

SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 97

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WEEKLY ITALIAN LABOUR UPDATES

"ESG issues have an increasing impact on the human resources management."

Dismissal of workers from retail outlet does not require comparison with other stores

The dismissal of workers brought on by the closure of an individual retail outlet does not require any prior comparison with workers in other outlets. It is irrelevant whether employees with less seniority or without family responsibilities are employed in other outlets because an employer is only obliged to take such conditions into consideration in cases of collective dismissals (more than four

dismissals within a 120-day period).

Trib. Messina (ord.) 06/03/2023, Judge Bonanzinga

Compensation for being overworked

Being overworked occurs when an employee is subjected to long periods of particularly intense and prolonged shifts and/or working hours, well above what is considered normal. An employer is contractually liable for the imposition of working conditions that are in excess of what are considered tolerable under Article 2087 of the Civil Code. In order to exclude their liability, an employer must prove that the workloads were, in fact, congruous and within the normal range.

Cass. (ord.) 28.2.2023 no. 6008

Delegation of duties for security purposes

With the delegation of duties provided for in Article 16 of the Consolidated Act on the Protection of Health and Safety in the Workplace (Legislative Decree 81/2008), specific powers are transferred from an employer (understood to be the employer for safety purposes) to other professional figures within the business. The delegation of duties is particularly effective in complex corporate structures because it allows for a balanced distribution of decision-making and spending powers concerning security purposes. The delegation of duties may be transferred to those who are not considered *employers* under Legislative Decree 81/2008. The decision making and spending powers related to health and safety and security are entrusted to the management of one or more employers.

Cass. 27/02/2023 no. 8476

Compensation for damages following unlawful transfer

Following the unlawful transfer of a company branch, a worker whose employment relationship has been ordered to be reinstated with the transferor company, is entitled to be paid their wages for the time period after the court order was delivered. Additionally, an employee is entitled to damages for the period between the date of the (unlawful) transfer and the judicial order of reinstatement.

Cass. 24/02/2023 no. 5796

Rules on weekly rest day

Eleven hours of continuous rest must elapse between one day's work and the next. This obligation is accompanied by a weekly rest day. The Court of Justice of the European Union has specified that even if the weekly rest day lasts for more than 24 hours, the 11 hours of continuous rest between one working day and the next must still be observed. An employer cannot prevent the enjoyment of the 11 hours of continuous rest just because their employee is returning from a weekly rest period of more than 24 hours.

Court of Justice of the European Union

Interference risks and subcontractor liability

Contractors and subcontractors must also observe measures in place to prevent interference risks in in-house contracts. The responsibility of the client to implement necessary health and safety and accident prevention measures caused by possible interference does not exempt contractors or subcontractors from complying with such provisions. Nor does it exempt them from taking appropriate accident prevention measures relating to the work carried out on the client's business premises. The drawing up of the interference risk assessment document (known as 'duvri') is the client's responsibility but contractors and subcontractors must coordinate their protective measures with those of the client.

Criminal cassation 13/02/2023 no. 5907

INL guidelines against undeclared work and caporalato

The National Labour Inspectorate has published guidelines for inspectors relating to the management of employment relations in companies. The main point being the fight against undeclared work and the "caporalato" phenomenon, a form of illegal hiring, for which the support of the Carabinieri Command is envisaged. The inspections to combat undeclared work will focus, firstly, on the sectors at greatest risk: seasonal tourism, fairs and entertainment events, and work carried out at night, during public holidays and at weekends. To combat "caporalato", special inspections are envisaged on the basis of the A.L.T. Caporalato D.U.E. project, aimed at dealing with labour exploitation and ensuring continuity with initiatives developed in past years. This includes measures to protect Ukrainian refugees against labour exploitation.

INL, General guidelines for surveillance activities 2023

Time limit for challenging contracts

The limitation period of 180 days provided for by Article 28, par. 1, of Legislative Decree 81/2015 to challenge the nullity of a fixed-term contract also applies in instances where a social clause requires the incoming contractor to hire the workers of the outgoing contractor on an open-ended employment contract. The successor employer is obliged to hire the workers employed in the contract by the outgoing contractor under the same conditions and, therefore, the term affixed to the new employment contract is invalid. Also, in this case, anyhow, the employee must challenge the nullity of the fixed-term contract within the legal time limit. If this was not done, the claim to be reinstated and paid for damages must be rejected.

Trib. Reggio Calabria 10/02/2023 no. 289

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