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Labour Monthly Roundup

April 2023

LABOR MONTHLY ROUNDUP

The Firm's Labour Monthly Roundup holds some of the most important clarifications on the new practices and law cases of the past month that are relevant to the following subjects:

1. *Italian Supreme Court, decision no. 10802/2023: delay of notification of disciplinary procedure and employee reinstatement.*
2. *Evidence of indirect gender discrimination in the workplace (Supreme Court, decision no. 10328/2023).*
3. *Assessments on the fairness of dismissal due to employee's poor performance (Supreme Court, order no. 9453/2023).*
4. *INL, statement no. 2572/2023: further clarifications on privacy and remote control on employees.*
5. *Ministry of Labour and Social Policies: countermeasures against illegal work (D.M. no. 57 of April 6th 2023).*
6. *INPS message no. 1356/2023 regarding working fathers' resignations and consequent employer's burdens.*

1. Italian Supreme Court, decision no. 10802/2023: delay of notification of disciplinary procedure and employee's reinstatement

In its recent decision dated April 21st 2023, the Italian Supreme Court ruled on a fascinating case, given its practical relevance. More specifically, an employee was dismissed for just cause following a disciplinary measure set off by the employer within the terms provided for by the relevant NCBA; however, the letter initiating such procedure was notified to the employee at an incorrect address, while the renewed notification occurred ten days after the expiry of the time limit set by the NCBA, thus rendering it ineffective. The employer dismissed the employee for just cause, which the latter claimed was unlawful before the competent Court and Court of Appeal.

Once charged on the decisions upon this case, the Italian Supreme Court held that the employer alone was responsible for the inaccuracy of the address at which the notice was sent and referred to the principle of the timeliness of disciplinary proceedings, thus confirming the unfairness of the dismissal of the employee, who was reinstated pursuant to section 18 of Law no. 300/1970.

2. Evidence of indirect gender discrimination in the workplace (Supreme Court, decision no. 10328/2023)

On April 18th 2023, the Italian Supreme Court ruled on indirect gender discrimination in the workplace, which was identified by the latter when the consequences of an apparently neutral provision affected employees of a particular gender. In the

decision under review, the Court of Appeal set out a list of instructions that judges may follow to ascertain evidence of such a condition. More specifically, it is possible to take into account, where available, statistical data on a particular group of employees, comparing them to estimate how many of them are affected by unequal treatment, depending on their gender.

In any case, the Supreme Court has ruled that there are no objective parameters against which the treatment of employees can be assessed; therefore, the evidence submitted to the competent judge must always be placed within the factual context to be examined on a case-by-case basis.

3. Assessments on the fairness of dismissal due to employee's poor performance (Supreme Court, order no. 9453/2023)

In cases of dismissal for an employee's poor performance – which identifies a subjective ground for termination – the employer bears the burden of proving that the employee failed to achieve the expected result and that it was objectively possible for the employee to perform at least to the required standard. Therefore, the failure at issue shall be caused by the employees' culpable and negligent breach of their obligations under the relevant employment contract. To this end, according to the Court of Appeal, the employer may use the comparison of data regarding the activity of the involved employee and those performed by the latter's colleagues with the same duties.

4. INL, statement no. 2572/2023: further clarifications on privacy and remote control on employees

On April 14th 2023, the Italian National Labour Inspectorate ("INL") went back to the issue of audio-visual equipment and other instruments aimed at monitoring employees in the workplace. More specifically, the INL reiterated that 'without prejudice to the absolute prohibition of intentional remote monitoring', the installation of such instruments must be authorised in advance by collective agreements with the existing union representatives, which must be considered a priority route against public authorisation.

Even if granted, the latter would be merely contingent, as it would come only after any failure to reach an agreement with the trade union representatives. Moreover, such an agreement cannot even be replaced by the consent given individually by each employee, which would legitimate criminal sanctions against the employer, as the INL confirms. The statement above provides further information on multi-localised companies and integrations to already-issued authorisations, new companies and post-installation hiring, and geolocation systems.

5. Ministry of Labour and Social Policies: countermeasures against illegal work (D.M. no. 57 of April 6th 2023)

Regarding undeclared work, the Ministry of Labour and Social Policies has formally established (by Ministerial Decree dated April 6th) the National Committee for the Prevention and Combating of

Unrecorded Work, chaired by the Minister of the same office and consisting of representatives of the latter, as well as other related national ministries and institutes.

The Committee is entrusted with coordinating and monitoring the implementation of the measures contained in the 'National Plan for Combating Unrecorded Work', which – among others – also provides for activities aimed at combating illegal hiring (with specific reference to the agricultural sector).

6. INPS message no. 1356/2023 regarding working fathers' resignations and consequent employer burdens

On April 12th 2023, the Italian National Social Security Agency ("INPS") issued a message highlighting the obligations lying on the employer receiving notice of voluntary resignation from a working father during the paternity leave period, as well as providing various operational instructions on the matter.

More specifically, the involved employee will still be entitled to receive the NASPI contribution (a monthly unemployment allowance) for the period following the termination of the employment relationship and will also be exempted from observing the contractually established notice period. In turn, following the verification of the validation of the resignation itself, the employer will be required to pay, in favour of INPS, the relative contribution pursuant to Law no. 92/2012 (the so-called 'redundancy ticket').

The main updates on Labour Law of April 2023

Garden Leave

28 April 2023

The "Garden Leave" is a contractual clause used mainly in the United States and the United Kingdom, which grants employees a paid leave within the execution of the notice period to prevent them from engaging, during that time, in competitive conduct that could be detrimental to the employer.

[→ Read more](#)

Nature of the dismissal due to employee's unfitness for work

14 April 2023

The law provides for several cases in which employees must undergo a company medical examination to confirm their physical fitness to perform the tasks assigned under the employment contract. But what are the consequences if such confirmation is never released? Below is a brief analysis of the employer's alternatives when its employees no longer hold the physical abilities to perform the duties provided for by their employment contracts.

[→ Read more](#)

Labour Alert | Renewal agreement of NCBA for executives ("dirigenti") of the trade, distribution and services sector (Amendments to economic provisions)

20 April 2023

Union representatives have recently met to update the economic provisions of the NCBA of the sector. Finally, on April 12th 2023, they signed a renewal agreement which provides for a system of contractual uplifts gradually granted to executives already hired on the same date.

[→ Read more](#)

HR Tips #4: Company Welfare

Company welfare consists of the goods and services that the employer makes available to its employees, involving tax and contribution benefits for the company and the same employees. Welfare plans are usually implemented through agreements between employers and unions or company policies. They shall be addressed to all employees or specific categories and provide goods and services without any cash payment.

For a successful implementation of a welfare plan, it is essential to assess the needs of employees through an analysis aimed at outlining the roll-out strategies and providing flexible plans in terms of the choice of benefits designed for employees. For this purpose, employee surveys are handy in identifying the workforce's preferences.

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For more information and insights, you may contact:

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