

 OBSERVATORY
LABOUR LAW & IR
di Morri Rossetti & Franzosi

Monthly Roundup

September 2025

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The main clarifications of practice and case law of the last month.

1. *Italian Supreme Court, order No. 24416/2025: social security contribution is due even when the employee waives the payment in lieu of notice;*
2. *Italian Revenue Agency, ruling no. 237/2025: tax and social security treatment of benefits issued to employees for charging electric and hybrid vehicles;*
3. *Investigative activities on employees permitted in cases of poor performance (Italian Supreme Court, order no. 24564/2025);*
4. *Italian Supreme Court, order no. 26035/2025: compliance with the repechage duty also requires offering lower-level positions, provided they are compatible with the worker's professionalism.*

1. Italian Supreme Court, order no. 24416/2025: social security contribution is due even when the employee waives the payment in lieu of notice

With order no. 24416, dated September 2nd, 2025, the Italian Supreme Court reaffirmed the obligation to pay social security contributions to the National Social Security Agency ("INPS") in relation to the indemnity *in lieu* of notice, even where the employee expressly waives said remuneration.

In the case at issue, the Italian Supreme Court overturned the decision taken by the Court of Appeal of Bologna and ruled that the company was indeed required to pay the contributions related to the waived indemnity *in lieu* of notice following the dismissal of thirteen employees, specifying that this obligation has a remunerative nature, and that is due at the exact moment in which the termination of the employment relationship is notified, regardless of the express waiver that the dismissed employees executed by way of dedicated settlement agreements signed between the parties.

2. Italian Revenue Agency, ruling no. 237/2025: tax and social security treatment of benefits issued to employees for charging electric and hybrid vehicles

With response no. 237/2025, the Italian Revenue Agency provided an answer to a query received from a company wishing to extend the mixed-use assignment of company cars (in addition to managers, for vehicles with combustion engines) to other employees who choose to use an electric or hybrid vehicle, for which the employer intends to bear the fuel costs (as it does for managers) up to a specific annual limit, through the provision of a special company card.

Given that, in the event of exceeding this limit, the company requires its employees to pay the corresponding sum due (by issuing a specific invoice), it wondered whether this refueling (as is the case for fuel used by executives) can also be considered exempt for tax and social security purposes, as this value is included in the Italian Automobile Club (ACI) conventional value – used as a national reference – which is already subject to taxation.

In this regard, the Italian Revenue Agency has clarified that the ACI tables include the cost of electricity, even for the vehicles mentioned by the company. Therefore, the benefit provided by the

employer does not generate taxable income for the employee if it refers to vehicles in mixed use.

However, the Agency specified that amounts exceeding the limit indicated on the cards cannot be considered fringe benefits, too, as they contribute to the employee's total income and, therefore, they shall be deducted from the net amount paid in the salary (as already clarified in response to query no. 421/2023).

3. Investigative activities on employees permitted in cases of poor performance (Italian Supreme Court, order no. 24564/2025)

With order no. 24564, dated September 4th, 2025, the Italian Supreme Court clarified that investigative checks on employees may be carried out not only, as already established, in cases of suspected unlawful conduct by employees, but also in cases where their performance is significantly lower than that of other employees on the same task, which justifies the execution of targeted checks on said workers.

In the case at issue, the Court of Appeal of Naples rejected the appeal filed by the former employee against the decision of the first-degree Court, which had deemed his dismissal for cause to be legitimate based on his false statements regarding the start and end times of work, which had continued over time and were verified through investigative activities.

The former employee then appealed to the Italian Supreme Court, challenging the legitimacy of the investigative company's report, which the court rejected.

More specifically, it stated that investigations are admissible «*based on concrete evidence*», and, in the case at hand, it considered the lower performance to be a circumstantial element that justified «*a more specific check on him, including through investigative activities*».

4. Italian Supreme Court, order no. 26035/2025: Compliance with the repechage duty also requires offering lower-level positions, provided they are compatible with the worker's professionalism

With order no. On September 24, 2025, the Italian Supreme Court reiterated that compliance with the repechage duty requires the employer also to offer positions of an immediately lower level, only if they are compatible with the professional skills acquired by the employee, in accordance with the company's organisational structure.

In the case at hand, the Italian Supreme Court confirmed the decision reached by the Court of Appeal of Milan, which had deemed unlawful the dismissal of an employee for organisational reasons because the employer had not correctly fulfilled the repechage duty. In the case at issue, this could have occurred merely by offering a job position – albeit immediately lower in level – compatible with the worker's professional skills, meaning those that he had already effectively performed, either at the same time or previously, without the employer being obliged to provide additional or different training for the employee to safeguard their job.

The main updates on Labour Law of September 2025

School assistance for disabled children of cross-border workers

The Court of Justice of the European Union has declared that national legislation making the enjoyment of a social benefit conditional on residence in the country concerned is unlawful. In the case decided with judgment dated July 10th, 2025 (Case C-257/24), the Court of Justice of the European Union affirmed a principle of particular relevance in the field of equal treatment and free movement of workers: school integration assistance for children with disabilities, as provided under national legislation (in this case, German law), may not be denied to children of EU frontier workers solely based on residence in another Member State.

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The Italian regulation of telematic resignations also applies to employees on probationary period

With decision no. 24991/2025, the Italian Supreme Court has confirmed that the regulation concerning telematic resignations – and their revocation – provided for by Article 26, paragraphs 1, 2, 3, and 4, of Legislative Decree no. 151/2015, also applies to employees on probation.

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HR Tip #9 Agile working

The performance of work in **agile working** mode (sections 18 and ff., Law No. 81 of May 22nd, 2017) is a form of remote working which is executed **partly inside and partly outside the company premises**, using company devices provided by the employer, within the limits of the daily and weekly working hours a set by national regulations and by the applicable NCBA.

Employers shall **prioritise**, before other employees, workers with dependent children under the age of thirteen or with disabilities, workers with disabilities themselves or those who act as caregivers, should they require benefit from such a working regime.

To implement this work regime, employers shall execute a dedicated **individual agile working agreement** with each employee concerned. Within five days of the beginning and termination of remote working, the employer is required to formally notify the Italian Ministry of Labour of the names of the affected employees, along with the relevant start and end dates. In the event of non-compliance, the applicable law provides for an **administrative fine** on the employer, ranging **from EUR 100 to EUR 500 for each employee concerned**.

For further information and insights

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