

SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 93

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WEEKLY ITALIAN LABOUR UPDATES

"The measures aimed to balance life and work are crucial for the gender equality certificate."

Doctors for smart working employees

A doctor separate from those allocated to each workplace can be appointed to attend to 'smart-working' employees. For large companies with multiple premises and thus several doctors, one must be nominated as coordinator for all healthcare matters as provided for by Article 39, par. 6, of Legislative Decree No. 81/2008 (Consolidated Safety Act). The doctor appointed to supervise smart working employees assumes all the obligations and responsibilities provided for in the Consolidated Workplace Safety Act.

Ministry of Labour, Answer to question 01/02/2023 no. 1

2023 Taxable salary for social security and welfare contributions

The INPS has issued instructions for determining taxable payroll for 2023, specifying that the criteria to be used as the basis for calculating social security and welfare contributions are those included in national collective labour agreements (NCLAs) agreed with leading trade unions. Taxable income is then adjusted to be in line with the automatic pension equalisation process calculated annually by ISTAT. Operationally, employers must adjust payback values on which contributions due are calculated if they are lower than the set daily and monthly minimum. For 2023, the minimum daily remuneration is €53.95.

INPS, Circular 01/02/2023 no. 11

INPS update on life expectancy forecast for pensions

The INPS has updated its procedures for calculating pensions based on the latest life expectancy forecasts. Previously, to access both early retirement and old age pension before 2027, 43 years' paid contributions were required. This has now been adjusted to 42 years and 11 months.

INPS, Message 31/01/2023 no. 446

15-employee minimum requirement to begin collective redundancy proceedings

There is a 15-employee minimum requirement for companies that wish to initiate collective redundancy proceedings and dismiss more than four employees within a period of 120 days as according to Articles 4 and 24 of Law no. 223/191. This requirement applies to the entire company and not just individual offices or production units.

Supreme Court (ord.) 23/01/2023 no. 1965

Unlawful dismissal for poor performance cannot depend on previous infractions

Dismissal for poor performance is determined objectively by performance below a required average and requires subjectively that said below average performance equate to punishable conduct on the part of the employee. Poor performance cannot therefore be inferred from an employee's disciplinary record as previous precautionary infractions are deemed to have been addressed once communicated to them. Poor performance is linked to an employee's negligent conduct and has separate disciplinary implications. The argument that multiple disciplinary actions against an employee are indicative of poor performance punishable by dismissal must therefore be rejected, as this violates the principle of double jeopardy (i.e. one cannot be tried for the same offense twice).

Supreme Court (ord.) 19/01/2023 no. 1584

Only net excess pay can be reclaimed by employer from employee

If an employer wrongly pays its employees more than they are due, only the net excess remuneration paid can be reclaimed. They are not able to reclaim any withheld tax as this was never paid to the employees, which must be negotiated separately with the tax authorities. The same principle applied in a case in which a judgment that required an employer to pay certain sums to the employee was overturned.

Supreme Court (ord.) 23/01/2023 no. 1963

Day's leave taken to assist disabled relative need not be spent exclusively on said task

Taking a day's leave pursuant to Article 33 of Law no. 104/1992 to assist a seriously disabled family member for two-to-three hours a day and then spending the rest of the day on unrelated matters is not unlawful. There is no requirement that the whole of such a day's leave must be spent exclusively on caring for the disabled family member. The Court of Appeal in Rome found that two/three hours of daily assistance were sufficient to legitimise their absence, meaning the disciplinary dismissal imposed on the employee for unlawful use of leave pursuant to Article 33 of Law no. 104/1992 was invalid.

Court of Appeal Rome, Judge Parolari, 13/09/2022

Employers must be neutral in internal intra-trade union disputes

In internal disputes between the representatives of different trade unions within a company, the employer must take a neutral stance and only intervene if doing so is necessary to protect the safety of individuals or the integrity of the company. In particular, the employer is precluded from taking disciplinary action to manage such disputes. Using this principle, the Supreme Court confirmed the unlawfulness of a disciplinary sanction applied to an employee who had accused colleagues and trade union representatives of being responsible for the suicide of another employee, considering that the employee's conduct fell within the scope of trade union matters and the exercise of the right to criticism.

Supreme Court (ord.) 27/01/2023, no. 2520

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