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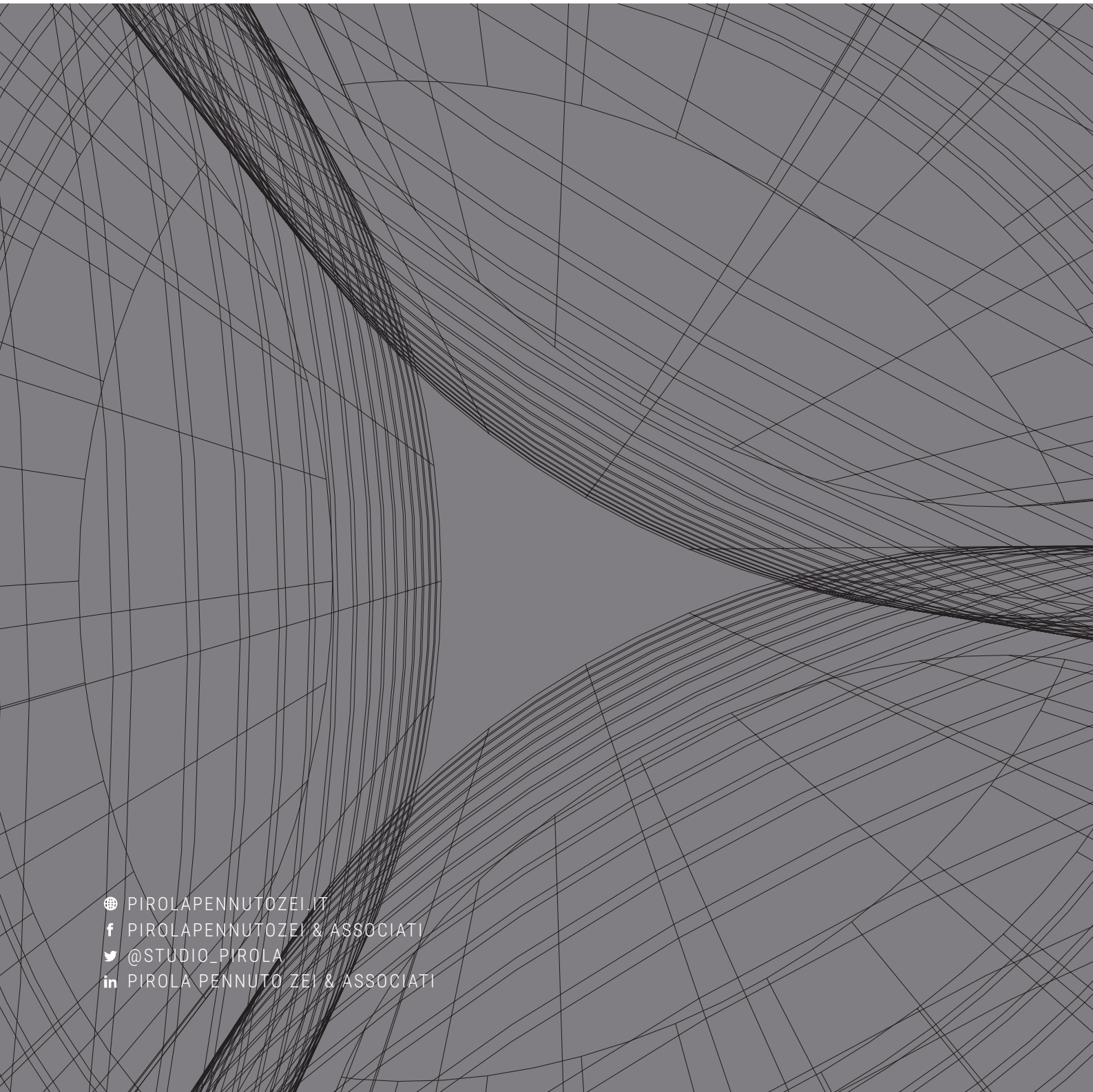
NEWSLETTER / SEPTEMBER 2019



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LEGISLATION

1.1

Decree Law No 101 of 3 September 2019 – new rules and protection for gig workers and riders

Decree Law No 101/2019, containing urgent provisions for the protection of workers and the resolution of business crises, entered into force on 5 September 2019.

