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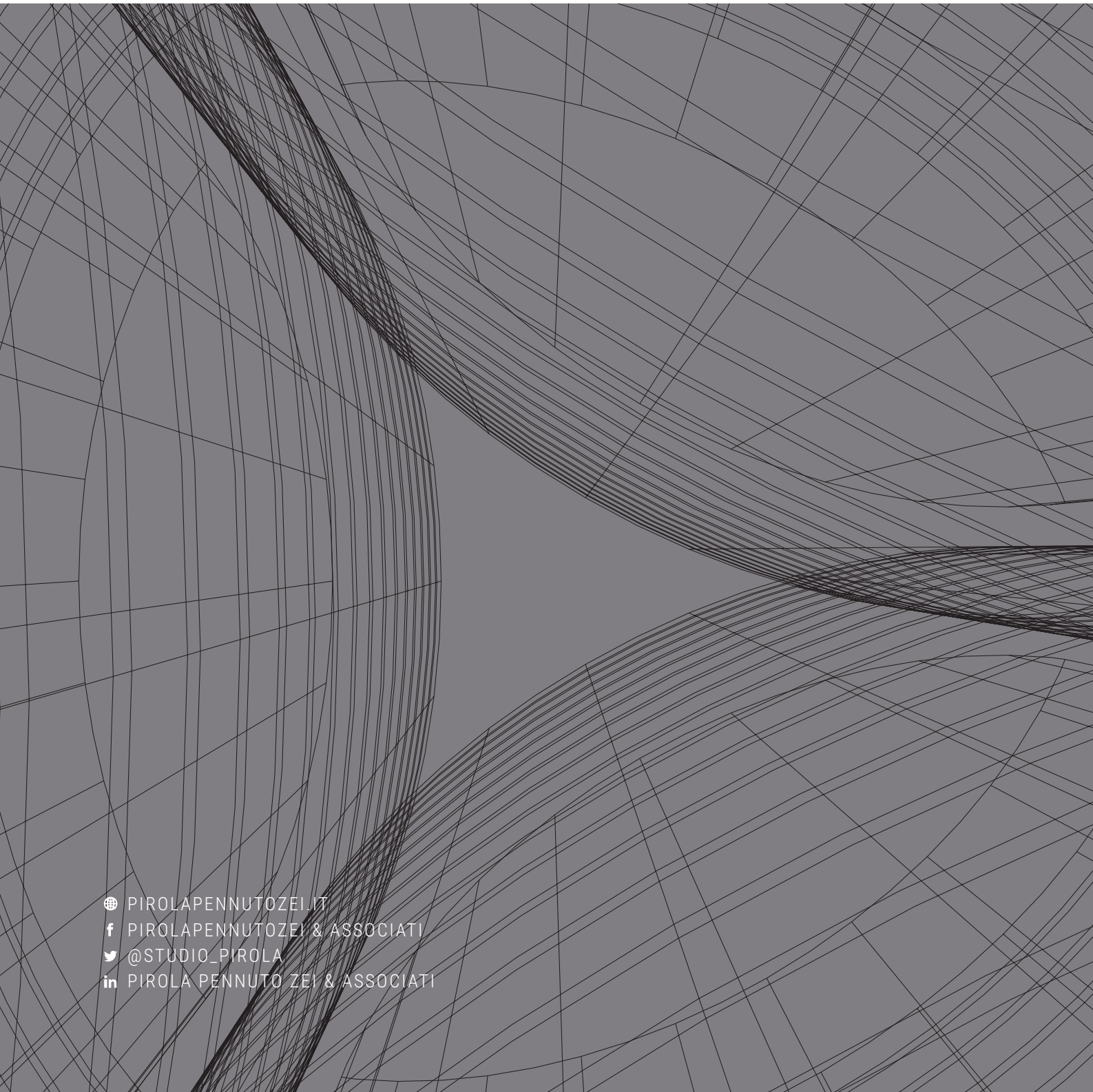
LABOUR

NEWSLETTER / MARCH 2019



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LEGISLATION

1.1

The Directive on paternity leave and carers' leave has been approved

The European Union has issued a directive regulating the rights of parents and carers, to ensure gender equality, promote equal sharing of caring responsibilities between men and women and facilitate the work-life balance of parents through flexible working arrangements.
The Directive on the work-life balance for parents and carers approved on 4 April 2019, and repealing directive 2010/18/EU, introduced a minimum paid parental leave of 10 working days (two calendar weeks) that may be taken by fathers or - where and insofar as recognized by national law - equivalent second parents regardless of the worker's marital status or family status, on the occasion of the birth or adoption of the worker's child.
This rule will have to be incorporated into domestic legislation within three years; in Italy, this should result in the extension of the paternity leave compared to the current 5 days plus one additional day to be taken as an alternative to maternity leave; however, the maximum term of parental leave – six months for the mother and 11 months in the aggregate for both parents – should remain unchanged.

