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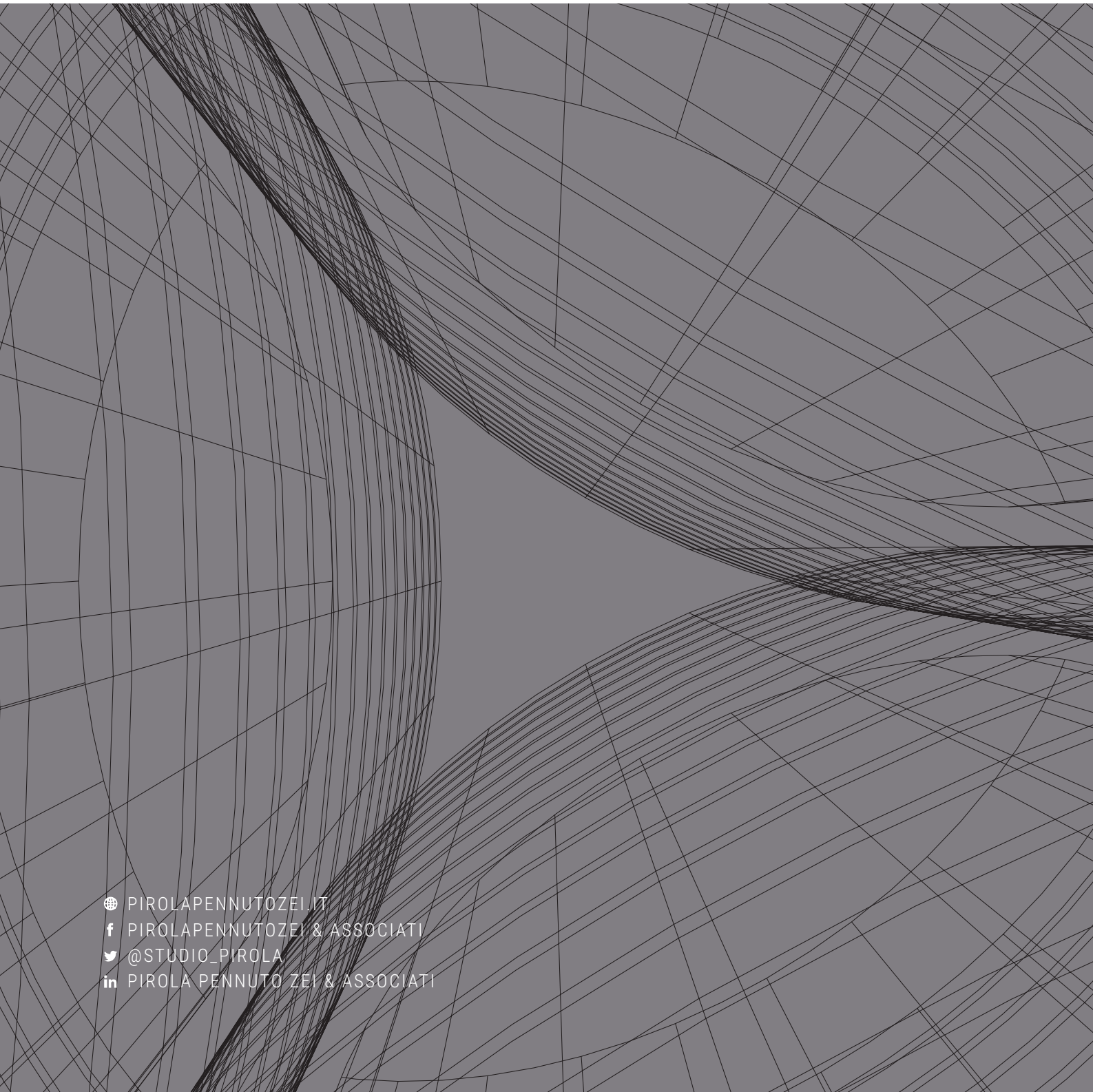

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LEGISLATION

1.1
Decree Law No 4 of 28 January – Urgent provisions concerning citizen's basic income and pension benefits

Decree Law No 4 of 28 January introduced "*Urgent provisions concerning citizen's basic income and pension benefits*", with an impact on several employment law issues, including the following:

- Citizens' basic income (articles 1 ff): this benefit – which will become effective in April 2019 – is part of an active labor policy to combat poverty, inequality and social exclusion and to guarantee the right to work. It will be granted for an 18-month period conditional on the eligible individuals rendering a declaration of immediate availability to work ("*patto per il lavoro*") and accepting to follow a job placement training program.

Eligible persons are:

i. Italian and EU citizens or long-stayers who have been living in Italy for at least 10 years, the last 2 of which on a continuous basis;
ii. individuals with an ISEE wealth indicator of less than € 9,360 p.a.;
iii. individuals who own real property (other than their principal residence) valued up to € 30,000;
iv. individuals with maximum savings of less than € 6,000 (or up to € 20,000 for families with disabled members).