One of the main reasons which prompted the Government to adopt this decree was the need to provide financial and regulatory protection to some vulnerable categories of workers, such as riders, workers with disabilities, unemployed individuals receiving income support benefits and providing socially useful activities (*lavoratori socialmente utili* - LSU), individuals providing court-ordered community service (*lavoratori di pubblica utilità - LPU*) and individuals without a fixed job.

The new rules incorporate the guidance issued by courts over the past two years on the "*Gig economy*", extending to riders the protections afforded to employees: article 1(1)(a) of the Decree Law introduced a significant change to article 2(1) of legislative decree No 81/2015, extending the application of the rule on "*collaborazioni organizzate dal committente*" (a form of quasi-employment contract) to "*collaborazioni organizzate mediante piattaforme anche digitali*" (quasi employment arrangements carried out through digital and other platforms).

As a result of this change, effective 5 September 2019 employment rules also apply to "*personal and continuing collaborations organized by the principal inter alia through digital platforms*".

Article 1(c) of the Decree Law defines "*digital platforms*" as business software and IT procedures that, regardless of a company's place of establishment, organize deliveries of products, setting their prices and the way in which the service is performed. The material element, therefore, is the use by the principal of software to organize the time and manner of delivery.

The rule is quite generic on how the riders should be paid: it simply states that their remuneration must be paid, albeit on a non-prevalent basis, according to the number of deliveries made and that hourly

remuneration will be granted if the worker accepts at least one call during one hour of work, and leaves it up to the parties and to the collective bargaining agreements to set a remuneration scheme, based on how the services are carried out and on the organizational models adopted.

Finally, the Decree Law deals with accident at work and safety issues, extending INAIL (the Italian Workers' Compensation Fund) coverage also to the new categories of workers, and requiring companies making use of digital platforms to comply with the Italian workplace health and safety legislation (legislative decree No 81/2008). This obligation, however, will become effective 180 days after the date of entry into force of the law converting Decree Law 101/2019.

GUIDANCE

2.1

Italian National Labor Inspectorate (*Ispettorato nazionale del Lavoro*) – Note No 8120 of 17 September 2019

In their note No 8120 of 17 September 2019, the Italian Labor Inspectorate dealt, once again, with fixed-term contracts after the reform introduced by *Decreto Dignità,* providing operating instructions from the execution of fixed-term contracts *in deroga assistita* (qualifying for a derogation to the standard length of contract) pursuant to article 19(3) of legislative decree No 81/2015.

Under this rule, a new fixed-term contract may be entered into between the same parties before the Labor Inspectorate, derogating from the maximum 24-month period (or such longer period stated by the relevant collective bargaining agreement). Since the contract would not be the extension of an existing contract but a renewal for a maximum period of 12 months, it will be necessary to state the reasons for the renewal otherwise the procedure may not be implemented due to violation of a mandatory rule.

As regards the "*Stop and go*" rule for fixed-term employment contracts, the Labor Inspectorate specified that, in the case of the fixed-term contract "*in deroga assistita*" (which, as mentioned, does not constitute an extension but a new contract), the parties will have to meet the required time interval between fixed-term contracts.

2.2

INPS (Italian social security authority) – Circular No 124 of 20 September 2019

In circular No 124/2019, the Italian Social Security Authority INPS confirmed the recent approach taken by the Italian Supreme Court (decisions Nos 28605 of 8.11.2018, 671 of 12.1.2018 and 30699 of 21.12.2017) on the matter of the limitation period for the liability to employers' contribution to the *mobilità* redundancy fund.

Although *mobilità* was abrogated in 2017 by *Legge Fornero,* those companies who dismissed any employees by 30 December 2016 must still pay the contribution (as the relevant liability is subject to a five-year limitation period pursuant to article 3 of law No 335/1995).

