

A man in a light blue shirt and dark tie is gesturing with his hands while speaking to a woman in a white and grey checkered shirt. They are sitting at a table with a laptop and some papers. The background is a blurred office setting.

MORRI
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Labour Monthly Roundup

May 2022

LABOUR MONTHLY ROUNDUP

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

1. *Apprenticeship: distance training;*
2. *"Bonus Bebè" for non-EU citizens;*
3. *Taxability of sums received for damages caused by loss of professional opportunities;*
4. *Self-employed workers and employees enrolled in INPS Special Fund: extension of maternity and paternity leaves;*
5. *New "clearance" for entry into Italy of non-EU workers operating remotely (so-called digital nomads);*
6. *Executive's good faith and fairness;*
7. *Site Manager's scope of responsibility in the field of safety of workers;*
8. *Riders: subordinate nature of the employment relationship;*
9. *"Simplified" smart-working communication regime until August, 31st 2022;*
10. *Anti-covid protocol in force until June, 30th 2022;*
11. *"Aid Decree": 200 Euros for employees, self-employed workers and retirees;*
12. *Agency workers temporary regime extensions;*
13. *Post Covid online validation of resignation.*

Apprenticeship: distance training allowed

With its Circular letter no. 2/2022, the Italian National Inspectorate of Labour (*INL*) allowed the use of e-learning for the training of apprentices. *INL* specified that "e-learning" is a distance learning model characterized by forms of remote interactivity between learners and teachers and/or e-tutors and/or other learners, in a synchronous mode.

Training is only allowed in synchronous mode, so it will be necessary that trainers and apprentices are connected at the same time to the relevant digital platforms, which can detect the actual presence of the latter.

"Bonus Bebè" for non-EU citizens

The introduction of the so-called "*Assegno Unico*", which replaced a series of measures in support of parenthood, determined the end of the granting of the so-called "*Bonus Bebè*".

Non-EU citizens had been previously excluded from the possibility of obtaining said bonus, but they will now have the chance of being granted the monthly allowance assigned to families for each child born, adopted or in pre-adoptive foster care.

The Constitutional Court (with the decision no. 54/2022) has declared unconstitutional the rules that introduced the so-called "*Bonus Bebè*" concerning the part in which it was provided that non-EU citizens could obtain the bonus only if they held a long-term EU resident permit.

Therefore, non-EU citizens in possession of a residence permit for work or research lasting more than six months may also apply for the benefit.

With its Message, no. 1562/2022, the Italian social security institution (*INPS*) clarified the requirements for obtaining the bonus and the procedures for submitting requests for reconsideration of applications rejected based on the limit that has now been declared illegitimate.

Taxability of sums received for damages caused by loss of professional opportunities

Through its note no. 185/2022, the Italian Revenue Agency stated that the amounts paid to the employee following the Court's ascertainment of impairment of professional skills (so-called "loss of chance damages") are not taxable because they may be construed as "damages for loss of earnings" and, therefore, are intended to compensate for the economic loss suffered by the worker.

The damage caused by the demotion can have an economic nature, such as impoverishment of the professional capacity and loss of chances as well as possibility of gain, or a non-economic one, such as possible damage to psycho-physical integrity, existential damage and damage to the professional image of the employee.

The Italian Fiscal Agency, aligning with numerous decisions of the Italian Supreme Court, has therefore restated that the sums paid for damages to the professional skills are not taxable because

they compensate for the economic loss suffered by the worker.

Essential for the liquidation of the damage is, in any case, to give evidence of the latter.

Self-employed workers and employees enrolled in INPS Special Fund: extension of maternity and paternity leaves

The budget law for the year 2022 has established that female workers, self-employed workers and those enrolled in the *Gestione Separata* who declared an income of less than EUR 8,145 in the year before the beginning of their maternity leave (increased by 100% of the growth resulting from the annual change in the ISTAT consumer price index for families of workers and employees), the maternity allowance is granted for three additional months from the end of the ordinary period.

Although the law mentions only female workers, this kind of protection must also be granted to fathers who are self-employed or enrolled in the *Gestione Separata*.

Through its recent note no. 1605/2022, the Italian social security institution (*INPS*) announced that new procedural updates relating to the electronic submission of the relevant application have been now introduced. Although said application may also involve periods of abstention before the date of submission, it is possible to grant the above-mentioned extension of three additional months only if the ordinary period is set at the turn of/after January 1st, 2022.

New "clearance" for entry into Italy of non-EU workers operating remotely (so-called digital nomads)

Section 6-*quinquies*, of Law no. 25/2022, converting Law decree "Sostegni-ter", allows facilitated entry for non-EU citizens who decide to temporarily work in Italy and carry out their activities remotely.

This is a provision in favour of "highly qualified" employees or self-employed workers, who can work remotely for companies with no units in Italy. For these workers, it will only be necessary to obtain an entry visa, specific for this category, with a duration of no more than one year.

Therefore, it will no longer be necessary to make any further requests for work authorizations, which are required for the majority of entry procedures in Italy for work purposes.

