

## SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 98

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### WEEKLY ITALIAN LABOUR UPDATES

"Share plans are  
useful measure to  
retain employees."

#### **Whistleblowing procedure extended to companies with 50 employees**

Acknowledging the EU Directive 2019/1937, the Council of Ministers approved a legislative decree extending existing whistleblowing rules to private companies that have employed an average of at least 50 employees (permanent or fixed term employment relationship) in the last year. Until now, the whistleblowing rules, which require companies to adopt a procedure for anonymous reports from workers with

respect to wrongdoing and criminal offenses, was limited to companies that have adopted the organisation, management and control model specified in Decree 231/2001. The new decree, which is still awaiting publication, also provides for the possibility of making reports to ANAC in cases where, among other things, a worker has already made an internal report that has not been followed up.

*Legislative Decree approved by the CDM on 09/03/2023*

#### **Recovery of contribution waivers**

Companies that were entitled to the exemption from paying the additional contributions for use of CIGO and CIGS between March 22 and May 31, 2022 can now proceed to recover the contributions paid. As a reminder, the benefit was introduced by Decree-Law 21/2022 (Art. 11, par. 2) in favour of employers in the steel, wood, automotive, ceramics and agriculture-industry sectors. INPS has given the go-ahead for contribution recovery, providing directions for recovering the amounts paid.

*INPS, Message 14/03/2022, no. 1022*

#### **Unwanted comments about colleague's sexual orientation constitute discrimination**

Unwanted behaviour related to a worker's sexual orientation amounts to discrimination. On this principle rests the Court of Cassation's decision to overturn a judgment that had dismissed the just cause of dismissal against a worker who, in the presence of other workers, had approached a colleague with comments about her sexual orientation. Current values dictate that unwanted comments made about an individual's sexual orientation – particularly those that are derogatory, mocking or in the presence of others – are punishable by the maximum disciplinary penalties.

*Cass. 09/03/2023 no. 7029*

## **Attendance at Serie A game during sick leave**

The dismissal of a worker who, during a day off work due to illness, was seen attending a Serie A football game is unlawful. The court ruled that the individual's participation as a spectator at the game was unlikely to aggravate their illness or delay recovery. In addition, the game was during the evening and outside of the afternoon slot during which the employee, if in sick leave, is obliged to be at his domicile. It is also irrelevant that the game's time coincided with the evening duty shift that the worker would have had to observe if he had not been on sick leave. For these reasons, the case was found to be without disciplinary significance and the employee reinstated to his job, with the employer having to pay damages of five months' salary.

*Trib. Arezzo 07.03.2023 no. 64*

## **INPS clarifications on union communication for social safety nets**

Obligations under Art. 14, Legislative Decree 148/2015 to inform and consult trade unions on the application for social safety nets for reduction or suspension of activity (Cigo, Fis, etc.) should not be interpreted in a formal sense, but their fulfilment should be evaluated on a substantive level. In adherence to this principle, communications to trade unions are subject to evaluation even if they are produced after the application has been submitted to the INPS. In particular, whilst applications for social safety nets related to objectively unavoidable events, trade union communication must be prior to or concurrent with the beginning of the cessation or decline of activity, in other cases trade union communication can be made after this period.

*INPS, Message 09/03/2023 no. 980*

## **Retaliatory dismissal and obligation of reinstatement**

Dismissals brought about by an employer's retaliation to an employee's right to exercise a particular right are null and void and result in the employee's reinstatement and compensation equal to the wages they would have earned from the day they were dismissed to the day of reinstatement. For a retaliatory dismissal to be considered null and void however, it is necessary for retaliation to have been the determining and exclusive reason for the dismissal.

*Cass. 07/03/2023 no. 6838*

## **Distinction between delegation of duties and managerial delegation for health and safety**

In the context of employer powers relating to health and safety and risk prevention against occupational accidents, a careful distinction must be made between delegation of duties and managerial powers. The latter consists of the transfer of certain managerial powers to employers that are assigned to a particular duty (i.e., members of the board of directors). In complex organisations, managerial delegation makes it possible to allocate specific decision-making and spending powers among one or more employers. Conversely, delegation of duties consists of transferring the safety-related duties proper to an employer to other individuals without the relevant powers in their original capacity. In other words, only employers can transfer duties to other competent individuals within the corporate structure, whereas managerial delegation results in distributing decision-making and spending powers among employers.

*Criminal Cass. 27/02/2023 no. 8476*

## Administrative appeal against fraudulent internship ruled out

If a fraudulent internship is alleged, the company cannot exercise administrative recourse (under Art. 17, Legislative Decree 124/2004) to the Labour Relations Committee. The employer's fraudulent conduct for using a trainee to replace an employee in violation of the rules introduced by the Budget Law for 2022 (Art. 1, paragraphs 721 to 726, Law 234/2021) is subject to a fine of €50 for each day worked for each trainee. Since this is a criminal offence for which there is a mandatory statute of limitations (Art. 20, Legislative Decree 758/1994), the offense is extinguished administratively if the employer pays the penalty. In this context, the company may not take administrative action by appeal to the Labour Relations Committee, as it is considered necessary to avoid an overlapping of judgments with the criminal authority.

*National Labour Inspectorate, Note 08/03/2023 No. 453*

## Dismissal communicated to the employment centre and not to the employee is void

Notification of termination of employment to the employment centre, without informing the relevant employee amounts to an oral dismissal only. The validity of a dismissal assumes that it is announced in writing and so only communicating the dismissal to the competent authorities cannot be classed as a written act of dismissal, since the worker was not the recipient of the aforementioned communication. Any dismissal in such a case is deemed void and the worker is entitled to reinstatement and payment of all wages (including contribution payments) from the date of termination to the date of reinstatement.

*Trib. Castrovillari 16/01/2023 no. 781*

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