

A man in a blue shirt and hard hat is looking at a blueprint in a factory setting. He is wearing a lanyard with an ID badge. The background is a blurred industrial environment.

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Labour Monthly Roundup

February 2024

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:

- Italian Supreme Court, decision no. 4350/2024: **de facto** full-time relationships;
- The resuming of working activities after the employee's judicial reinstatement: Italian Supreme Court, order no. 3264/2024;
- Staffing agencies and limitations to personal data processing;
- Ruling no 1/2024 of the Italian Ministry of Labour on health surveillance;
- Permanent suppression of ANPAL.

1. Italian Supreme Court, judgement no. 4350/2024: de facto full-time relationships

The Italian Supreme Court recently issued the judgement mentioned, which acknowledged a full-time employment relationship originally established as part-time due to conclusive facts highlighting the actual nature of the relationship. The Court reached this conclusion based on the employer's persistent requests that the employee performs extra work and overtime, which *de facto* erased the relationship's original nature.

Therefore, the judges applied the effectivity criterion to the case at issue, thus stating that the working relationship had been transformed into a full-time one.

2. The resuming of working activities after the employee's judicial reinstatement: Italian Supreme Court, order no. 3264/2024

After establishing the unlawfulness of an employee's dismissal, the employer received a judicial order to reinstate the latter to his former job. Complying with such a provision, the employer invited the employee to return to work within eight days. However, such an offer was refused by the employee who, instead, complained that, according to the applicable laws, the time limit for such a proposal should correspond to the more extended period of 30 days. Disagreeing with this interpretation and acknowledging the refusal of the invitation, the employer assumed the employee's resignation at issue.

In Order no. 3264/2024, the Italian Supreme Court held that default of the employee's claims, stating

that the regulations on the matter mean that the employer may indicate a resumption date earlier than the 30 days indicated therein but, in that case, the employment relationship will terminate only at the end of the 30th day from receipt of that invitation, until which the remunerating obligations still lie on the employer.

3. Staffing agencies and limitations to personal data processing

With its provision, issued last January 11th, the Italian Data Privacy Agency shared the news of the upcoming publishing of a code of conduct per data processing pertaining to intermediation, research and selection of personnel activities.

More specifically, agencies headquartered in Italy, enrolled in the (former) ANPAL register and dealing with the above duties, shall now follow the new code of conduct and will have to release to each candidate an informative whose template is provided by the code itself.

The agency shall keep the data thus collected for a maximum of 48 months from the last activity executed that involved the candidate unless the latter requests an earlier cancellation of such data.

4. Ruling no 1/2024 of the Italian Ministry of Labour on health surveillance

Following a request from Milan University, the Italian Ministry of Labour and Social Policies issued its ruling no. 1, dated February 6th, 2024.

In such a document, the Ministry recalled some recent decisions of the Italian Supreme Court (e.g.,

29756/2022), which stated that only employees who, due to the nature of their duties, were already obligated to undergo a medical visit before the start of the relationship are also compelled to be medically rechecked when going back to work after being absent for health reasons for more than 60 days.

5. Permanent suppression of ANPAL

Through decree No. 38/2024, the Italian Prime Minister formally announced that the National Agency for Active Labour Policies ("ANPAL") will be suppressed starting from March 1st, 2024, as anticipated last year.

The new structure provides that all of its functions shall be transferred to the Ministry of Labour and Social Policies, except those related to the ANPAL research committee, which, instead, will be relocated to the National Institute for Public Policy Analysis (INAPP).

The main updates on Labour Law of February 2024

The monetisation of leaves at the end of the employment relationship

It is contrary to European Union law to prohibit the payment of an allowance to an employee concerning leave days not taken at the time of termination of employment.

[→ Read more](#)

HR Tips #2: INPS Insolvency Fund

*The Insolvency Fund is a program managed by the Italian Social Security Agency (INPS) that aims to **protect employees of employers experiencing financial difficulties**. The Fund provides employees with the mandatory severance pay and remuneration owed for the last three months of work on behalf of their employer.*

*To qualify for the program, the employees must prove that their employer is insolvent, which depends on whether the latter may be subject to insolvency procedures under the law. The program has **specific requirements** that must be met in order for it to be implemented for eligible employees.*

*Recently, the INPS issued Circular Letter No. 70/2023, which updated the regulations governing the Fund in accordance with the **new Italian insolvency code that went into effect in July 2022**. The circular letter provides a summary of the specific provisions under which the Insolvency Fund can be implemented based on the different scenarios that may arise during a financial crisis, as well as the correct procedures to be followed in each of these scenarios.*

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