Executive's good faith and fairness

By Order of the Italian Supreme Court (no. 11172, dated April, 6th 2022) it has been confirmed that the loyalty duty that lies on the Executive has a broader content than the obligation provided by Section 2105 of the Italian Civil Code. Such a principle must be construed along with fairness and good faith, which takes into consideration even the potential detriment that the employee's conduct may cause to the employer.

In light of the above, the Court confirmed the fairness of the dismissal for cause of the Executive who conducted negotiations aimed at the acquisition of a participation in the share capital of a company in competition with the employer, active in the same sector of the latter – even though said negotiations were not successfully concluded.

The Executive must abstain from acting in any way that may impair the relationship of trust between the parties, in contrast to the duties connected to his/her role within the internal organization of the company and that could potentially be conflicting with the interests pursued by the employer.

Site Manager's scope of responsibility in the field of safety of workers

With sentence no. 15157 dated April, 20th 2022, the Italian Supreme Court examined the limits to the site manager's liability concerning the health and safety of workers engaged in construction sites.

More specifically, the Court confirmed that the site manager is not affected by the legislation involving the prevention of accidents and occupational illnesses, although such a figure may be considered liable for injuries that occurred at the construction site when it is proven that they happened while he/her was effectively acting on behalf of individuals who are legally defined as recipients of the provisions at issue.

Riders: subordinate nature of the employment relationship

The Employment Court of Milan (with its decision dated April 20th 2022) ruled in favour of a rider who demanded the ascertainment of the subordinate nature of his employment relationship, which took place with the provider of a digital platform dealing with food deliveries.

Following such request, the Court stated that riders cannot be considered self-employed

workers whenever their working activity is handled in very precise and pressing ways by the algorithm of the digital platform itself.

More specifically, the Court pointed out many indicators that, according to its exam of the case, are capable of detecting the subordinate nature of an employment relationship, such as the fact that the rider usually cannot affect the organization for which he/she works, or that the access to the booking slots of the platform is not (entirely) free but subject to the algorithm, which takes in consideration the rating achieved by the rider within the platform, shows his/her the place where to collect the food and where to deliver it and it can also control his/her position through a geolocation system.

"Simplified" smart-working communication regime until August, 31st 2022

Law no. 52/2022, converting the so-called "Re-opening Decree" (D. L. no. 24/2022) extended up to August, 31st 2022 the final term up to which private companies can benefit from the "simplified" smart-working communication regime, which allows them to communicate to the competent authorities the beginning of such way of providing working activity without having to also attach to it the relevant agreement concluded with each employee involved.

The law at issue also revived specific provisions for "fragile" workers employed by both private and public companies, who can carry out their working duties via a smart-working regime up until June, 30th 2022, as long as it is well-suited to the nature of the activities themselves.

Anti-covid protocol in force until June, 30th 2022

The validity of the anti-Covid Protocol in the workplace, for companies in the private sector, is extended up until next June, 30th, as decided during a meeting held on May, 4th 2022 among social partners representing the Ministry of Labour, Health, Economic Development and the *INAIL* (the Italian Institute that deals with occupation illnesses and accidents at the workplace).

Said Protocol stated – among other provisions – that the use of face masks within the offices is still mandatory if the relevant activity is not carried out in isolation.

Moreover, previous provisions regarding the management of co-presence of employees at the workplace, the sanification of the premises, the application of the smart-working regime as well as the management of employees who tested positive for Covid (and their return back to work) are all still in force.

"Aid Decree": 200 Euros for employees, self-employed workers and retirees

The so-called "Aid Decree" (no. 50/2022) was published in the Official Gazette on May, 17th 2022, and contains different urgent provisions related to energy policies, company productivity and labour policies.

More specifically, Section 31 (and following) provide for the granting of a EUR 200.00 bonus for the benefit of employees, self-employed workers and retirees, as well as unemployed people and the recipients of the citizenship income.

As far as the employees' category is involved, said bonus is paid provided that the taxable salary for social contribution does not exceed the overall sum of EUR 2,692 monthly, and that the employee benefitted from the contributive reduction under budget law 2022 for at least one of the first four months of the current year.

Employees will automatically receive said bonus in their payslip for July 2022, while employers will be reimbursed with these sums via compensation with the amounts due to *INPS* (the Italian social security Institution).

Agency workers' temporary regime extension

The law converting Law Decree no. 21/2022 ("Ukraine Decree") has extended up until June 30th 2024 the application of the temporary regime to employees engaged by employment agencies.

More specifically, to that date and in cases where the outsourcing contract is a fixed-term one, the company receiving the employee's activity is free to employ the same outsourced employee for more than 24 months (even discontinuously), provided that the agency has beforehand made the user aware of the existence of permanent employment relationship between the agency and the employee at issue.

Post Covid online validation of resignation

The *INPS* has declared that is now available on their website the new online interview request form, which is necessary to validate the

resignation of working mothers and fathers of children under the age of three.

Said form must be filled out, signed and transmitted via e-mail by the employee to be able to access the online procedure, which is an alternative to the interview conducted in person,

before an officer to the competent local Inspectorate of labour (*ITL*).

Should such procedure not be completed, the relevant resignation is void, even if already transmitted via the ordinary online automatic procedure.

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For further information and explanations, you may contact:

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