The benefit entitlement is as follows:

i. a person living alone may receive up to € 780 per month;
ii. a family of 2 adults and 2 children below age may receive up to € 1,180 per month;
iii. a family of 2 adults, 1 child of age and 1 child below age may receive up to € 1,280;
iv. a family of 2 adults, 1 child of age and 2 children below age may receive up to € 1,330 per month.

Anyone who (i) does not sign the declaration of immediate availability to work, (ii) does not follow the training program without sound justification, (iii) does not accept to provide community service, (iv) refuses the third offer of suitable employment, (v) does not provide the competent authorities with updated information on the composition of his/her family, or (vi) provides false personal information shall not be eligible for the benefit.

Anyone who (i) does not sign the declaration of immediate availability to work, (ii) does not follow the training program without sound justification, (iii) does not accept to provide community service, (iv) refuses the third offer of suitable employment, (v) does not provide the competent authorities with updated information on the composition of his/her family, or (vi) provides false personal information shall not be eligible for the benefit.

- Pension reform (article 14): the "*Quota 100*" retirement program has been experimentally launched: it consists of optional early retirement for workers registered with the compulsory social security authority or any equivalent social security scheme, who are at least 62 years of age and have accrued at least 38 years of contributions. The old-age retirement pension and early retirement based on seniority of service under the Fornero law continue to apply.
- Extension of *opzione donna* (article 16): female employees or self-employed, respectively of 58 and 59 years of age who at 31/12/2018 had accrued at least 35 years of social security contributions may be eligible for early retirement.
- Reduction in the number of years of social security payments to be eligible for retirement benefits (article 15): effective 2019, the number of years of social security payments required to be eligible for retirement will be 42 years and ten 10 months for men and 41 years and 10 months for women.
- Early retirement for anyone who began work at an early age and accrued 41 years of social security payments (article 17).
- Extension of *Ape sociale* (early retirement for social reasons) (article 18): the payment of benefits in lieu of retirement pension until the worker becomes entitled to old-age pension has been extended by one year; the benefit may be applied for until 31 December 2019 by individuals of at least 63 years of age who paid social security contributions for between 30 and 36 years.
- Possibility to make voluntary payments to cover periods during which no social security contributions were paid (article 20) for a maximum of 5 years, and to pay reduced social security contributions to obtain recognition of the period of university studies for social security purposes before 45 years of age.
- Possibility for civil servants to ask for an advance on their severance pay up to a maximum of €30,000 (article 23).
- Incentives for companies who hire workers eligible for the Citizens' basis income (article 8).

1.2

Incentives for companies who hire workers eligible for the Citizens' basis income (article 8)

In order for an employer to take advantage of the available incentives under the new legislation, the following conditions apply:

- individuals eligible for the citizens' basic income must be hired under a full-time indefinite-term employment contracts;
- the required increase in net headcount must be attained;
- the general principles stipulated by article 31 of legislative decree No 150/2015 must be met (right of precedence etc.);
- the company must obtain a certificate of regular social security payments (DURC – *Documento Unico di Regolarità Contributiva*);
- compliance with the limitations under the de minimis regime;
- compliance with the provisions on the dismissal of individuals eligible for citizens' basic income (further clarification on the matter is awaited).

If a company hires an individual eligible for citizens' basic income, it shall be entitled to an exemption from the employee and employer social security contributions (except the premiums payable to INAIL – the Italian workers' compensation authority) of a maximum monthly amount corresponding to the difference between the 18-month basic income entitlement and the amount of the benefit already paid to the person concerned; the amount is increased by a 1-month benefit if women or disadvantaged individuals are hired. In any event, the incentive may not be lower than the benefit payable for 5 months and may not exceed €780 per month.

An incentive is also available if an employer hires individuals eligible for citizens' basic income who attended training or retraining courses under a *Patto di Formazione*, an agreement entered into with training agencies accredited with the Italian Employment Center (*Centro per l'Impiego*). Again, at the end of the training period, the individual will have to be hired under a full-time indefinite-term employment contract, and the incentive will consist of an exemption from social security contributions (except the premiums payable to INAIL) of up to the difference between the 18-month basic income and the benefits already paid to the person concerned; the maximum amount of the benefit may not exceed €390 per month and may not be lower than half the citizens' basic income payable over a six-month period.

GUIDANCE

2.1

Secondment during apprenticeship – Ministry of Labor and Social Policies Note No 1118 dated 17 January 2019

In its Note No 1118 dated 17 January 2019, the Labor Ministry answered a question from the Udine Inspectorate of Labor, providing significant clarification on the matter of secondment during apprenticeship.
The Ministry noted that there was no prohibition under current legislation to second apprentices, provided that secondment was made in accordance with the obligations applicable to apprenticeship contracts, making sure that the apprentice's training prevailed over the home company's interests in having the job performed.
In other words, the Ministry stated that it was necessary to combine the interests of the home company with the prevailing interest of the apprentice that the employer meet its commitment towards him/her and that he/she may become part of the employer's organization.
For these reasons, the manner of secondment must ensure that training – which the employer will continue to be responsible for – is in any case conducted and that a tutor is appointed at the host company, as attested in the training program.
In any case, the length of the apprentice's secondment shall be limited compared to his/her overall apprenticeship period, since it is not acceptable that the entire training be delegated to third parties.

