

SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 104

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WEEKLY ITALIAN LABOUR UPDATES

"Whistleblowing
procedure helps
companies to prevent
illicit actions on the
workplace."

Dismissal for refusal to work overtime is lawful

The dismissal of an employee who refused to work the overtime ordered by their employer is lawful. Requesting an employee to work overtime is considered an expression of managerial power and, if the additional hours are permissible by the CCNL, an employee cannot refuse. So long as the overtime does not exceed two hours per day and eight hours per week, an employer may lawfully impose this overtime giving 24 hours' notice. In this recent case, a notice was posted inside the workplace indicating the overtime allocated to each worker. The employee who was

dismissed refused – for the entire working week – to carry out their assigned overtime which was within the permissible limits.

Cass. 20/04/2023 no. 10623

Expansion contract with incentivised hiring

An employer who, by virtue of an expansion contract, is bound to make a given number of hirings may benefit from the employment incentives. Doubt in relation to Article 31 of Legislative Decree 150/2015, according to which hiring incentive are not due if they constitute the fulfillment of a preexisting obligation, has been clarified by INPS. The hirings that an employer undertakes to carry out an expansion contract (a collective agreement that enables <<generational turnover>> by anticipating the exit of workers close to retirement) do not fall under the <<pre-existing obligations>>. In this context, it is perfectly lawful for recruitment to take place with the benefit of employment incentives.

INPS, Message 18/04/2023 no. 1450

Indirect gender discrimination detected with statistical data

Whenever an act, practice or provision objectively determines unequal treatment between male and female employees, there is indirect discrimination based on gender. Applying this principle, the Court of Cassation laid down guidelines for ascertaining indirect discrimination, observing that the statistical data collected through company measures in place for such reporting, must be analysed by including all employees affected by the relevant unequal measure or practice. It is therefore necessary to verify how many male and female employees are negatively affected by the application of a company measure. If it emerges that such a negative effect has largely affected the female population, it must be concluded that there is indirect discrimination based on gender.

Cass. 18/04/2023 no. 10328

If agency contract terminated due to bankruptcy, severance payments are payable

If an agency relationship is terminated due to the bankruptcy of the principal, then the agent is entitled to payment of notice and indemnities. This conclusion is reached on the basis that, following bankruptcy, Article 72 of the Bankruptcy Law applies, under which the employment relationship is suspended until the liquidator takes over the contract in the place of the bankrupt company or decides to dissolve the contract. If the liquidator chooses termination, the rules regarding termination in the agency contract apply.

Cass. 14/04/2023 no. 10046

Details on Inter-professional Funds published in the Official Gazette

The Ministerial Decree of 14/03/2023 on reimbursement to the Inter-professional Funds for continuous training of the annual amount of €120m allocated for financing professional development paths for workers benefiting from CIGO and CIGS has been published in the Official Gazette. The training paths must be linked to the lay-off program and enhance the skills possessed by the employees. There is an entry assessment and the training courses must be considered practical courses rather than theory based. Following the completion of the training course, the Interprofessional Fund issues a certificate to the employees.

Decree Labour Ministry of 14/03/2023, published in O.G. 21/04/2023 no. 94

Notification of administrative offences via PEC

The National Labour Inspectorate (“NLI”) has provided clarification on the Cartabia Reform (“the Reform”) of the civil and criminal process. Of great interest is the NLI’s clarification that a notification of administrative offences to addressees required to have a certified electronic mail (PEC) address may only take place by this means. It should be noted that notification by means of a PEC can be made without any time limit and is understood to be finalised once the sender receives a receipt of acceptance from the system. And for the addressee, the notification is considered finalized once delivery receipt is generated.

NLI, Note 14/04/2023 no. 2563

Proximity agreement in breach of 'fixed term' requirements

A proximity company agreement (pursuant to Article 8 of Law 148/2011) allowing recourse to fixed-term supply of staff without the need to provide reasons and without time limits is null and void, since it is contrary to the limits and conditions laid down by regulatory requirements. In this particular case, the nullity of a proximity agreement involved 34 months of uninterrupted labour supply given to a user company which was in breach with labour law requirements because a duration of 34 months is longer than what can reasonably qualify as 'fixed-term' under national legislation (Articles 19 and 34 of Legislative Decree 81/2015) and EU legislation (EU Directives 2008/104).

Trib. Teramo 08/02/2023 no. 71

Employer compensates employee for harassment by colleagues

Even if there is no proof of persecutory intent, harassment by a group of employees towards another over a prolonged period of time leads to compensation for damages by the employer pursuant to Article 2087 of the Civil Code. The employer's liability arises both for not having ensured a safe working environment and for not having remedied the aforementioned conduct after having become aware of it. Compensation for physical damage and psychological damage is accompanied by reimbursement of any medical expenses incurred by the employee to treat the depressive disorder.

Trib. Bari 17/01/2023 no. 97

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