

OBSERVATORY
LABOUR LAW & IR
*di Morri Rossetti & Franzosi*

# Monthly Roundup

**October 2026**

# October 2026

This month's key clarifications on practice and case law.

1. Remunerative nature of severance pay (TFR) allocated to the Italian National Social Security Agency (INPS) Treasury Fund: United Sections of the Italian Supreme Court Judgment No. 26356 dated October 7th, 2026;
2. Italian Supreme Court, Order No. 26009 dated September 30th, 2026: training secondment and interest of the posting employer;
3. Italian Supreme Court, Order No. 26937/2026: repayment of advanced payments in the event of termination of an agency agreement during the probationary period;
4. INPS Circular No. 106 of 16 October 2026: provisions concerning the "2026 Working Mothers' Bonus.".

## 1. Remunerative nature of severance pay (TFR) allocated to the Italian National Social Security Agency (INPS) Treasury Fund: United Sections of the Italian Supreme Court in Judgment No. 26356 dated October 7th, 2026

In Judgment No. 26356 dated October 7th, 2026, the United Sections of the Italian Supreme Court clarified that severance pay (*TFR*) allocated to the *INPS* Treasury Fund shall be considered having a remunerative nature, rather than representing a social security benefit.

This clarification was due following certain doubts that arose after the introduction of the Treasury Fund introduced by a new legislation in2006, which, however, did not alter the structure of the obligation relating to severance pay (*TFR*), but only affected the methods used to finance and disburse the accrued amounts.

The ruling thus puts an end to the conflicting case-law within the Supreme Court, ruling out the classification of the amounts at issue as social security benefits and, consequently, the imposition on the Treasury Fund of the exclusive responsibility for protecting employees where the employer fails to pay the relevant amounts.

Instead, the United Sections judgement endorsed the prevailing approach, according to which accrued but unpaid *TFR* amounts constitute deferred remuneration and, as such, represent a claim held by the employee against the employer, which becomes payable upon termination of the employment relationship.

The conclusions reached by the United Sections are particularly significant in terms of their practical application, as they have specific legal and operational implications. In the case under consideration, the approach adopted allows employees to claim to be included on the list of creditors in the event of the employer's judicial liquidation.

## 2. Italian Supreme Court, Order No. 26009 dated September 30th, 2026: training secondment and interests of the posting employer

In Order No. 26009 dated September 30th, 2026, the Italian Supreme Court ruled again on the legal requirements of secondment operations, as governed by Article 30 of Italian Legislative Decree No. 276/2003 and their link to possible scenarios of unlawful supply of manpower.

The ruling arose from a training secondment involving 39 employees, which the court of first instance classified, in fact, as unlawful supply of manpower.

This conclusion was based on the absence of a genuine interest on the part of the user employer, as well as on the actual arrangements under which the employees were integrated into the latter, from

they received organizational instructions and underwent the exercise of its direct managerial authority.

However, the key issue concerns the existence of the interest underlying the secondment and its actual purpose. Although acknowledging the training aim as an actual grounding reason for posting employees, the Italian Supreme Court upheld the finding that the arrangement was unlawful, reiterating that the separation between the formal employer and the entity that actually benefits from the work performed is permissible only where the seconding employer has a specific business interest, which must, moreover, continue to exist throughout the entire duration of the secondment.

Regardless of the training purpose of the case at issue, the Court found that not enough evidence of the existence of the latter was issued by the involved parties.

## 3. Italian Supreme Court, Order No. 26937/2026: repayment of advanced payments in the event of termination of an agency agreement during the probationary period

In Order No. 26937 dated October 15th, 2026, the Italian Supreme Court clarified that agents must repay advances payments received where the right to retain them is expressly conditional upon the achievement of targets to be assessed on an annual basis.

In the case at issue, a bank sought repayment of the amounts the latter had paid in advance following termination of the agency agreement due to the agent's failure to pass the six-month probationary period.

The Italian Supreme Court confirmed that, in the absence of the annual assessment required under the incentive plan, such amounts could not be regarded as having been definitively earned and, therefore, they were technically unjustifiably gained by the agent.

