

SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 113

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WEEKLY ITALIAN LABOUR UPDATES

"Also the renewal of fixed term contracts does not require a business reason within the first twelve months duration."

Employment Decree: green light also from the House

After the Senate, also the House of Representatives has approved the bill converting the Employment Decree into law.

The Employment Decree introduces a number of new initiatives including:

- the extension until 31 December 2023 of smart working in the private sector for parents with children under 14 and for employees most at risk of Covid-19 infection ("vulnerable employees");
- the extension until 30 September 2023 of smart working for public sector and private sector employees suffering from particularly serious chronic illnesses as identified by Ministerial Decree of 4 February 2022 ("super vulnerable employees");

- the 12-month period within which an employer must indicate the reason for granting a fixed-term contract starts on 5 May 2023 (the date the Employment Decree entered into force);
- until now, to extend a fixed-term contract it was not necessary to give a reason for the extension for the first 12 months. This is now also extended to include contract renewals (i.e. new fixed-term contracts concluded after the expiry of a previous fixed-term contract);
- agency employees hired under an apprenticeship contract, unemployed persons (with at least six months of unemployment or social security benefits) and disadvantaged or severely disadvantaged employees (as set out in Regulation (EU) 651/2014) are excluded from the calculation of the quantitative limits for permanent agency work (20% limit);
- the €3,000 limit on fringe benefits for employees with dependent children covers both the social security contribution and the tax costs;
- an employer must still provide information in an employment contract about the scheduling of foreseeable and unforeseeable working time; and
- €7m is earmarked for four years for the training of personnel employed on ships.

Bill converting Decree-Law no. 48/2023

Deferred payment of TFS to public employees breaches fair pay principle

Deferred payment of severance pay (“TFS”) to public sector employees terminated from employment due to age or length of service limits, conflicts with the constitutional principle of fair pay. The principle requires not only that the amount paid is fair, but also that it is paid promptly. Deferral of payment of TFS to after the termination of an employment relationship therefore contravenes the constitutional fair pay principle. The Constitutional Court called on the legislature to implement reforms to ensure compliance with the principle, taking into account the commitments already undertaken in earlier economic-financial programmes.

Constitutional Court 23/06/2023 no. 130

INPS unlocks contribution exemption for the recruitment of people under 36

The INPS has unlocked companies’ access to the contribution exemption provided for specific cases in 2023 by the Budget Law (Article 1, paragraph 297, Law no. 197/2022). This gives an employer a 100% exemption from contributions (excluding the INAIL premium) for newly recruited people under 36, with an annual ceiling of €8,000 for a maximum of 36 months (48 months for certain regions in southern Italy). Similarly, and again for those under 36, the same contribution exemption applies to the conversion of fixed-term contracts to permanent contracts. The recruitment of executives, apprentices, intermittent employees and domestic employees is not included in the contribution exemption. Private employers, excluding the financial sector, who recruit people under 36 between 1 July 2022 and 31 December 2023 are eligible for the contribution exemption. INPS has clarified that, where the recruitment takes place during the year, the maximum annual amount of the exemption (i.e. €8,000) is proportionally reduced to the number of months between the recruitment date and the end of the year.

INPS, Circular 22/06/2023 no. 57

Contribution exemption and recruitment of disadvantaged female employees

INPS has provided operating instructions for the use of the contribution exemption for the recruitment of female employees who meet the following criteria: (i) are at least 50 years old and have been unemployed for over 12 months or (ii) resident in regions receiving EU structural funds and have been unemployed for at least six months, or (iii) working in sectors where there is a pronounced gender employment disparity and have been unemployed for at least six months, or (iv) without regular paid employment for at least 24 months. The exemption applies to recruitment (including under fixed-term contracts) and conversion of fixed-term contracts into permanent contracts between 1 July 2022 and 31 December 2023. The exemption is equal to 100% of an employer’s INPS contributions, up to a maximum limit of €8,000 per year (equal to €666.66 per month and €21.50 for each day of work) and applies for 12 months (increased to 18 for permanent contracts and conversions of fixed-term contracts to permanent contracts). The benefit is available to all private employers (excluding financial sector companies and domestic employers). The exemption only applies to recruitment (or conversion) if it leads to a net increase in employment compared to the average of the previous 12 months, and if the requirements set out in Article 31 of Legislative Decree no. 150/2015, which are always necessary to obtain the relief, are met.

INPS, Circular 23/06/2023 no. 58

INAIL/Conference of Regions agreement on occupational safety training

The framework agreement between INAIL and the Conference of the Regions and Autonomous Provinces on employees' training in occupational health and accident prevention has been approved. The purpose of the agreement is to provide training courses on occupational safety in production contexts financed with the resources under the National Recovery and Resilience Plan (*Piano nazionale di ripresa e resilienza, "PNRR"*). The purpose of the training, in line with the training funded through the PNRR, is to strengthen workplace safety policies to reduce the risk of accidents. The INAIL/Conference of the Regions agreement lasts for three years with a financial endowment of over €10m to be distributed among the Regions and Autonomous Provinces. The local authorities will have to issue public notices relating to the financing of training in the areas of health and safety, after submitting to INAIL their adherence to the training plan.

INAIL, Resolution 19/06/2023 no. 127

Reinstatement and transfer to another location due to replacement

A judicial order of reinstatement following a dismissal held to be unlawful presupposes that the employment relationship is restored to the situation prior to the employer's unlawful termination, including the same duties and the same workplace. The power to transfer is not precluded on reinstatement, but the employer's needs which give rise to the reinstated employee's change of workplace cannot be based on the fact that the dismissed employee has been replaced by another employee. In other words, the unavailability of the position in the unlawfully dismissed employee's original workplace cannot be based on the fact that they have been replaced, because this replacement is necessarily transitory and conditional on the outcome of the judicial challenge of the dismissal. It follows that, if reinstatement is ordered, the employee is reinstated to the original workplace and cannot be transferred to another because their position had, in the meantime, been reassigned to another employee.

Supreme Court 03/05/2023 no. 11564

Messages on WhatsApp prove performance of higher level duties

Messages exchanged on WhatsApp by an employee with a shop manager can be used to prove the performance of higher level duties and the right to the corresponding classification at the higher level. A screen shot of the messages had made it possible to ascertain that the shop assistant also regularly and continuously performed cashier duties and was responsible for any shortages. The exchange of messages between the employee and the hierarchical superior, in which the former provided the data on the day's takings and the latter requested the data and asked for clarification, fully proved the nature of the duties. It follows that the employer was ordered to pay the employee's accrued salary differences for the higher contractual classification.

Court of Cuneo 02/02/2023 no. 44

Facebook screenshot proves employee's professional negligence

A Facebook screenshot showing that a driver was active on the social network while driving a bus constitutes sufficient proof of the employee's misconduct. A copy of a personal computer or smartphone screenshot is, in this sense, equivalent to an electronic copy and fully proves what it attests. Dismissal based on this evidence is lawful, since a driver's interaction with other Facebook users is a distraction from performance of the work obligation, and also breaches the fundamental duties of care and diligence appropriate for driving a bus.

Court of Appeal 03/01/2023 no. 2

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