2.2

Conclusion of a fixed-term agreement employment agreement for a term longer than prescribed by law – National Labor Inspectorate Note No 1214 dated 7 February 2019

In its Note No 1214 dated 7 February 2019, the National Labor Inspectorate provided clarification on the possibility to enter into a fixed-term agreement for a period longer than prescribed by the law under the National Labor Inspectorate's "*deroga assistita*" procedure, following the reduction by *Decreto Dignità* of the length of fixed-term agreements from 36 to 24 months.
Pursuant to article 19(1) of legislative decree No 81/2015, fixed-term agreements may be entered into for a maximum of 12 months, extendible to 24 months if any of the conditions expressly specified by the legislation is met.
The maximum length of the contract includes any secondment periods during which the employee carried out tasks in the same contractual category.

Article 19(3) of legislative decree No 81/2015 allows the possibility for the same parties to enter into a further contract for a maximum period of 12 months under the National Labor Inspectorate's "*deroga assistita*" procedure. In its Note, the Authority specified that such additional contract may be entered into whether the maximum term had been set by *Decreto Dignità* or by the relevant collective bargaining agreement.

Pursuant to Labor Ministry guidance (Circular No 17/2018), the additional contract concluded pursuant to the "*deroga assistita*" procedure is subject to the rules on fixed-term contract renewals which require stating one of the mandatory reasons for renewal.

CASE LAW

3.1

Involvement of managers/executives (*dirigenti*) in a collective redundancy procedure – Italian Supreme Court – labor division – decision No 2227 of 25 January 2019

The Italian supreme court confirmed the principle according to which in a collective redundancy procedure pursuant to article 24 of law No 223/1991 involving managers/executives, the employer has an obligation to contact the relevant trade union organization for managers/executives (*dirigenti*). This decision is based on the amendment to article 24 by law No 161/2014, following ECJ decision dated 13 February 2014 (in case C-596) extending the application of *mobilità* (a redundancy procedure) to dirigenti to fulfill the obligations of Directive 98/59/EC

In the case submitted to the Court, the employer company had only involved the employees' trade union organizations and had failed to involve the trade union organizations for dirigenti as well (in the case at issue, Federmanager).

The Supreme Court justices noticed that, as a result of the harmonization of domestic legislation following the inclusion of paragraph *quinquies* in article 24(1), a collective redundancy procedure initiated by an employer without the involvement of the relevant trade union organizations for dirigenti is null and void.

3.2

Dismissal and obligation to find an alternative position for employees made redundant (*repêchage*) – Italian Supreme Court – labor division – decision No 31495 of 5 December 2018

In this decision, the Italian Supreme Court confirmed the principle according to which employers have an obligation to prove that at the time of dismissal there was no similar available position which the employee made redundant could have covered (*repêchage*).

In the case at issue, an employee had been terminated due to "*justified objective reasons*" following the elimination of his position due to the "*critical situation of the domestic market*".

The employee had appealed against dismissal, claiming that the employer had failed to comply with its obligation to find an alternative position for him, although at the time of termination the employer was aware that two employees (*capo area*) with similar tasks as the employee laid off had tendered their resignation, and shortly after his termination such positions were covered by two new resources formally hired from another group company.

During testimony, it also emerged that although sales staff had always been hired by the employer company, for the first time the two new resources had been hired by the group company. The appellant claimed that the different procedure for hiring the new staff suggested intention, especially because it was implemented right after his dismissal.

Based on the employee's arguments, the supreme court acceded to his appeal against unfair termination on the basis that the employer had the burden of proving that at the time of dismissal there was no similar position which the employee made redundant could have covered by performing tasks similar to those he used to carry out, having regard to the employee's professionalism, and had to be able to demonstrate that it had not appointed anyone to an equivalent position for an appropriate length of time after dismissal.

In other words, in the Supreme Court's opinion the employer's analysis should include all hires made during a fair amount of time following termination of a worker and may not be limited to evaluating the possibility to find another position for the employee at a specific point in time only.

In the supreme court judges' opinion, the fact the new resources had been hired by a company other than the employer played no role in this context, since the issue to be taken into account as circumstantial evidence when considering the situation as a whole was the proper application of the principle of good faith in the fulfillment of the employer's obligation to make an attempt at finding an alternative position for the employee made redundant.

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LABOUR NEWSLETTER | JANUARY 2019

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 31 JANUARY 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