

SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 95

23 FEBRUARY 2023 • ARTICLE



WEEKLY ITALIAN LABOUR UPDATES

"Performance remuneration with welfare option must be underwritten by company agreements."

Whistleblowing on tax evasion defended by ECHR

An employee who discloses information regarding tax evasion that has come into their possession as a result of their work is protected under Article 10 of the European Convention on Human Rights given that combating tax evasion is in the public interest and therefore has precedence over any confidentiality and privacy duties the employee may be bound by. Whistleblowing plays an essential role in democratic societies and whistleblowers must be protected in cases where sharing information is in the public interest. A prerequisite for such protection is that the

information disclosed be genuine and the whistleblower have acted in good faith, with no intention of gaining financial advantage or harming the employer. By virtue of these principles, an employee who was dismissed for whistleblowing and had, therefore, been subjected to criminal proceedings resulting in a fine, was entitled to compensation for damages suffered and expenses incurred.

European Court of Human Rights, 14/02/2023 (Appeal 21884/18)

Further training via New Skills Fund

The ability to access the New Skills Fund (the "Fund") for employee training has been extended to 2023 by virtue of an amendment to the Milleproroghe Law Decree. This is provided for in Article 22-quater of the Draft Law, converting Law Decree no. 198/2022, which has been approved by the Senate and is now being reviewed by the Chamber of Deputies. The amendment provides the Fund with a €230m budget, with access based on having a collective agreement where, in cases of company restructurings driven by investments in new or sustainable technology, employees whose pay and contributions are paid (for the most part) by the INPS through Anpal monitoring are required to participate in training courses. The Milleproroghe Law Decree must be converted into law by 27 February 2023 and companies that are interested in taking advantage of the scheme are advised to start working with trade unions on setting up the relevant collective agreements.

Draft Law converting Law Decree no. 198/2022

Damages awarded for loss of opportunity not subject to taxation

Damages awarded to an employee for “loss of opportunity” are not subject to IRPEF taxation. Compensation for damages for loss of professional or career opportunities is not considered ‘income’ but payment for damages. Loss of opportunity arises when it is reasonable to believe that had an employee not been subjected to ‘deskilling’ or been unlawfully excluded from an opportunity for career development, they would have had a reasonable chance of achieving a promotion or career advancement.

Supreme Court (ord.) 08/02/2023 no. 3804

Further case law on collective redundancies

The general rule in cases of collective redundancies is that those being chosen for redundancy must be selected from across the entire company. Where, however, there are specific and demonstrable technical and production requirements, the number of redundancies may be limited to a single company site or a specific department. To this end, it is necessary that any technical/production needs are communicated pursuant to Articles 4 and 24 of Law no. 223/1991. Moreover, the employer must (also) demonstrate that the redundant workers do not perform tasks replaceable by those in departments and locations not included in the collective procedure.

Supreme Court (ord.) 06/02/2023 no. 3511

Retaliatory dismissal compensation only covers period taken to find new employment

Damages payable for retaliatory dismissal only cover the period necessary for the employee to find new employment. If the employee has not taken diligent steps to seek other employment following their dismissal, the damages cannot include all the monthly payments up to the day of reinstatement but must be limited to the period necessary to find other employment.

Court of Appeal Brescia 2.2.2023 (Pres. Matano)

Limits on principal's liability for accidents occurring in contracted work

A principal's liability for accidents at work occurring to the employees of contractors and sub-contractors is subject to the condition that the principal assumed the role of supervision guarantor for safety measures to be adopted in practice and has also assumed the technical and organisational powers concerning the work to be performed. There is no liability under the “in re ipsa” principle simply because work or a service had been entrusted to them in a contract. Therefore, if the principal has fulfilled his safety obligations by checking the technical and professional suitability of a contractor, there is no automatic extension of liability to the principal in case of accident.

Supreme Court (ord.) 01/02/2023 no. 2991

Equivalent documentation clarified by National Labour Inspectorate

For an international posting, an Italian company using an employee from overseas company must keep, amongst other documents, the public notice of the establishment of the employment relationship or equivalent documentation. The National Labour Inspectorate has clarified the meaning of “equivalent documentation”, noting that in certain third countries there may be no public communication of the establishment of an employment relationship. “Equivalent documentation” includes any document that allows the employment relationship to be confirmed. This category includes A1 forms (certificates ascertaining social security status in the original third country) submitted by the posting company to the Social Security Authority of the state of origin.

National Labour Inspectorate, Circular 15/02/2023 no. 1

New codes to be indicated for parental leave

The codes required to accessing parental leave (Articles 32-34 of Maternity Law) to be indicated in the Uniemens system have been increased from four to ten. The INPS clarified the update which adds to the requirements that businesses must fulfil in order to manage the various parental leave options that employees can access. In order to allow enterprises to adapt to the new provisions, the new codes will apply in April 2023.

INPS, Message 13/02/2023 no. 659

Lombardy allocates €10m for gender equality certifications

The Lombardy region has allocated €10m to help small and medium-sized enterprises achieve gender equality certification. This has been outlined in a public notice approved by the region titled “Towards the certification of gender equality”, which establishes two funding lines in accordance with the law that introduced gender equality (Law no. 162/2021). The first funding line of €4m provides grants for the costs of specialised consultancy services involved in setting up management systems for gender equality. The second funding line of €6m contributes towards the costs incurred by businesses to obtain gender equality certification. Eligible companies are those that have an operational headquarters in Lombardy.

Lombardy Region, Public Notice 23/01/2023

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