

## SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 109

1 JUNE 2023 • ARTICLE



### WEEKLY ITALIAN LABOUR UPDATES

**"According to a recent case law the collective transfer of employees implies to follow the mass redundancy process set forth by Law 223/1991."**

#### **Installing cameras without authorisation breaches privacy regulations**

The installation of cameras inside retail stores always requires the signing of a trade union agreement or, failing that, authorisation from the Labour Inspectorate, as provided for in Article 4 of the Workers' Statute. It is not sufficient for employees to simply be informed of the cameras' presence, nor is it sufficient to say that the cameras were installed for security reasons and/or to prevent theft. The positioning of the cameras is also irrelevant (i.e. filming a transit zone rather than the area where employees are working). The legislation on the processing of personal data (Article 114 Italian Privacy Code and Article 88 Regulation (EU) 679/2016) is based on the premise that whenever an employer intends to install video surveillance systems they must comply with Article 4 of the Workers' Statute. If an employer fails

to comply, they will be subject to an administrative fine for the unlawful processing of personal data.

*Italian Data Protection Authority, Newsletter 26/05/2023*

#### **Group e-mail containing offensive content about colleague is defamation**

Sending an e-mail containing offensive content about a colleague to several other recipients constitutes the offence of defamation and cannot be considered a mere insult. In such a case, the Supreme Court recently pointed out that it was irrelevant that the email recipients included the subject of the offensive content, because the message did not arrive in the recipients' e-mail boxes at the same time. It would have been different had the offensive content been said during a video conference, because in that case the offended person, the offender and the other recipients would have been present at the same time which would have resulted in the offending conduct being classed as an insult. Since the content was sent via e-mail the offending employee is liable for defamation.

*Supreme Court, Criminal Section, 24/05/2023 no. 22631*

## **Just cause for dismissal after conviction for sexual assault at nightclub**

The dismissal for just cause of an employee convicted of sexual assault against a minor in a nightclub is lawful. It is irrelevant that the sexual assault was committed some 10 years earlier, because the seriousness of the employee's conduct cannot be mitigated by the passage of time. Furthermore, no issue arises from the dismissal being late, as the timeliness of a disciplinary action must be assessed in relation to the time when the employer became aware of the criminal conviction. Sexual violence against minors is conduct that, although extraneous to the employment relationship, irreparably damages the bond of trust with the employer.

*Supreme Court (ord.) 23/05/2023 no. 14114*

## **INPS clarification on social security contribution reduction applied to 13th month's salary**

Decree-Law no. 48/2023 (Employment Decree) increased the social security contribution reduction for six months (July-December 2023) for employees with incomes up to €35,000. The INPS reiterated that the four-point contribution reduction, which increases the previous contribution reduction levels, does not apply to the 13th month's salary. Therefore, the social security contribution reduction set out in the Employment Decree, which applies only to the second half of 2023, concerns ordinary monthly payments, and not the instalments of the monthly payment made in December. Conversely, the previous social security contribution reduction, which applies to employees for all of 2023, also includes the instalments of the 13th month's salary. INPS has provided clarification on how to calculate the 13th month's salary whilst taking into account these provisions.

*INPS, Message 24/05/2023 no. 1932*

## **Invalid dismissal and contribution deduction for monthly wages in arrears**

In the face of a judicial ruling ordering the reinstatement of an employee and payment of remuneration accrued during the period of unemployment (Article 18, paragraph 1, Law no. 300/1970), an employer cannot deduct the employee's share of contributions from their wage debt. The general principle, which is inferred from Article 23 of Law no. 218/1952, is that an employer who has not paid contributions on time remains exclusively obliged to pay them, and this principle includes the employee's share of contributions. If a dismissal is found to be invalid, the employer cannot deduct the portion of the contributions that, had the relationship continued, would have been payable by the employee from the total amount of wages it owes for the period between the dismissal date and the actual reinstatement date.

*Supreme Court (ord.) 17/05/2023 no. 13525*

## **INPS clarification on time limits for challenging CIGO refusals**

INPS clarified that administrative appeals against orders denying or partially accepting applications for the ordinary redundancy fund ("CIGO") must be filed within 30 days from the date of receipt. The new deadline applies from 17 May 2023. The deadline of 60 days for filing an administrative appeal to the competent INPS committee remains in place for orders served before this date. The 30-day deadline is expressly identified as mandatory.

*INPS, Message 23/05/2023 no. 1900*

## **INPS clarifications on parental leave allowance**

INPS has issued operating instructions for employees on the use of the parental leave allowance following the increase of the amount of the allowance from 30% to 80% of monthly salary. The leave must be taken by the child's sixth birthday (or six years from the child's entry into the household in the case of adoption or fostering). The 80% allowance may be taken for the same child by either of the working parents. The allowance can also be shared between the parents, e.g. 15 days each of 80% compensated leave. The INPS specified that self-employed workers are excluded. INPS also clarified that the month of 80% compensated leave does not increase the total number of months of parental leave that the couple can take in total under Article 32 of Legislative Decree no. 151/2001, i.e. 10 months, which can be increased to 11 months if the father takes leave for a period (fractioned or whole) of three months, to be taken before the child's twelfth birthday.

*INPS, Circular 16/05/2023 no. 45*

## **New Skills Fund and training project funding**

Employers who are enrolled in a joint interprofessional fund may receive funding for the training project under the New Skills Fund exclusively through the aforementioned joint fund. It should be remembered that the New Skills Fund allows employees to participate in training projects related to their company's digital or ecological transition. Only where an employer does not join the joint fund, or if the joint fund is not included among those included in a specific list kept by ANPAL, is the training provided and funded by a national or regional institution. A further scenario for receiving training and regional or national funding is the existence of "objective reasons", among which ANPAL includes the scenario in which the inter-professional fund's resources are exhausted.

*ANPAL, FAQ 22/05/2023*

## **Employer liable for reputational damage to employee subjected to offensive conduct by manager**

An employer was held liable for the non-financial damage suffered by an employee who, on several occasions, was publicly and gratuitously discredited by their manager. The employer's liability was upheld because nothing was done to prompt the manager to behave in a manner which befitted their role and respected the subordinate's dignity. The fact that there was no proof of the manager's intention to harass the subordinate was irrelevant, because even if the elements of persistent assault ("mobbing") are not present, the variety of insults against the employee constituted conduct which is unjustifiable in any relationship context, including a professional context. The employer's failure to intervene gave rise to its liability for the damages to reputation and honour suffered by the employee.

*Court of Udine 08/03/2023 no. 219*

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