



MORRI
ROSSETTI

Labour Monthly Roundup

July - August 2023

LABOUR 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. *Supreme Court: Termination indemnity is not due to an agent who takes early retirement;*
2. *INPS: application for unemployment benefit (so-called NASPI allowance) by para-subordinate workers;*
3. *Supreme Court: dismissal for failure to pass the probationary period and nullity of the relevant agreement;*
4. *Supreme Court: remuneration during holidays;*
5. *New ANAC Guidelines on Whistleblowing;*
6. *INPS: Recruitment of 'NEETs'*
7. *Turin Court: resigning employees due to transfer over 50 km from their residency have the right to the NASPI allowance;*
8. *Circular no. 25/E dated August 18th, 2023, from the Italian Fiscal Agency on the fiscal residency of remote workers;*
9. *Operational guidelines for agencies on the entry of non-EU citizens residing abroad.*

1. Supreme Court: Termination indemnity is not due to an agent who takes early retirement

The Supreme Court, in its decision no. 17235/2023, ruled that the termination indemnity according to Article 1751 of the Civil Code is not due when the agent terminates the contract to take an early retirement pension.

In particular, the Court, confirming the appealed judgment and conforming to its precedents, specified that apart from the exceptions outlined in Article 1751 of the Civil Code, the termination indemnity is not due when the agent withdraws from the contract.

The agent's termination represents a fact preventing the right to the indemnity, even in the event of the accrual of the right to an early old age pension. The entitlement to such an indemnity exists only when the agent meets the requirements for ordinary old-age retirement without prejudice to the possibility of the parties modifying the provision in favour of the agent.

2. INPS: application for unemployment benefit (so-called NASPI allowance) by para-subordinate workers

With message 2570/2023, INPS provided indications on how to apply for the NASPI by para-subordinate workers already enrolled in the Separate Management Fund of the same agency.

The Agency has indicated that insured persons registered with this separate fund but who have ceased the employment relationship or activity for which they are obliged to be registered are nevertheless required to complete the 'Declaration of employment activity' section, indicating in the "Expected income for 2023" field with the presumed annual income, in this case, equal to zero.

3. Supreme Court: dismissal for failure to pass the probationary period and nullity of the relevant agreement

The Supreme Court, in its decision no. 20239 of 14th July 2023 ruled that dismissing an employee hired after 7th March 2015 for failure to complete the probationary period, served in respect of an agreement later declared invalid, does not entitle the employee to reinstatement.

According to the Supreme Court, in such a case, the deed of the employer is not null and void and validly terminates the employment relationship. However, it may entitle the employee to receive monetary damages.

4. Supreme Court: remuneration during holidays

The Supreme Court, in its decision no. 19663 of 11th July 2023 ruled that the remuneration due during holidays includes any amount that (i) relates to the performance of duties and (ii) is related to the employee's personal and professional 'status'.

Indeed, any decrease in that remuneration could dissuade employees from exercising their holiday entitlement.

5. New ANAC Guidelines on Whistleblowing

On 15th July 2023, the new Guidelines issued by ANAC (the National Anti-Corruption Agency) came into force (Resolution no. 311 of 12th July 2023). They have been approved with the new Regulation for managing external whistleblowing measures.

6. INPS: Recruitment of 'NEETs'

INPS, with Circular no. 68 of 21st July 2023, gave instructions concerning access to the economic incentive granted to employers who hire 'NEETs' - Not (engaged in) Education, Employment or Training' – on an open-ended basis from 1 June to 31 December 2023.

The incentive, introduced by the Employment Decree, is recognised, if requested, for 12 months, to the extent of 60% of the gross monthly salary for new hires of young people who, on the date of hire, are under 30 years of age, are not working and are not in education or training ('NEET') and are registered with the National Operational Programme Youth Employment Initiative.

7. Turin Court: resigning employees due to transfer over 50 km from their residency the right to the NASPI allowance

With its recent decision dated July 27th, the Court of Turin dealt with cases where employees are proposed to be transferred from the workplace contractually defined to another one set over 50 km from their residency. According to the Court, in situations like these, non-accepting employees may resign from their employment position and still have the right to receive NASPI allowance. The

INPS opposed such demands, claiming that the employees' refusal should have been considered a unilateral decision, thus precluding the latter's right to obtain the NASPI, as provided by the applicable laws. Notwithstanding the above, the Turin Court decided that a transfer as such would necessarily involve a significant sacrifice for the employees, enough to qualify as involuntary the termination of the relevant relationship.

