

## SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 99

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### WEEKLY ITALIAN LABOUR UPDATES

**"As of 15 July 2023 companies employing no less than 50 employees must have a dedicated channel to whistleblowing violations."**

#### **NASPI unemployment benefit for fathers that resigned within a year of child's birth**

A working father who takes paternity leave and submits a voluntary resignation within the first year of his child's life is entitled to NASPI unemployment benefits. INPS provided this clarification following amendments to the Consolidated Maternity Act (Legislative Decree 151/2001) introduced last summer (Legislative Decree 104/2022), under which compulsory paternity leave was increased to ten days, to be taken from two months before and five months following the child's birth.

*INPS, Circular 20/03/2023 no. 32*

#### **Accessing ex-employee's e-mail account is unlawful**

It is unlawful for a business to access a dismissed employee's email in order to build a defence in court and is punishable by an administrative fine. Continuing to access an ex-employee's email account cannot be justified by a need for a defence in court, nor can it be justified by the company claiming that the access was continued in order to retain customers or clients. A company should be able to meet its needs in terms of retaining customers without breaching an ex-employee's right to have their personal data protected and should proceed with less invasive processes.

*The Data Protection Authority, Newsletter 15/03/2023*

#### **Concealing relationship with colleague and forcing an abortion is just cause for dismissal**

The dismissal of a senior employee who had a secret romantic relationship with a more junior colleague and, upon discovering her pregnancy, pressured her into having an abortion so as not to damage his chances of promotion, is justified. The code of ethics requires that companies are made aware of any romantic relationship between colleagues. It is irrelevant – despite the claims of the employee – that their relationship amounted only to 'sporadic sexual relations'. Evidence in this case was gathered through the company's whistleblowing policy and through messages exchanged by the two colleagues via WhatsApp. There was no violation of rules relating to the protection of private correspondence.

*Trib. Rome 14/03/2022, Judge Colli*

## **New regulations on whistleblowing**

A decree has been published in the Official Journal that aims to protect people who report wrongdoings that violate EU law and national provisions. The obligation to adopt an internal reporting (whistleblowing) procedure has been extended to companies with at least 50 employees (including those on fixed-term contracts), and the definition of “violations” has been broadened beyond the scope of unlawful conduct noted under Legislative Decree 231/2001. In brief, the new whistleblowing rules provide for a dedicated internal whistleblowing channel and an independent office with trained staff to manage the processes. A report can be made in writing or verbally. Acknowledgement of receipt of a report must be issued within seven days and feedback on the content of the report within the following three months. The decree comes into force on 30 March 2023.

*Legislative Decree 10/03/2023 No. 24*

## **Online questionnaire for SMEs on gender gap and personal data processing**

The Data Protection Authority has created an online questionnaire to help SMEs understand how to reduce the gender gap and fight discrimination against vulnerable individuals within a business. The questionnaire, which can be completed anonymously, also measures employees’ awareness of personal data protection. The aim of the questionnaire is to help SMEs comply with the requirements of Regulation (EU) 2016/679 and the Italian Privacy Code. The deadline for completing the questionnaire is 2 April 2023.

*The Data Protection Authority, Notice 16/03/2023*

## **Qualified doctor for compulsory health supervision**

The obligation to appoint a qualified doctor arises when a company is required to carry out health supervisions in cases provided for by the Consolidated Occupational Health and Safety Act (Article 41, Legislative Decree 81/2008). These instances include where a worker may be exposed to biological hazards, asbestos, various forms of radiation, etc.

*Ministry of Labour, Response to Interpello 15/03/2023 no. 2*

## **Unlawful dismissal of worker on leave to care for parent**

The dismissal of a worker who, on leave taken to assist their disabled parent (Article 33, paragraph 3, Law 104/1992), was caught reading for two hours a day at a park, was unlawful. Since the worker had actually visited their parents’ home, it had to be concluded that the assistance had taken place. In this situation, the fact that the employee had carried out personal activities for a number of hours does not constitute an abuse of the right. An employee is not required to sacrifice their own personal needs if he has devoted himself sufficiently to the care of the disabled person.

*Cass. 13/03/2023 no. 7306*

## Probationary agreement void if duties are not clear

A probationary agreement is null and void if duties that will be subject to evaluation at the end of the probationary period are not clearly and specifically indicated. A basic indication of duties that fall under the employee's remit is not enough. A reference to tasks outlined in a collective agreement is capable of fulfilling the requirements only if it is possible to derive the specific content of the outlined tasks from the agreement. In a case before the Court of Appeal of Milan, the collective agreement referred to as many as 17 different roles/tasks, none of which were specific enough to meet the requirements for the probationary agreement to remain valid. It was then voided and the employee – who had been dismissed for failing to pass their probationary period – was reinstated and received full payment for the time not worked (pursuant to Article 2, Legislative Decree 23/2015).

*Court of Appeal Milan 06/03/2023*

## Marginalising workers equates to “mobbing”

One example of “mobbing” (harassment through aggressive verbal or physical abuse) occurs when an employee is marginalised by their manager for a long period of time. This can include being deprived of a desk space and being forced to work elsewhere (the stairwell, in this case) and being denied appropriate equipment to carry out their work. In this case before the Tribunal of Naples, instances of mobbing were identified by the anxiety and depressive disorders that the employee had developed as a result of the harassment and marginalisation they had suffered at work. The employee was compensated for psychological damage and for the professional damages suffered as a result of having their careers paths set off.

*Trib. Naples 15/12/2022 no. 6663*

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