On this basis, considering the manner of payment of the contribution (alternatively in one amount or in thirty monthly instalments), the Circular clarified that, in the event of instalment payment, the limitation period starts on the due date for payment of the last instalment, since each instalment does not constitute an individual payment obligation but a fraction of a single obligation.

Therefore, unlike other social security obligations - characterized by periodical payments each of which constitutes a separate obligation as they are related to independent reasons for payment (e.g., individual salaries) – in this case the single reason for payment results in a single obligation and therefore the social security authority may not claim or enforce payment until the due date for the last instalment payment has expired.

CASE LAW

3.1

Decision by the Italian Supreme Court on illegal measures and bullying/mobbingat work

By decision No 22288 of 5 September 2019, the Italian Supreme Court stated the principle according to which a series of employer's (disciplinary and non-disciplinary) measures may constitute a sign of bullying/mobbingonly if it is possible to identify the employer's persecutory conduct against the worker concerned.

The decision was issued in connection with an appeal submitted by a bank officer who, after resigning with cause, sued the bank for bullying/mobbing, claiming that repeated and unjustified measures had been taken against him (transfers, disciplinary complaints, suspensions etc.).

The worker claimed that these measures (all of which were appealed against before the labor judge and had had a favorable outcome, at least in the preliminary stages - *fase cautelare*) were ultimately designed to oust him from the company; accordingly he claimed compensation for financial harm (loss of opportunities) and damage to his health caused by the employer's attitude.

Both the lower court and the appeals court had rejected the bank officer's claims on the grounds that in their view the bank's measures – albeit unlawful – were not intentionally bullying/mobbing and were justified by objective circumstances.

The same conclusion was reached by the Italian supreme Court which, after an in-depth analysis of the measures taken by the bank and affecting the employee, confirmed the lower courts' decisions on the basis that – although such measures had been judged unlawful, the persecutory intent required for a workplace harassment ruling could not be identified.

3.2

Decision by the Italian Supreme Court on the transfer and dismissal of an absent employee

By decision No 22100 of 4 September 2019, the Italian Supreme Court confirmed that the dismissal of an

employee who had failed to go to work following his transfer to a different office of the employer company providing no justification for his absence, did not constitute wrongful termination.

The case examined by the Supreme Court started with the employee's appeal against his transfer.

The Appeals Court had stated that the employee could not claim that his transfer was unlawful on the basis of the employer's non-performance pursuant to article 1460 of the Italian civil code, since the company had demonstrated that the reasons for the employee's transfer were satisfied, although they were not properly stated in the transfer letter.

The worker appealed to the Supreme Court against this decision, bringing three different reasons, all of which however were rejected on the basis of the principle of law (which had inspired the Appeals Court's decision as well) that - although a worker's transfer letter does not necessary have to comply with specific formal obligations and state the reasons for the transfer and the employer has no obligation to respond to the worker asking for them - if the worker disputes the lawfulness of the transfer, the employer has an obligation to provide evidence in court of the reasons for it and, if possible, to supplement or amend the reason stated in the transfer letter.

Pursuant to this principle, the Italian Supreme Court specified that the employer could not merely deny that the grounds for unlawfulness claimed by the appellant existed, but had to actually demonstrate the organizational and production rationale for the transfer.

In the case at issue, the Supreme Court believed that the employer had proved the existence of the reasons for the transfer and therefore rejected the appeal and confirmed the lawfulness of the dismissal due to unjustified absence.

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LABOUR NEWSLETTER | SEPTEMBER 2019

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 30 SEPTEMBER 2019.
THIS NEWSLETTER IS INTENDED AS A SUMMARY OF KEY DEVELOPMENTS AND HIGHLIGHTS MATTERS OF GENERAL INTEREST, AND THEREFORE SHOULD NOT BE USED AS A BASIS FOR DECISION-MAKING.
FOR FURTHER DETAILS AND INFORMATION, PLEASE CONTACT YOUR RELATED PARTNER OR SEND AN EMAIL TO UFFICIOSTUDI@STUDIOPIROLA.COM