The Directive also introduced provisions which may affect Italian parental leave legislation; for instance, it confirms that both parents are entitled to paid leave of at least four months to be taken before the child reaches the age of eight (instead of 12 as currently provided by Italian legislation).

Moreover, the Directive specified that two of the four months of minimum parental leave cannot be transferred from one parent to the other, in order to encourage fathers to use parental leave and facilitate the reintegration of mothers in the labor market after they have used a period of maternity and parental leave.

The directive does not specify how parental leave should be taken, but simply requires Member States to adopt the necessary measures to ensure that parents may use it in a flexible way.

Pursuant to the Directive, domestic legislation shall: (i) specify the notice period the worker shall give to

the employer when applying for parental leave; (ii) decide whether the right to parental leave is subject to a certain length of service, which in any case may not exceed one year; (iii) narrow down the employer's right to refuse parental leave only in case of application for leaves shorter than one full-time working day; (iv) establish the circumstances in which an employer is allowed to postpone the granting of parental leave on the grounds that the taking of parental leave at the time of the application would seriously disrupt the good functioning of the employer's organization. Employers shall provide reasons for such a postponement of parental leave in writing.

Furthermore, pursuant to the Directive, Member States are required to introduce a further leave of five working days per year to workers who must care for family members living with them, with limitations and conditions to be established by the respective domestic legislation. In Italy, however, law 104/92 already provides for a higher number of days of leave for carers.

Finally, the Directive requires Member States to adopt measures aimed to ensure that workers with children of up to 8 years of age and carers are entitled to request flexible working arrangements for care needs, subject - at each Member State's discretion - to a period of work qualification or to a length of service qualification, which shall not exceed six months.

GUIDANCE

2.1

Extension of the benefits under the wage guarantee fund for FYs 2019 and 2020 – Labor Ministry circular No 6 of 3 April 2019

The Ministry of Labor and Social Policies has declared that an amount of 50 million euro has been allocated as wage guarantee fund benefits payable in cases of corporate reorganization, severe business difficulties and "*solidarity*" agreements for FY2020, and specified that the resources available for payment of the same benefits for FYs 2018 and 2019 are respectively 100 and 180 million Euro.

In order to be eligible for the benefits, companies must concurrently meet the following conditions:

- must have a certain strategic economic significance, including at the regional level;
- must be characterized by significant employee redundancy issues;
- must have entered into an agreement with the Region or Regions concerned (if they have cross-regional operations) before the Labor Ministry.

The conditions and time limits to ask for an extension of the benefits in the event of corporate reorganization, severe business difficulties and "*solidarity*" agreements are as follows:

- corporate reorganization: maximum 12 months' extension, provided that the reorganization project includes investments or job recovery plans for employees made redundant which may not be implemented within 24 months;

- severe business difficulties: maximum six months' extension, provided that the turnaround project includes remedial actions aimed at ensuring the continuation of business and the protection of jobs which may not be implemented within 12 months;

- "*solidarity*" agreements: maximum 12 months' extension, provided that there is no change in the staff made redundant as declared by the company in the relevant trade union agreement.

2.2

Entitlement to wage guarantee fund payments due to severe business difficulties for workers of companies which have been contracted to provide canteen and cleaning services – Labor Ministry circular of 27 March 2019

This Circular deals with the possibility for workers hired by companies contracted to provide canteen and cleaning services to receive wage guarantee fund benefits due to severe business difficulties in the event of termination of the contract with a principal who is in turn entitled to the benefits.

