

MORRI  
ROSSETTI

# Labour Monthly Roundup

March 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. *Remote working: updated communication procedure for parents of children under 14;*
2. *Supreme Court: it is lawful the dismissal served because of the use of homophobic remarks against a colleague;*
3. *"Women's option": INPS clarification on access to early retirement;*
4. *Whistleblowing: transposed, in final form, the European directive;*
5. *Supreme Court: it is lawful the dismissal for the use of company vehicles to disseminate no-vax messages;*
6. *INPS: entitlement to NASPI for resigning fathers;*
7. *Italian Data Privacy Authority (IDPA): defence in Court does not justify access to employee's emails.*

### **1. Remote working: updated communication procedure for parents of children under 14**

Following the entry into force of the law converting the so-called "Mille proroghe" Decree, the *online* procedure by which employers fulfil the mandatory agile work reporting requirement has been updated.

In fact, until June 30th, 2023, the entitlement to ask for "*smart working*" arrangements has been restored for workers with children under the age of 14.

The communication form includes the category of parents with children under 14 among those for which individual agreement is not mandatory.

It is understood that if there is already a remote working agreement between the parties, it is not necessary to submit a new communication.

### **2. Supreme Court: it is lawful the dismissal served because of the use of homophobic remarks against a colleague**

The Supreme Court, in Order no. 7029 of March 9th, 2023, confirmed the lawfulness of the dismissal of an employee who addressed a coworker with the comment "you're a lesbian!" with taunting purposes.

Indeed, the behaviour cannot be framed as simple rudeness, but it shall be rather intended as a form of discrimination based on sexual orientation.

In the opinion of the Supreme Court, the meaning of cause for dismissal must be evaluated considering the legal system's general moral sense and general principles.

Therefore, the use of inappropriate expressions, in a taunting manner, about sexual orientation justifies a dismissal.

### **3. "Women's option": INPS clarification on access to early pension**

The Italian social security institution (INPS), in its Circular no. 27/2023, provided guidance on the application of the Budget Law 2023 regarding the early retirement that female workers can receive by exercising the so-called "woman option."

The recipients are, in fact, female workers who, by December 31st, 2022, have accrued a contribution period of 35 years or more and an age of at least 60 years.

A moving window applies to the early retirement pension, whereby female workers earn their pensions twelve months after the date on which they meet the prescribed requirements, in the case where the pension is paid from the employees' social security forms and eighteen months after the date on which they meet the prescribed requirements, in the case where the pension is paid from the self-employed employee' social security funds.

### **4. Whistleblowing: transposed, in final form, the European directive.**

Legislative Decree no. 24 of March 10th, 2023, implementing EU Directive No. 2019/1937, for the protection of persons who report violations of European Union law that harm the public interest or the integrity of the public administration, of which they have become aware in the framework of an

employment relationship, was published in Official Gazette no. 63 of March 15th, 2023.

The purpose is to regulate the protection of whistleblowers, providing minimum standards of protection to unify national disciplines and preserve from retaliatory behaviour those who report wrongdoing or violations of the law in both public administrations and private companies.

**5. Supreme Court: it is lawful the dismissal for the use of company vehicles to disseminate no-vax messages**

The Supreme Court, in its Order no. 7293 of March 13, 2023, ruled on the legitimacy of dismissing an employee who appropriates company property, even temporarily, to spread no-vax messages.

The distorted use of the company goods includes a social disvalue that does not allow the application of a mere conservative sanction.

In the case decided by the Court, the employee, a public transportation driver, had posted, within a Facebook group, a photo of a bus that displayed no vax phrases on the display board of the vehicle.

**6. INPS: entitlement to NASPI for the resigning fathers**

The Italian social security institution (INPS), in its Circular no. 32/2023, clarified that fathers who

take mandatory paternity leave and voluntarily resign within the year of their child's birth are eligible for NASPI (i.e., the public unemployment indemnity).

After amendments to the Consolidated Maternity Act (Legislative Decree no. 151/2001), which provided for mandatory paternity leave of 10 days to be taken from two months before the expected delivery date five months thereafter, this clarification was necessary.

If the father has used the leave and resigned during the period protected by the layoff ban, he is entitled to NASPI.

**7. Italian Data Privacy Authority (IDPA): defence in court does not justify access to employee's emails**

The IDPA, in its Order no. 8 of January 11th, 2023, published March 15, ruled that accessing a *former* employee's e-mail messages is not permissible even for litigation defense needs.

A legitimate interest in processing personal data to defend one's right does not nullify an employee's right to the protection of personal data, especially if it concerns a form of correspondence.

According to the IDPA, the purpose of not losing business contacts useful for one's business could have been pursued with a less invasive processing complying with the minimization principle.

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The main updates on Labour Law of March 2023

**Whistleblowing: implementation of the European Directive through Legislative Decree**  
27 March 2023

*The Legislative Decree no. 24 of 10th March 2023, which will become effective on 30th March 2023 (the “WB Decree”), was published in the Official Gazette no. 63 on 15th March 2023 and it definitively implements Directive (EU) 2019/1937 on whistleblowing (“WB Directive”).*

*The implementation of mandatory reporting channels will require evaluating numerous connected topics such as corporate governance, risk management, personal data protection, and workers’ rights..*

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**What are the options for foreign citizens performing working activities in Italy?**  
23 March 2023

*During these past few years, the percentage of Italian workers leaving their country of origin to pursue better career opportunities abroad has exponentially risen. However, even if based on different patterns, the opposite flow of people moving went through severe changes as well, so much so that the intervention of the lawgiver was necessary to provide more balanced regulations of the field.*

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**Evidence of hetero-direction for establishing the existence of the employment relationship**  
8 March 2023

*Even without the element of subjection to the employer’s directive power, it is possible to prove the existence of the employment relationship through presumptions.*

*The Supreme Court examined an employee’s claim to establish the existence of an employment relationship with a company for which he provided consultancy services.*

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**HR Tips #3: Employers of Record (EoR)**

*Entrepreneurs needing working performances abroad but who do not intend to incorporate legal entities on that territory frequently resort to the so-called «Employers of Record» (EoR), which formally recruit employees with the required skills to bear the relevant burdens, thus allowing their customers to benefit from such resources directly.*

*In Italy, such an interposition identifies personnel leasing, which – as the Italian law prescribes – may only involve authorised agents (the «employment agencies»).*

*To be appointed as such, these agencies must meet specific (and strict) requirements, whose violation exposes the final user of the working performance (i.e., the customer) to criminal and administrative fines.*

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