



MORRI
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Labour Monthly Roundup

December 2023

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:

1. Termination of newly-parent female employees during judicial liquidation procedures: the ordinance issued by the Italian Supreme Court;
2. Italian Supreme Court: the termination of the employee due to his previously authorised absence from work is null and void;
3. Starting in 2024, cancer survivors' right to be forgotten becomes law even for employment relationships
4. Ruling of Italian Ministry of Labour: cases where the responsible company manager and the employer both identify one single individual;
5. Remote working for employees with children under 14 is granted until March 31st, 2024.

1. Termination of newly-parent female employees during judicial liquidation procedures: the ordinance issued by the Italian Supreme Court

With ordinance no. 35527, dated December 19th, 2023, the judges of the Italian Supreme Court dealt with the possibility of terminating the employment relationship with an employee who had become a mother less than a year before while the employer was going through a judicial liquidation. More specifically, in the case at issue, the employee was still benefitting from her mandatory maternity leave when she was notified of the company's receiver's decision to terminate the relationship.

After confirming the decision of the Court of Appeal – which had deemed the dismissal to be null and void – the Italian Supreme Court stated that the termination of the employment relationship with a working mother before the child's one year of age is only allowed in the event of the total cessation of the employer's entire business. Therefore, the judicial liquidation procedure in which the company may find itself is irrelevant if the production activity continues despite the crisis.

2. Italian Supreme Court: the termination of the employee due to his previously authorised absence from work is null and void

The Italian Supreme Court recently stated the invalidity of the dismissal of an employee due to the execution of personal activities on the way home, to which he had been authorised to return by his employer for a change of working clothes, using the company car he was assigned with.

Although the employee used working time to purchase personal goods, thus taking advantage of the employer's permission to go back home, the judges of the Italian Supreme Court ruled that dismissing the employee was disproportionate to his conduct, given that his intention to deceive his employer could not be proven, nor he had left his working position without being expressly authorised to do so. Additionally, any potential monetary damage to the employer was quickly restored, as the time used by the employee for personal errands is deductible from the relevant pay slip.

3. Starting in 2024, cancer survivors' right to be forgotten becomes law even for employment relationships

Section 2 of Law no. 193/2023 – which will be in force from January 2nd, 2024 – prescribes that parties of private contracts (thus including employers) are forbidden to ask the other party (i.e., potential future employees) for information about previous oncological pathologies when stipulating or renewing contracts.

Moreover, the parties to such agreements cannot be subjected to specific medical examinations or controls; otherwise, clauses providing for such obligations inserted in the relevant contracts shall be declared null and void.

4. Ruling of Italian Ministry of Labour: cases where the responsible company manager and the employer identify one single individual

With Ruling no. 5 dated December 1st, 2023, the Italian Ministry of Labour and Social Policies replied to the Chamber of Commerce of Modena,

which requested clarifications on who shall be identified as the responsible company manager in small companies staffing no employees. More specifically, the Ministry stated that following a practical assessment of the involved company, the latter – who is generally entrusted with the implementation of directives and instructions on work activities given by the employer – could be the same person as the employer.

Therefore, where a modest organisational complexity of the work activity is identified, the employer must directly supervise its execution, thus exercising in the first person the hierarchical-functional powers generally assigned to the person in charge (i.e., the responsible company manager).

5. Remote working for employees with children under 14 is granted until March 31st, 2024

The Italian Senate Budget Committee recently approved an amendment to the bill to convert the so-called '*Anticipi*' Decree. The latter provides for a three-month extension of the possibility for employees who are parents of children under 14 to access a remote working regime to carry out their duties.

More specifically, the amendment prescribes that employees in the private sector may only continue to work remotely if the other parent, who is part of the same household, is not already benefitting from a different state income support nor is unemployed. Furthermore, as a prerequisite to be granted such right, the nature of the working activities to be carried out remotely must be compatible with the regime.

The main updates on Labour Law of December 2023

Issues related to in-house service company agreements

In-house service company agreements are unlawful if the contractor does not bear the economic risk and does not create an organisation enabling the achievement of a productive result.

So-called in-house service contracts are those related to the assignment of activities to an external contractor that are strictly connected with the overall production cycle of the principal.

[→ Read more](#)

HR Tips #12: Retention Agreement

*A retention agreement is a **temporary** contract between an employer and an employee that guarantees a minimum period of employment. During this period, neither party can terminate the*

employment relationship unless there is a just cause for doing so.

*The purpose of the agreement is to **retain key employees** who possess skills that are strategically important to the company.*

*If either party violates the terms of the agreement and terminates the employment relationship without just cause before the agreed-upon period, there will be **compensatory consequences** which can be predetermined in the form of a penalty clause.*

If the agreement places the obligation solely on the employee, it is necessary to include provisions for reasonable compensation (not necessarily monetary) to be awarded to the employee in such a scenario.

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For more information and insights, you may contact:

Emanuele Licciardi

*Partner | Dept. of Labor Law and Industrial Relations
(Emanuele.Licciardi@MorriRossetti.it)*

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MORRI
ROSSETTI



Morri Rossetti
Piazza Eleonora Duse, 2
20122 Milano

MorriRossetti.it