Pursuant to article 20(1) of legislative decree No 148/2015, income support benefits apply *inter alia* to the following businesses:

- letter c): "*contractors of canteen services, who suffered from business cuts due to difficulties of the principal, as a result of which the latter applied for wage guarantee fund benefits;*
- letter d): *"contractors of cleaning services, who suffered from business cuts due to difficulties of the principal, as a result of which the latter applied for wage guarantee fund benefits*".

Pursuant to Labor Ministry Decree No 94033/2016, contractors of cleaning and canteen services are eligible for wage guarantee fund benefits for periods not exceeding the term of their contract. However, if the principal ceases to do business and the contract is definitively terminated, eligibility for the wage guarantee fund benefits is unrelated to the term of the contract and the standard period will apply. This is conditional on the fact that the contract, not renewed due to the principal's cessation of business, was in place at the time of the principal's decision to do so, in order to avoid abusive conducts by companies which enter into contracts after their decision to stop carrying out such activities only to extend the period of eligibility for the wage guarantee fund benefits.

CASE LAW

3.1

Time-bar for submitting an opposition against the sale of a business division – Labor section of the Italian supreme court, decision No 9750 of 8 April

The Italian Supreme Court ruled that the time-bar pursuant to article 32(4)(c) of law 183/2010 (60 days from the transfer of an employment contract pursuant to article 2112 of the Italian civil code with effect from the date of the transfer) applies only if a worker appeals against the assignment of his employment contract as part of a transfer of business – and asks to continue working for the transferor – and not if the worker takes legal action to obtain recognition of the assignment of his employment contract as a result of the transfer of business pursuant to article 2112 of the Italian civil code and asks to work for the transferee.

The Appeals court had rejected the worker's appeal on the basis that the 60-day time-bar after the date of transfer had expired, as the worker, after having claimed to transform his staff leasing contract into a direct employment contract with the staff lessor, who transferred the branch of business to which the employee was assigned, filed a claim to be reinstated at work requesting that his employment continue with the transferee only two years after the transfer of business.

Instead, the Supreme Court agreed with one of the arguments brought by the worker, namely that the time-bar under article 32 applied to the cases in which a worker disputed the lawfulness of a contract or action (dismissal, fixed-term contract or assignment of a work contract pursuant to article 2112 of the Italian civil code) and asked for the issue of a court decision to the contrary.

Instead, in the case at issue the worker wished to enforce the assignment of his employment contract as a result of the transfer of business (the worker having no obligation to formalize the continuation of his employment with the transferee, which is an automatic effect of a business transfer).

3.2

Inclusion of working members of cooperatives in the headcount calculation for the purposes of the job protection afforded by article 18 of law No 300/1970 – decision No 6947 of 11 March 2019

With its decision, the Italian Supreme Court introduced an innovative principle, reversing prior decisions

according to which only the number of non-member employees was relevant for the purposes of the protection afforded by article 18, paragraphs 8 and 9, of Law No 300/1970, on the basis that their status as members prevailed over their status as employees and that they already benefited from job protection by virtue of their status as members.

In the case at issue, a worker had appealed against his dismissal by a haulage cooperative due to liquidity issues. The Appeals court ruled against the dismissal but did not order the cooperative to reinstate him at work on the grounds that the cooperative did not reach the minimum headcount requirement established by article 18 of law No 300/1970, i.e. 15 employees, since, in the Court's view, working members of the cooperatives were not to be deemed as part of headcount.

The Italian Supreme Court's reasoning is based on the argument that the employment relationship and the same worker's membership in the cooperative shall be deemed as separate.
In this regard, pursuant to article 1(3) of law 142/2001, cooperatives' members assigned to specific working assignment actually enter into an employment relationship, which shall be deemed as any other ordinary employment relationship, notwithstanding their membership in the cooperative, with relevant tax and social security implications.

In other terms, according to the Supreme Court's interpretation, the working member of a cooperative provides work not so much on the basis of the members' agreement as pursuant to the employment agreement which operates on a separate basis.

Therefore, whereas the working relationship ceases in the event of the worker's exclusion from the cooperative pursuant to a specific provision (article 5(2) of law 142/2001), the termination of the work relationship does not affect the individual's status as member of the cooperative and, as a consequence, the same individual shall be taken into account in the cooperative headcount (for the purpose of the application of protection against dismissal) as an ordinary employee (like any other employee who is not a member of the cooperative).

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LABOUR NEWSLETTER | MARCH 2019

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 31 MARCH 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