

SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 115

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WEEKLY ITALIAN LABOUR UPDATES

"Avoiding extension of the fixed term contract before maternity leave is a discrimination factor."

Single height requirement for recruitment is sex discrimination

A recruitment selection procedure which sets a minimum height requirement of at least 160cm for both men and women constitutes indirect gender discrimination. The imposition of an identical height requirement for men and women is contrary to the principle of equality, since it does not take into account the scientific fact that, on average, there is a difference in height between men and women. The fact that the requirement was introduced to comply with rail transport safety, which imposed a minimum physical height requirement, is irrelevant. Discrimination operates objectively, regardless of whether the employer intended to discriminate or not.

Prohibited inequality can also arise where there is a provision or practice that is in itself lawful but which objectively leads to unequal treatment on the basis of gender.

Supreme Court (ord.) 28/06/2023 no. 18522

Indemnity clause for unlawful labour brokering void

The purpose of the prohibition on unlawful labour brokering is to suppress the division between apparent responsibility for an employment relationship and the actual use of the services supplied under it. The regular supply of agency labour can only take place through employment agencies registered in the relevant register. Consequently, if these requirements are not met, the prohibition stops a business organising and enjoying the productive activity of staff while not assuming the position of employer and the risk of the associated staff costs. In this context, a clause inserted in a contract under which a contracting company is indemnified by a contractor against the risk of unlawful labour brokering is null and void. In the presence of sham labour brokering, the indemnity clause breaches mandatory legal obligations and has no effect on an employee's right to be employed by the principal who organised and directed their work.

Supreme Court 20/06/2023 no. 17627

End-of-shift changeover and overtime entitlement

Changeover at the end of a shift is to all intents and purposes a work activity which an employee performs, putting their productive activity at the employer's disposal. Unless that activity is merely minimal, it is considered working time and is, therefore, counted as overtime. A clause in a collective agreement that provides for a monthly lump-sum payment for an employee's inconvenience in the event of a minor shift overrun for changeover activities is lawful. However, it does not apply in cases where the changeover does not involve a minimal overlap between shifts but instead involves a larger overrun of normal working hours. In this situation, the employee is entitled to overtime pay or potentially compensatory time off.

Supreme Court 16/06/2023 no. 17326

Operating instructions issued for CIGS in derogation of the Employment Decree

The INPS has issued operating instructions for the use of the extraordinary wage guarantee fund provided for by the Employment Decree (Article 30 of Law Decree no. 48/2023, converted with amendments by Law no. 85/2023). Under the instructions, businesses suffering particularly difficult financial conditions (including those in liquidation) may use an additional period of CIGS, an exemption from the maximum limits set out in the general legislation. The additional maximum period of CIGS is 15 months and covers the period between 1 October 2022 and 31 December 2023. It should be noted that there is no need to activate the trade union information and consultation procedure required by the general rules (Articles 24 and 25 of Legislative Decree no. 148/2015). The disbursement of extraordinary wage guarantee fund payments is authorised by the Ministry of Labour (within certain spending limits) with INPS's supervision. This exemption can only be obtained via direct payment to employees and employers are required to send the INPS all the necessary data so payment can be made. Failure to do so will give rise to the defaulting employer's liability for the payment of the CIGS and related charges.

INPS, Message 04/07/2023 no. 2512

Two ILO Conventions on safety at work ratified

The Italian Parliament ratified two International Labour Organisation ("ILO") Conventions (no. 155/1981 and no. 187/2006) on health and safety at work and protecting against the risk of accidents. The conventions were not immediately applicable in individual national legal systems and their ratification now requires their immediate application, including in Italy. Among the measures are the commitments of individual states to implement workplace inspections, promote research and to identify mechanisms to improve safety conditions in micro and small businesses. A provision is also made for an employee to remove themselves from a work situation when there is imminent and serious danger to life or health. National legal systems are required to establish mechanisms for permanent consultation with social partners, geared towards the continuous improvement of safety measures.

Law 08/06/2023 no. 84

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No accumulation of earned income and withdrawn pension under “quota 100” pension scheme

The prohibition on the accumulation of employment income with the “Quota 100” pension (38 years of pension payments and being aged 62) (as well as for the Quota 102 and 103 pension) cannot be interpreted to mean that, where the pensioner has earned income, the entire year’s pension must be withdrawn. The prohibition on accumulation only means that the employment income generated during the same period must be deducted from the pension payment received by a Quota 100 pensioner. The prohibition on accumulation excludes, in other words, the possibility that the Quota 100 pension can be added to the employment income received in the same period and, therefore, the amount must be deducted from the pension itself. INPS’s interpretation to the contrary, according to which a Quota 100 pensioner must have their entire year’s pension withdrawn because of income earned under an agency contract, is erroneous.

Court of Lucca, Judge Piccoli, 07/03/2023

KEY CONTACTS



**GIUSEPPE BULGARINI
D'ELCI**
PARTNER • MILAN

T: +39 02 721 7071
M: +39 347 26 86 664

gbulgarini@wfw.com



ROBERTA CRISTALDI
COUNSEL • MILAN

T: +39 02 721 7071
M: +39 344 0506106

rcristaldi@wfw.com

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