

## **Small businesses also suspended in cases of safety measure violations**

Small businesses are also subjected to suspension in cases of severe violations of workplace health and safety regulations. In particular, suspension will result when it proved that a company didn't carry out risk assessments (DVRs) and or appoint an employee to be responsible for protection and accident prevention protocols (RSPPs). Suspension also applies to companies employing only one 'irregular' worker as well as in cases said worker *should* also have been classified as a subordinate employee.

*INPS, Note 24/01/2023 No. 162*

## Indemnity in lieu of notice not included in severance pay

Indemnity in lieu of a notice period must not be included when calculating severance pay ("TFR"). Article 2120 of the Civil Code specifies that all additional amounts paid must be counted in the TFR. Due to this provision, the Supreme Court clarified that, if an employee is prevented from carrying out their usual work during their notice period, the employment relationship terminates immediately and the payment of any relevant indemnity is not connected to said working time. The Supreme Court thereby confirmed the prevailing case law according to which a notice period that was not worked should not be factored into remuneration compensation such as 13th and 14th month salaries, holiday leave and TFR.

*Supreme Court 19/01/2023 No. 1581*

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