8. Circular no. 25/E dated August 18th, 2023 from the Italian Fiscal Agency on the fiscal residency of remote workers

The Italian Fiscal Agency has recently confirmed the application of the general criteria provided for by sections 2 and 3 of the "Tuir" (the Italian Tax Code) even to identify the fiscal residence of employees executing their activities remotely.

Generally speaking, the above means that employees setting their domicile or residency in Italy for at least 183 days within a year or enrolling in the records of the resident population in Italy will be considered to be fiscal residents in that country.

9. Operational guidelines for agencies on the entry of non-EU citizens residing abroad

With a joint circular from the Ministries of the Interior and of Labour dated last August 10th, 2023, operational guidelines were provided regarding the management of clearance documents requested directly by staff-leasing agencies to allow non-EU citizens residing abroad to enter Italy.

More specifically, the Ministries clarified the operating mode through which agencies holding their legal or operational headquarters in Italy may submit, on behalf of the involved employees, their requests to obtain clearance to establish a working relationship with the agency itself (fixed or open-term) in that same country.

The main updates on Labour Law of July and August 2023

Issues in choosing the governing law of a contract: the overriding mandatory provisions 3 August 2023

When concluding a contract that involves more than one jurisdiction because of the parties' citizenships or the place of execution of the activities, they may choose the law that will govern their working agreement. Although there are no boundaries to the legislation to choose from, the terms and conditions of the agreement mustn't collide with the ground principles of the law of the country where the working activity is mainly executed.

[→ Read more](#)

Formal requirements in employment contracts with transnational features 28 July 2023

A contract can only be considered valid and effective when specific requirements are duly fulfilled, including those relating to the form of the agreement. With particular reference to contracts regulating employment relationships with transnational features, things can get further complicated. Below is a brief examination of the most relevant aspects to be considered.

[→ Read more](#)

Agents are not entitled to a termination indemnity if they take early retirement 21 July 2023

The Italian Supreme Court recently ruled that an agent who retires with early pension requirements is not entitled to the termination indemnity since this case is not included among the exceptions outlined in Article 1751 of the Italian Civil Code that allows an agent who withdraws from the relationship to obtain such an indemnity.

[→ Read more](#)

HR Tips #7: Risks of interference on working location

*When **procurement, services** or **agency** contracts are executed, section 26 of the single text on health and safety within the work premises (Legislative Decree no. 81/2008) prescribes that a specific document (so-called DUVRI) defining all the **risks of interference** caused by the presence of several subjects on the exact working location must be drafted (e.g., a construction site, a production plant).*

*As a precondition for applying the mentioned section 26, the principal – liable for drafting the document at issue – must hold **legal availability** of the working site during the duration of the relevant contracts.*

*However, there are some exceptions where **the drafting obligation of the DUVRI fails**, depending, for instance, on the actual dangerousness of the activities executed according to the contract at stake.*

*If defaulting or omissions connected to the DUVRI obligations are reported, the principal could be **sanctioned** with a fine ranging from **EUR 1,500 to EUR 6,000** or the **arrest** from two to four months. Moreover, **service contracts** that do not show the cost allocated for the health & safety measures are **null and void**.*

HR Tips #8: Workation

***Workation** refers to a new form of flexible work that combines work and vacation for a limited period.*

*In practice, work is performed continuously from a **vacation location** where it is possible to work, carving out leisure moments without the need to resort to a leave or a permit.*

Companies considering introducing workation cannot fail to consider the **legal** and **organisational** implications, especially when cross-border destinations are involved.

In particular, the main ones are:

- the **immigration requirements to enter and work in the destination country**;
- the **tax** and **social contribution** implications that working in the chosen location may have for the company and the employee;
- compliance with **work safety obligations**.

* * *

For more information and insights, you may contact:

Emanuele Licciardi

Partner | Dept. of Labor Law and Industrial Relations

Emanuele.Licciardi@MorriRossetti.it

Follow us on **LinkedIn**



MORRI
ROSSETTI



Morri Rossetti
Piazza Eleonora Duse, 2
20122 Milano

MorriRossetti.it