

SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 94

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WEEKLY ITALIAN LABOUR UPDATES

"Employers can allow employees to opt for company welfare measures instead of variable remuneration."

Constitutional Court confirms legality of vaccination requirements for healthcare employees

The Constitutional Court has confirmed the legality of the emergency laws requiring mandatory Covid-19 vaccinations for healthcare employees, including the penalties for those who refused to be vaccinated. In balancing the conflicting rights of the individual with those of the community in preventing the spread of infectious diseases, the importance to the latter of vaccinating healthcare workers in order to protect those who come into contact with them was highlighted. The Constitutional

Court also rejected the use of swab tests as an alternative to vaccination.

Constitutional Court, 09/02/2023 no. 14 and 15

Collective dismissals can be limited to single production unit

A collective dismissal procedure can be limited to employees within a single production unit provided that the opening communication to trade unions indicates: (i) the reasons that led the employer to limit the dismissals to employees of that unit; and (ii) the reasons why the redundant employees cannot be transferred to other production units. Without prejudice to the general rule that the selection of the employees to be made redundant must cover the entire company (Article 5 of Law no. 223/1991), redundancies may be restricted to a specific department or company site though only if there are objective technical and production reasons for doing so which are clearly explained in the notice initiating the procedure.

Supreme Court 03/02/2023 no. 3437

Reassigning employees to more junior roles only legal if directly related to organizational changes

Article 2103 of the Civil Code, which includes amendments introduced in the Jobs Act reform, allows companies to assign employees to a role more junior than their existing one provided this is due to organisational structural changes directly impacting the specific roles of said employees. Based on this principle, the Supreme Court held that the reassignment of a team leader to call centre operator was unlawful as the company had not demonstrated this change in role was due to a reorganisation directly impacting said employee's existing role.

Supreme Court (ord.) 02/02/2023 no. 3131

Ministerial clarification on “generational turnover”

The Ministry of Labour has confirmed that, amongst various optional benefits available to companies, bilateral solidarity funds cover the so-called “generational turnover” instrument, which allows employees to retire early if they would meet the relevant age and/or pension requirements within the next three years providing that they are replaced by someone no older than 35 for a period of no less than three years. The ministry also provided clarifications on managing generational turnover, specifying that the mutually-agreed termination or resignation of an employee close to retirement must be matched by the hiring of a young employee. Recruitment, including for apprenticeships, must be via an open-ended employment contract. Generational turnover also includes changing the contract of an employee close to retirement from full to a part-time whilst simultaneously hiring a younger employee on a part-time basis.

Ministry of Labour, Circular 17/01/2023 no. 1

Dismissal for exceeding maximum period of sick leave if severely disabled null and void

The Court of Appeal of Naples deemed the dismissal of an employee with multiple sclerosis who exceeded their maximum sick leave allowance null and void on the basis that having a severe disability does not fall under the NCLA rules regarding sick leave. The court deemed the dismissal indirect discrimination under both domestic law (specifically Article 2 of Legislative Decree 216/2003) and European law (EU Directive 2000/78). The employee in question was awarded compensation for all money lost from the date of their dismissal as well as reinstatement in their role. The declaration of nullity implies the entitlement of the employee to the payment of all remuneration from the date of dismissal to the reinstatement.

Court of Appeal Naples 17/01/2023 no. 168

Entitlement to Naspi benefits when role terminated during judicial liquidation procedures

The INPS has clarified that, without prejudice to the key principle that access to Naspi unemployment indemnities presupposes that the termination of the employment relationship occurred involuntarily, there are other instances where employees are entitled to Naspi benefits under the Business Crisis and Insolvency Code (Article 189). These include: (i) when an employee resigns during the period between the judicial declaration of the compulsory winding up of a company and the news being communicated to employees; (ii) a liquidator’s termination of employment relationships; and (iii) the termination of the employment relationship (which occurs if a liquidation trustee does not communicate a takeover within four months from the initiation of a compulsory liquidation procedure). In these three cases, the INPS has a 68-day time limit for filing an application to access Naspi.

INPS, Circular 10/02/2022 no. 21

Dismissal procedure for executives

Given that the rule limiting dismissals under Law no. 604/1966 does not apply to executives, justifications for the dismissal of an executive are not the same as those for other types of employees (e.g. middle managers etc.). In this context, a dismissal for objective reasons supported by the need to eliminate an executive’s role during a corporate reorganisation is justified, provided that there are no discriminatory elements involved in the dismissal.

Supreme Court 23/01/2023 no. 1960

Time limits on company collective agreements

If a company's collective agreement does not have a predetermined time limit, it is not binding on the contracting parties. Collective agreements must take into account changing social and economic realities and, for this reason, have historically had relative short time frames. It must, therefore, be held that, in the absence of conventional expiry terms, the termination of one of the parties to an agreement constitutes a valid ordinary cause for the termination of a company collective agreement. Following termination, employees retain the rights acquired under the collective agreement but can no longer claim its application going forward.

Cass. 17/01/2023 no. 1289

New 2023 social safety net benefits announced

The monthly maximums for wage subsidies (Cigo, Cigs, etc.), unemployment indemnities (Naspi and Dis-Coll) and so-called "ticket dismissals" for 2023 have been announced. Starting with salary support benefits, in cases of reduction or suspension of working hours, the maximum gross amount is set at €1,321.53, equal to a net amount of €1,244.36. Increases of 20% are provided for construction workers (amongst other sectors) in cases of seasonal bad weather that limit their working hours. The maximum Naspi benefit available in such circumstances is €1,352.19, whilst the maximum monthly indemnity unaffected by the reduction provided for by Art. 26 Law no. 41/1986 €1,470.99. The same values apply to Dis-Coll unemployment indemnities.

INPS, Circular 03/02/2023 no. 14

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