Accordingly, the Court stated that merely relying on Article 1373, para. 2 of the Italian Civil Code is insufficient to rule out the obligation to repay the amounts received. A distinction must, in fact, be drawn between remuneration definitively earned and amounts paid merely by way of advance.

The Supreme Court therefore dismissed the agent's appeal, upholding the order requiring repayment of the amounts that had not become definitively payable.

## 4. INPS Circular No. 106 of 16 October 2026: provisions concerning the "2026 Working Mothers' Bonus"

With Circular No. 106 of 16 October 2026, INPS has established the conditions and eligibility requirements for the so-called "Working Mothers' Bonus" for 2026.

This is an income supplement intended for working mothers, excluding domestic workers, with two or more children, for each month of employment or self-employment carried out in 2026.

Working mothers with three or more children who hold an open-ended employment contract are excluded, as they may benefit from an exemption from social security contributions for invalidity, old age and survivors' pensions (IVS), in respect of the portion of contributions payable by them, pursuant to Article 1, paragraph 180, of Law No. 213/2023.

A further eligibility requirement is that the total income from employment and self-employment, as relevant for tax purposes for the 2026 tax year, must not exceed EUR 40,000 per year.

Applications must be submitted by 31 December 2026. However, where the eligibility requirements are met in December 2026, applications may exceptionally be submitted by January 31st, 2027.
The allowance amounts to EUR 60.00 for each month of employment or self-employment carried out during 2026, for a maximum of twelve months and up to a total amount of EUR 720.00.

OBSERVATORY
LABOUR LAW & IR
*di Morri Rossetti & Franzosi*

The main updates on Labour Law of October 2026

**Resignation by implied conduct: the collective bargaining agreement (NCBA) term set for disciplinary dismissals does not replace the statutory threshold**

In its ruling No. 508 of August 19, 2026, the Bologna Court of Appeals clarified that the term set by the National Collective Bargaining Agreement (NCBA) for disciplinary dismissals in cases of unjustified absence cannot be extended to resignations by implied conduct. Lacking any specific collective bargaining provisions governing this matter, the statutory time limit set forth in Article 26, paragraph 7-bis, of Legislative Decree No. 151/2015 shall apply, which serves to ensure a correct assumption of the employee's intent to terminate the employment relationship.

→ Read more

**EU worker mobility: digital documents, portable qualifications and more effective checks are forthcoming**

The European Regulation amending the rules on social security systems at the EU level – recently approved by the European Parliament – introduces a series of changes affecting workers who perform their work in a member State other than their country of origin. In this article, we discuss the most significant regulatory changes contained in the document.

→ Read more

**HR TIPS | #10 Isopensione**

Section 4, paragraphs 1 to 7-ter, of Law No. 92/2012 defines the so-called «*isopensione*», a tool used by companies **employing at least 15 employees** in the preceding six-month period, within **redundancy procedure**, with the aim of encouraging the termination of employment relations with workers who are set to meet the pension eligibility criteria (in both old-age and early retirement scenarios) within certain **time limits**.

More specifically, *isopensione* requires that an employer meeting the mentioned conditions shall execute a dedicated **agreement with the works council reps** that are most representative at company level.

This agreement must then be **submitted by the employer to the Italian National Agency for Social Contributions (*INPS*)** for approval, together with a **bank guarantee** to ensure its solvency in relation to the obligations undertaken by the employer company.

Following acceptance of the agreement, the employer is compelled to **monthly correspond to INPS the sums necessary to cover for both the benefit offered through the *isopensione* and the relevant social contribution**. In the event of non-compliance by the employer, INPS is obliged not to pay the relevant benefits.

It shall be noted that, while the *isopensione* agreements are executed, the employer retains the option to employ new workers, even at the business units that are affected by the redundancy process (as an exception to the right of priority generally provided for in cases of this sort).

For further information and insights

**Emanuele Licciardi**

*Partner | Dept. of Labour Law and Industrial Relations*
*Responsible for the Labour Observatory*

Emanuele.Licciardi@MorriRossetti.it

**Morri Rossetti & Franzosi** **Labour Observatory**

OBSERVATORY
LABOUR LAW & IR
*di Morri Rossetti & Franzosi*

Piazza Eleonora Duse, 2
20122 Milano
**MorriRossetti.it**

**Osservatorio-labour.it**