SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 108

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WEEKLY ITALIAN LABOUR UPDATES

"The use of smart working may be a key indicator for the accrual of variable remuneration."

EU Directive on Transparency and Equal Pay

On 17 May 2023 Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 was published in the Official Journal of the EU. Its aim is to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and its enforcement mechanisms.

The main provisions are summarised below:

• Member States must take the necessary measures to ensure that employers pay equal pay for equal work or work of equal value by using gender-neutral job evaluation and classification systems, which exclude any direct and indirect pay discrimination based on sex;

• the concept of "pay" means the minimum wage or salary and all other consideration paid directly or indirectly, in cash or in kind, including bonuses, overtime compensation, transport services, food and accommodation allowances, compensation for attending training, severance pay and occupational pensions;

• the directive applies to employers in the public and private sectors and to all employees who have a contract of employment or an employment relationship;

• the directive also applies to job applicants, who have the right to receive information about the initial pay or its range attributed to the position concerned;

• employers may not obtain information on the applicant's prior pay history;

• employers must ensure that job vacancy notices and job titles are gender-neutral and that recruitment processes are led in a non-discriminatory manner;

• employees have the right to request and receive, in writing, information on their individual pay level and the average pay levels, broken down by sex, for employees performing the same or equally valuable work;

• if the information received is incomplete, employees may request (including through trade union representatives) clarification and further details;

• Member States must ensure that employers with at least 100 employees provide (within a deadline that varies according to size levels) information on the gender pay gap in fixed and variable components in their organisation. This information should be shared with, among others, employees' trade union representatives;

• Member States shall ensure that all employees who consider themselves wronged by a failure to apply the principle of equal pay, have access to court proceedings to enforce their rights (including full compensation and reparation for the damage suffered); and

• Member States must introduce measures to protect employees against dismissal or other adverse treatment by the employer as a reaction to a complaint within the organisation or to any administrative procedure or court proceedings for the purpose of the enforcement of the principle of equal pay.

Member States must comply with this Directive by 7 June 2026.

Directive (EU) 2023/970, 10/05/2023

Renewal of CCNL for road haulage and freight forwarding executives

On 18 May 2023 Confetra and Manageritalia signed off the renewal of the CCNL for road haulage and freight forwarding company executives. The new measures include a one-off payment to cover the contractual holiday period, up to a maximum of €1,500, payable in two instalments in June and November 2023. Also included, on an experimental basis, is the introduction of an annual mandatory welfare contribution of €1,300 to be used through a special welfare platform ("CFMT" (*Centro di Formazione Management del Terziario*) – Executive Training Centre). The welfare contribution applies for two years, January 2024 and January 2025 and is not reduced if the executive works part-time. Employers may also increase the amount of the welfare contribution at their own discretion. Finally, the mandatory contribution is not a substitute for, but in addition to, any flexible benefits already provided by employers.

CCNL renewal agreement for road haulage and freight forwarding company executives

Jobs Act regulations on collective redundancies referred to Constitutional Court

The Jobs Act provides for compensation only as a remedy in a case of a breach of the selection criteria in a collective dismissal (Article 10, Legislative Decree no. 23 of 4 March 2015). The lawfulness of this rule was referred to the Constitutional Court by the Court of Appeal of Naples. According to the Court of Appeal, the rule would create unequal treatment between employees recruited before 7 March 2015, who are entitled to reinstatement, and employees recruited after that date. The Court of Appeal held that if a dismissal is unlawful because of a breach of the selection criteria in a collective dismissal, reinstatement should be available to all employees, regardless of the date of recruitment. In addition, the Court of Appeal criticised the compensation process established by the Jobs Act (which increases from a minimum of six to a maximum of 36 months' salaries). The Court noted that it would not adequately compensate the damage suffered by an employee dismissed in such a case.

Court of Appeal Naples (ord.) 22/03/2023

Transfer of office or business unit and invalidity of transfer

If a transfer of a branch of business has been declared unlawful, the transfer of an employee is invalid and they must be reinstated. A branch of business is defined as any organised financial entity which, when transferred, retains its identity on the basis that there was a pre-existing, autonomous entity and was not simply a business structure created specifically during the transfer. Only when these conditions are met do the rules on the transfer of a branch of business under Article 2112 of the Civil Code apply. Ultimately, the transfer of a (non-existent) business branch is unlawful and the employees involved in the transaction are entitled to continue their relationship with their original employer.

Supreme Court (ord.) 18/05/2023 no. 13655

Redundancy contribution also due from companies in compulsory liquidation

Redundancy contribution is due even if the termination of employment is adopted by a company subject to compulsory liquidation. The obligation to pay redundancy contributions (introduced by Article 2, Paragraph 31, Law no. 92/2012) arises from the theoretical possibility of an employee benefiting from the NASPI unemployment benefit. Dismissals ordered by a liquidator under Article 189 of the Business Crisis and Insolvency Code falls within involuntary loss of employment. Therefore, since an employee has the right to receive NASPI, companies that undergo compulsory liquidation must pay the contribution. It should be noted that redundancy contribution is payable by a company in compulsory liquidation both in the case of individual and collective redundancies. However, the amount of contribution varies depending on whether the collective redundancy proceeds with or without trade union agreement.

INPS, Circular 17/05/2023 no. 46

Compensation reduced to minimum for dismissal for unfitness wrongly certified by the ASL

The Supreme Court found that compensation due to an employee for being unlawfully dismissed must be reduced to the minimum (under Article 18 of Law no. 300/1970) after being erroneously declared unfit for work by the public health authority (ASL) rather than their company's doctor. The employer was obliged to comply with the medical certificate issued by the ASL which assessed the employee as unfit for work. Had the employer disregarded the health authority's assessment, they would have been at risk (among other things) of liability for any damage to that employee's health. Ultimately, compensation due to the dismissed employee was limited to five months' salary rather than covering the entire period of unemployment.

Supreme Court (ord.) 28/04/2023 no. 11248

Sickness absences excluded from job retention period only if proof of occupational origin

Absences from work due to illness and/or injury fall within the broad concept of illness and injury under Article 2110 of the Civil Code. Therefore, they are normally included in the job retention period (*periodo di comporto*) i.e. the period of time during which a sick employee cannot be dismissed. An employee that alleges that their illness or accident originated at work or as a consequence of their work and wishes to be compensated for damages whilst excluding the relevant days of absence from the calculation for the job retention period, must prove their employer's liability (under Article 2087 of the Civil Code) for the onset of the illness or accident. The employee must also prove the damage sustained. If these requirements are not met, absences due to illness or injury fall within the calculation of the maximum job retention period and the damage suffered is not compensable.

Supreme Court (ord.) 27/04/2023 no. 11136

Explanation provided on new regulation on administrative appeals to INPS Committees

INPS has provided an explanation of a new regulation on administrative appeals to the INPS committees. The purpose of the regulation is to speed up the administrative appeals procedure and reduce the number of legal disputes that arise due to INPS' delay in concluding administrative proceedings concerning a social security or contribution dispute. An administrative appeal must be sent to the competent committee by electronic means only. Omission of a signature at the bottom of the appeal does not invalidate it as the electronic notification guarantees the traceability of the administrative claim to the appellant. If an appeal is submitted to the incorrect committee, it is not invalid, but is transmitted internally to the relevant committee. The time limit for appealing administrative rulings is, as a general rule, 90 days from the date of receipt of the ruling, but different time limits apply in specific cases. In this regard, a summary of the different time limits depending on the type of appeal has been produced.

INPS, Circular 17/05/2023 no. 48

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