SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 107

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WEEKLY ITALIAN LABOUR UPDATES

"The activation of the whistleblowing channel must be preceded by an information phase with the trade unions."

Dismissal for refusal to work part-time not retaliatory

The dismissal of an employee who had previously been offered a reduction in working hours from full-time to part-time due to an excessive workforce is not retaliatory. In this case, the refusal of the proposed change gives rise to a reversal of the objective justification for the dismissal as well as the employer's burden of proof. Dismissal is lawful if the following conditions are satisfied and proven in court: financial and organisational needs that mean it is only possible to retain the employee on a part-time basis, rather than full-time; a proposed change from full-time to part-time and the employee's refusal; and the existence of a causal link between the need to reduce working hours and the dismissal.

Supreme Court (ord.) 09/05/2023 no. 12241

Dismissal of employee who refuses further training lawful

The dismissal of an employee who persistently and voluntarily refuses, without justification, to comply with the training and professional development requirements necessary for work performance is lawful. In this case, the employee did not need to pay for the training activities, nor did they need to take leave or sacrifice their free time to attend. The employee's conduct clearly conflicted with their duties of diligence and to carry out their instructions from hierarchical superiors, justifying the disciplinary dismissal imposed by the employer.

Supreme Court (ord.) 09/05/2023 no. 12241

"Repêchage" must also be checked against positions available in the future

When an employer is considering dismissing an employee on justified objective grounds, the obligation of "repêchage" (employer's duty to redeploy) covers both currently available company positions, and positions that, although currently held by other employees, will become available in the near future. Therefore, in order to avoid an unlawful dismissal, the employer must consider redeploying the employee (whose position is being abolished) to another company position that will become vacant in the very near future. It is not enough for an employer to say that on the date of the intended dismissal there were no vacancies, because the company must also check that there will be no vacancies in the near future. An employer's failure to ascertain any near future vacancies is contrary to their duties of fairness and good faith and the employee's dismissal is unlawful.

Supreme Court 08/05/2023 no. 12132

Care giver exempted from night work

An employee who assists a disabled person cannot be obliged to work at night. It is not necessary for the disabled person to have a disability of a serious nature, rather it is only necessary to show that the disabled person is dependent on the employee under Law no. 104/1992. The contrary interpretation, according to which the care giver cannot be obliged to work at night only where the disability requires continuous care, or relates to a serious condition, cannot be endorsed. If the law (Article 11, paragraph 2, Legislative Decree no. 66/2003) had intended this interpretation, it would have made it clear. Therefore, the mere reference of a disabled dependent as a condition for exemption from night work precludes a more restrictive reading of the rule, which would limit its scope to more specific cases of severe disability.

Supreme Court (ord.) 10/05/2023 no. 12649

Framework convention for exchange of information on reconciliation of social security periods

The INPS has issued implementing procedures for the Framework Agreement between INPS and the Social Security Funds and Institutions for the exchange of information resulting from the exercise of the right to reconcile periods in the various social security systems. In accordance with the law (Article 1 of Law no. 45/1990), employees and the self-employed (those enrolled in compulsory social security schemes for the self-employed) have the right to request the reconciliation of all their social security contribution periods, both for when they were employees or self-employed. A similar right is granted to freelancers who have been enrolled in compulsory social security schemes for employees or self-employed persons to obtain the reconciliation of all social security contribution periods under social security management for when they are enrolled as freelancers.

INPS, Message 12/05/2023 no. 1739

Always apply most favourable CCNL wage treatment

Cooperatives' employees have the right to the same remuneration as that applied by the CCNL signed by the comparatively most representative trade unions in their sector. This principle applies even if the cooperative applies a different CCNL that fully respects the adequacy and proportionality remuneration principles laid down in Article 36 of the Constitution. Respect for the constitution is not a sufficient ground to deny cooperatives' employees the more advantageous remuneration. To ascertain the most representative trade unions that have signed the CCNL, the widespread presence in the composite bodies established at government level with a recommendatory and consultative function should be used as a point of reference.

Court of Bologna, Judge Pucci, 04/04/2023

Employer's liability for employee's injury and negligent conduct

An employee's careless or negligent conduct does not absolve the employer from liability for the accident if there are obvious flaws in the company's safety system. Safety obligations are to protect employees including with respect to their own errors and omissions. Consequently, safeguards to prevent accidents at work include those specific precautions to avoid accidents generated by the negligent or imprudent conduct of the employees themselves. It follows that if flaws are found in a company's accidents at work safety system, the employer remains liable for the accident notwithstanding the employee's negligence.
Supreme Court 28/04/2023 no. 17617

Temporary employment and seasonal work

The National Labour Inspectorate has provided clarification on the use of fixed-term staff leasing contracts for seasonal work. It reiterates that the legal rules on fixed-term contracts apply to fixed-term agency supply contracts between an employment agency and an employee, with the exception of the rules on the so-called "stop and go" contracts, the right of precedence and the maximum number of fixed-term contracts. This assumption underlies the Inspectorate's response, according to which it will be possible to derogate from the maximum numerical limit of 30% set by law (Article 31, paragraph 2, Legislative Decree no. 81/2015) for fixed-term hires including agency supply contracts only in the presence of a specific regulation on numerical thresholds defined by collective agreements (at national, regional and company level). The collective agreements to be referred to are those applied by the user undertaking to which the agency worker is sent for seasonal work.
National Labour Inspectorate, Response to referral 26/04/2023 no. 716