OBSERVATORY
LABOUR LAW & IR
di Morri Rossetti & Franzosi

Monthly Roundup

January - February 2025

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Some of the most important clarifications on the new practices and law cases.

1. *National Social Security Agency* (INPS), *circular letter no. 44/2025: Social contribution framework for influencers and content creators;*
2. *EU Commission approved guidelines on forbidden practices in the field of artificial intelligence (AI);*
3. *Italian Supreme Court, order no. 2054/2025: The effects of the union agreement concluded by the transferor are produced in the transferee Company;*
4. *Dangerous work activities set by company agreement with trade unions: Italian Supreme Court, order no. 3609/2025;*
5. *National Labour Office, note no. 579/2025: Operational instructions on* de facto *resignations for unjustified absence.*

1. National Social Security Agency (INPS), circular letter no. 44/2025: Social contribution framework for influencers and content creators.

In its circular letter no. 44, dated February 19th, 2025, the National Social Insurance Agency ("INPS") provided clarifications regarding the appropriate social security classification of various categories of so-called content creators, identified as those who process written content, images, video recordings, audio, or live products made available through digital social networking platforms.

More specifically, the Agency clarified that these subjects belong to the general category of digital platform workers, although they do not necessarily carry out their activity in response to specific requests for the provision of services with relevant payment of the due fee.

In fact, content creators may also monetise their works independently through direct payment or by resorting to other mechanisms (e.g., sponsorship). The above results in many different types of remuneration, which identify as many kinds of working relationships to which the relevant social security regulations must be applied (*e.g.*, for self-employed or entertainment workers).

2. EU Commission approved guidelines on forbidden practices in the field of artificial intelligence (AI).

On February 4th, 2025, the European Commission approved the publication of guidelines on artificial intelligence (AI) practices deemed unacceptable due to their potential risks to European values and fundamental rights.

The document is chronologically consistent with the provisions of the European Regulation on AI that came into force on August 1st, 2024, which provides – among others – for the staggered implementation of various bans on the use of AI in different sectors, the first of which became applicable on last February 2nd, which refers precisely to artificial intelligence systems that involve an unacceptable risk.

3. Italian Supreme Court, order no. 2054/2025: The effects of the union agreement concluded by the transferor are produced in the transferee Company.

With order no. 2054 of January 29th, 2025, the Italian Supreme Court reaffirmed that, in the event of a transfer of a business pursuant to section 2112 of the Italian Civil Code, the effects of a derogatory trade union agreement signed by the transferor extend to the transferee company.

The decision of the Italian Supreme Court contrasts with the judgements of the previous courts, which had ordered the reinstatement of the employee in his job, sanctioning the company to pay an indemnity which was not computed according to the terms of the trade union agreement signed by the transferor company, through which the parties has established precise provisions in case of dismissals, which were more favourable than those applied by the courts.

Conversely, the Italian Supreme Court reaffirmed the validity, for the transferee, of the effects produced by the union agreement signed by the transferor company, since the latter's contractual position was succeeded, by virtue of the transfer of the business, by the new employer, pursuant to the mentioned regulations.

4. Dangerous work activities set by company agreement with trade unions: Italian Supreme Court, order no. 3609/2025.

The Italian Supreme Court, with order no. 3609 of February 12th, 2025, reaffirmed – confirming the decision previously rendered by the Court of Appeal of Rome on the same grounds and challenged by the employer – the non-enforceability of a company agreement governing the execution of dangerous work against employees who are members of trade unions that explicitly opposed its signing.

Furthermore, the Italian Supreme Court established that no penalties shall be imposed on workers who, although not affiliated with any trade union that expressly opposed the agreement, still refused to perform duties tied to the dangerous activities since the latter failed to comply with the safety standards prescribed section 2087 of the Italian Civil Codee, while maintaining their entitlement to remuneration.

5. National Labour Office, note no. 579/2025: Operational instructions on de facto resignations for unjustified absence.

On January 22nd, 2025, the National Labour Office ("*INL*") issued a note providing operational guidance on the procedure – recently introduced by Law no. 203/2024 (the so-called "*Collegato Lavoro*") – to state employees' unjustified absence of 15 consecutive days (unless the applicable NCBA establishes a different period) and consequently lawfully terminate due to the worker's will.

This effect is produced after the employer sends an appropriate communication to the Local Labour Office ('*ITL*'), which can ascertain the accuracy of the employer's communication.

In this regard, through its note no. 579/2025, the INL outlines the correct procedure to be followed, particularly emphasising the required content of the communication to be submitted.

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The main updates on Labour Law of January - February 2025

Indirect discrimination in case of determining the same grace period for disabled workers

The Supreme Court's decision no. 170/2025 recognises the indirect discrimination in applying a uniform protected period to disabled and non-disabled workers.

With decision no. 170 of January 7th, 2025, the Italian Supreme Court reiterated that applying a uniform grace period to all employees, without considering the specific condition of disabled workers, constitutes indirect discrimination against the latter.

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International posting and residence permit: hosting Member States' prerogatives according to the EU Court of Justice

In its judgment in Case C-540/22, the Court of Justice of the European Union (CJEU) clarified that Article 56 of the Treaty on the Functioning of the European Union (TFEU), which governs the free movement of services, does not prevent a Member State from requiring to companies established in another Member State to comply with specific obligations when posting third-country nationals to its territory for more than three months.

These obligations include submitting a prior notification of the service provision to the government authorities of the host Member State and subsequently obtaining a residence permit for each posted worker.

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HR Tip #1 The Mandatory Hiring Statement

Italian Law No. 68, enacted on March 12, 1999, mandates that companies with a workforce exceeding certain thresholds **must employ a specified number of disabled and protected workers**. Employers must submit a hiring request to the appropriate offices within 60 days of the obligation being established.

Employers must submit an annual **statement** detailing the total number of employees and the available positions or duties for persons with disabilities.

The timely submission of the above statement will automatically replace the hiring request indicated. On the other hand, **employers who fail to submit the statement on time will face an administrative penalty** of EUR 702.43, plus an additional fee of EUR 34.02 for each day the submission is delayed.

Moreover, additional penalties exist for submitting incomplete statements and not meeting the required number of hirings.

HR Tip #2 Termination during the probationary period

The **probationary covenant** must:

- be provided in **writing**;
- be formalized **before the execution of the working activities**;
- **specify which tasks** will have to be performed for the purposes of the probation.

When these features are met, during the so-called «probationary period», the employee and the employer may **freely terminate** the employment relationship. However, shall they lack (i.e., **genetic defect**) or if the employee is not allowed to carry out the assigned activities for a reasonable period or to perform the tasks and duties indicated in the probationary covenant (i.e., **functional defect**), the

termination on the employer's part would be **unlawful.**

In these cases, the **sanctioning consequences** of unlawful dismissal in ordinary cases of employment relationships apply, which may lead to the employer being compelled to the payment of an **indemnity** or the **obligation to reinstate** the employee, depending on the protection regime granted to the latter.

For further information and insights

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