SNACKS: DIGESTIBLE WEEKLY LABOUR NEWS – ISSUE 116

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WEEKLY ITALIAN LABOUR UPDATES

"With collective company agreement variable remuneration is taxed only 5%."

Protecting employees against heat related health risks

The National Labour Inspectorate has outlined the precautions an employer must take to prevent health risks to employees exposed to heat in the workplace. An employer must assess the risks of heat stress and identify mitigation measures; make drinking water available for employees; provide PPE (cooling clothing etc.); reorganise work shifts taking into account the hottest hours of the day (2:00-5:00pm) and make shaded areas available for breaks. In addition, employers must train employees on preventative measures, including the use of breathable, light-coloured clothing, headgear with a visor and sunglasses with UV filters, as well as the application of a high-protection sun cream (SPF 50+). Finally, the Inspectorate reiterates that companies may apply for the ordinary wage guarantee fund (*cassa integrazione guadagni ordinaria*, "CIGO") for 'weather events' if work is suspended due to temperatures exceeding 35°C.
INL, Note 13/07/2023 no. 5056

ANAC guidelines on whistleblowing

The Italian National Anti-Corruption Authority (*Autorità Nazionale Anticorruzione*, "ANAC") has issued new operational guidelines on whistleblowing procedures effective from 15 July 2023. The guidelines provide recommendations and principles for private and public entities that are required to adopt reporting channels under Legislative Decree no. 24/2023 for breaches of EU law and national regulatory provisions. ANAC reserves the right to issue further subsequent guidelines on the matter. The rules apply to entities that have, in the last year, employed on average, over 249 employees under permanent or fixed-term employment contracts. Companies that have adopted the organisation, management and control model under Legislative Decree no. 231/2001 are also required to implement a reporting channel.
ANAC, Resolution 12/07/2023 no. 311

ANAC issues external whistleblowing regulation

ANAC has also published its new regulation on the handling of external reports and the exercise of sanctions. This regulation came into force on 15 July 2023. In particular, it identifies:

- how external alerts are captured and prioritised;
- how notices of alleged retaliation and complaints lodged with the ANAC are captured;
- the procedure for handling external alerts; and
- the sanction procedure for breaches ascertained under Legislative Decree no. 24/2023, including breach of the duty of confidentiality and failure to follow-up reports of breaches.

ANAC, Resolution 12/07/2023 no. 301

Financial allowances under company agreement also due during holidays

Remuneration due during a holiday period includes any amount received by an employee during the normal working period. The concept of holiday pay, in line with a guideline expressed by the European Court of Justice, must respect the principle that during a holiday period an employee is entitled to ordinary remuneration. Applying this rule, the "conduct" and reserve allowances provided for in a collective company agreement must be included in holiday pay, since they are an integral part of an employee's ordinary pay. Failure to pay in full the ordinary remuneration received by an employee during working periods could disincentivise them from taking all or part of an accrued holiday period.

Supreme Court 11/07/2023 no. 19663

Whistleblowing and privacy compliance

The deadline for the implementation of whistleblowing procedures under the new decree (Legislative Decree no. 24/2023) expired on 15 July 2023 for employers with more than 249 employees, while the deadline for employers with at least 50 employees (but fewer than 250) is 17 December 2023. In its report to Parliament, the Italian Data Protection Authority clarified some aspects relating to whistleblowing channels. The privacy obligations to be fulfilled by employers are: appointing the persons authorised to process data under Article 29 of the GDPR; carrying out an impact assessment of the processing; giving correct contextual information to the data subjects; updating the record of processing; and putting in place appropriate security measures to guarantee the protection of authentication credentials. The Authority clarified that responsibility falls not only on an employer who adopts the
whistleblowing procedure, but also on any third party that provides software to manage whistleblowing channels. Therefore, the software provider must be appointed as a processor under Article 28 of the GDPR and provided with specific instructions on the limits and management of data concerning the reporting person, the person concerned and any other individuals involved in the report.

Italian Data Protection Authority, Report to Parliament 13/06/2023

Sickness does not count towards job retention period in absence of safety training

In the absence of employees' training on health and safety, sick days attributable to unhealthy working conditions are not counted in the job retention period, even if an employer has taken the necessary measures to protect their employee's health. It is not sufficient that an employer has fulfilled its obligation to provide information on general and specific risks associated with their workplace because training is also considered essential. While information provides the necessary knowledge on health and safety issues, training translates these concepts into action. In the absence of training, days of illness related to working conditions are never counted in the maximum period for the purposes of job retention period. Consequently, a dismissal that includes such absences in the calculation of the job retention period is unlawful.

Court of Appeal of Messina, Reporting Judge Conti, 13/06/2023

Pregnant employee and failure to extend fixed-term contract

An employment agency that did not extend a fixed-term agency supply contract of an employee who had given notice that she was pregnant was held to have discriminated against her. The fact that the agency, more than three months before the expiry of the agency supply contract, had sent an email to the employee informing her that the contract would not be extended and the early notice of the termination of the relationship with the employment centre are clear indications of direct discrimination. These facts show that the decision to terminate the employment relationship was taken by the agency because of the employee's pregnancy. The pregnant employee was treated less favourably than her colleagues who had remained in service, for which reason damages were awarded amounting to 50% of the remuneration that the employee would have received if her contract had been renewed (less the maternity allowance received during the same period).

Court of Milan 12/06/2023 no. 16445

Including offensive expressions in court application not just cause for dismissal

An employee who, in a written defence, attributes to an employer, acts or facts, even if untrue, that directly and immediately concern the subject matter of the dispute, cannot be dismissed, even if they use improper or offensive expressions. Therefore, an employee's dismissal for just cause for having included phrases that the employer considered slanderous in court proceedings filed for the payment of salary differences is unlawful, with the sanction of consequent reinstatement in the workplace. Where the offensive phrases are necessary and relevant to the exercise of the right of defence in court, the employee's conduct constitutes a legitimate expression of the right to criticism. Moreover, the offence of slander or defamation is excluded when it is established that there is no intention to spread information likely to discredit the employer or hierarchical superiors.

Supreme Court 11/07/2023 no. 19621

Dismissal for just cause does not exclude right to compensation in lieu of untaken leave

Dismissal for just cause does not entail the loss of the right to receive compensation in lieu of leave accrued and not taken. This approach is the result of an interpretation of national law in accordance with the principles laid down by the Court of Justice of the European Union concerning the right to paid leave and the compensation in lieu thereof. The fact that an employee, following the commission of an offence, was suspended from duty and then dismissed is irrelevant, since the onus is on the employer to prove that they invited the employee to take leave in good time and warned the employee that, if they did not take it, the leave would be lost at the end of the reference period or an authorised rest period. In that context, denying compensation in lieu of leave accrued and not taken would constitute a sanction over and above the disciplinary penalty of dismissal.

Supreme Court (ord.) 11/07/2023 no. 19659

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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