SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 111

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WEEKLY ITALIAN LABOUR UPDATES

"Companies employing more than 249 employees are required to activate their whistleblowing channel no later than 17 July 2023."

Prohibition and limits of monetising accrued annual leave

Member States may implement national legislation that excludes the monetisation of accrued and unused annual leave, as is the case in Italy for public bodies. However, such legislative provisions will be valid only if the following specific conditions are met: (i) the prohibition on monetising annual leave does not extend to leave accrued in the year of termination of a employment relationship; (ii) the employee had the opportunity take the accrued annual leave in the previous years; (iii) the employer encouraged the employee to take the accrued annual leave; (iv) the employer informed their employee that, by not taking the accrued annual leave, the employee would not be entitled to monetise it. If these conditions are not met, the prohibition on monetising leave does not apply and employees may be able to claim payment in lieu of annual leave following termination.

EU Court of Justice 08/06/2023 (Case C-218/22)

On-line personalised video guide for universal single allowance

In light of the problems and difficulties encountered in recent years in the processing of applications submitted for the universal single allowance, the INPS has produced a personalised and interactive video guide for people who applied for the allowance in 2022 and 2023. The video-guide allows applicants to find out the status of their applications and what they need to do to benefit from it. In this regard, the INPS has pointed out that in many cases applications cannot be completed due to incomplete documentation, or allowances cannot be disbursed (for applications that have already been accepted) because the user's tax code does not correspond to the IBAN entered in the application. The video-guide will allow users to remedy anomalies and deficiencies, unblocking the acceptance of applications and the actual disbursement of the universal single allowance.

INPS, Message 2096/2023

Single social shock absorber for flooded areas

Special income support has been provided for up to 31 August 2023 (Article 7, Decree-Law 61/2023) for companies in flooded areas. The INPS has set out the operating instructions for accessing the support and explained its function and characteristics. At the outset, INPS has listed the areas where companies can access the new social security shock absorber. The INPS also clarified that the new shock absorber cannot be obtained with other forms of income support (CIGO, FIS, Solidarity Funds, etc.). In contrast, the periods of use of the new shock-absorber for flooded areas have no effect on the duration of redundancy payments. There is no need to attach any documents to the application for access to the support. The ceiling provided for the ordinary support schemes (Article 3 of Legislative Decree no. 148/2015) is applied to determine the amount of income support paid by the INPS to employees for the suspension of activity. Companies are exempt from paying the additional social security contribution and do not need to go through a prior stage of informing and consulting with trade unions.

INPS, Circular 08/06/2023 no. 53

Inclusion in bankrupt's statement of liabilities of severance pay contributions not paid into the supplementary pension fund

An employee has the right to lodge a claim in their employer's bankruptcy to recover severance pay contributions ("TFR") not paid to the supplementary pension fund, if there is no proof that the TFR contributions to the fund were made by an assignment of future receivable. Where there is no proof, only the fund can ask to be included in the bankrupt's statement of liabilities to recover the contributions. This is based on the assumption that the severance pay contributions to the fund are carried out through a delegation of payment (the employee delegates the employer to pay the severance pay to the fund). However, there is nothing to prevent the parties from deciding to use the assignment of future receivable scheme (the employee assigns to the fund their future receivable for the severance pay). The contractual scheme chosen affects which party is entitled to lodge the claim, since the employer's bankruptcy revokes the delegation of payment, whereas it has no effect on the assignment of the future receivable.

Supreme Court 07/06/2023 no. 16116

Dismissal of employee for unjustified absence

Dismissal for just cause of an arrested employee who, over a long period of time, did not justify his absence, is lawful even though his wife had already informally notified the employer of the arrest shortly after it had taken place. The dismissal is lawful because of the employee's failure to comply with the obligation to inform the employer of the reasons for his absence from work. To enable an employer to reorganise in the absence of an employee, notice of absence must be timely, effective and comprehensive in stating the reasons for the absence (i.e., the arrest) and its foreseeable duration.

Supreme Court 16/05/2023 no. 13383

Reinstatement on part-time basis justified refusal to work

Following a judicial order for reinstatement in the workplace, an employer must reinstate the employee in the same position and with the same duties. An employer may not unilaterally convert a full-time position into a part-time one. If, following a judicial order for reinstatement, an employer changes the position from full-time to part-time, the employee may claim non-compliance under Article 1460 of the Civil Code, and refuse to resume work. A subsequent dismissal for just cause of an employee who had refused to return to work because part-time work had been unilaterally imposed on him, is unlawful and gives rise to a new judicial order for reinstatement in the workplace. The refusal to return to work on reduced hours constitutes the exercise of a right and does not constitute a breach of duty punishable by the employer.

Supreme Court 05/06/2023 no. 15676

Distinctive characteristics of agency relationship as against business intermediation

A fundamental characteristic of an agency relationship is the agent's obligation to permanently promote the sale of the principal's products, as well as the agent's participation in negotiations to conclude a contract between the customers and the principal. In contrast, a business intermediary has no obligation to promote nor is involved in contract negotiations; they merely occasionally refer potential customers to the principal or collect and transmit contract proposals and orders to the latter without negotiating their content. As the distinction between the two relationships is based on the above characteristics, the reclassification of the relationship from business intermediation to agency cannot be based solely on other aspects, such as the duration of the relationship, the number of commissions and the frequency of invoicing.

Court of Appeal Rome, 18/05/2023 no. 1794

Dismissal for objective reason and wide-ranging "repêchage" (employer's duty to redeploy)

Before dismissing an employee due to the elimination of their job position, an employer must attempt to re-employ them. To fulfil this so-called "repêchage" obligation, an employer must check whether there are vacancies in the company involving duties belonging to the employee's classification level, or to lower levels falling within the same category. Therefore, checks cannot be limited solely to positions that are professionally equivalent to the one that is eliminated. Consequently, for an employer to prove in court that "repêchage" is not possible it must file the company's organisation chart at national level, including the positions falling within the classification level of the dismissed employee, as well as the lower ones belonging to the same category.

Court of Appeal Naples, Reporting Judge Iacone, 28/03/2023

Service of appeal by ordinary e-mail

Service to an ordinary e-mail address is not invalid and may be re-served by order of the court. Where an appeal is being served, service to an ordinary e-mail address does not make the appeal inadmissible nor does it disqualify an appellant/applicant who fails to re-serve the other party via certified e-mail ("PEC") within the legal deadline. It is common ground that when a message is sent from a PEC account to an ordinary email account, the system only generates an acceptance receipt and not also a delivery receipt. However, it cannot be presumed that the message did not reach the addressee merely because there is no proof of delivery, especially if the addressee had indicated the ordinary e-mail address in their defence documents.

Supreme Court 31/05/2023 no. 15345

Dismissal letter sent by registered post returned to sender

A dismissal letter sent by registered mail to an employee's residential address, then returned to the sender because the addressee was unknown, is considered to have been correctly delivered if the failure to locate the employee is attributable to the employee. Failure to locate an employee is attributable to them if the destination address is the same as the residential address provided by the employee and to which another registered letter had been successfully delivered before. In those circumstances, the employer had no reasonable grounds for assuming that the employee's address had changed, since the employee had not provided any change of residence. The delivery of the dismissal letter is considered to be effective since the employee's failure to collect the registered letter because it was returned 'addressee unknown' is solely attributable to the employee.

Court of Rome, 13/04/2023

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