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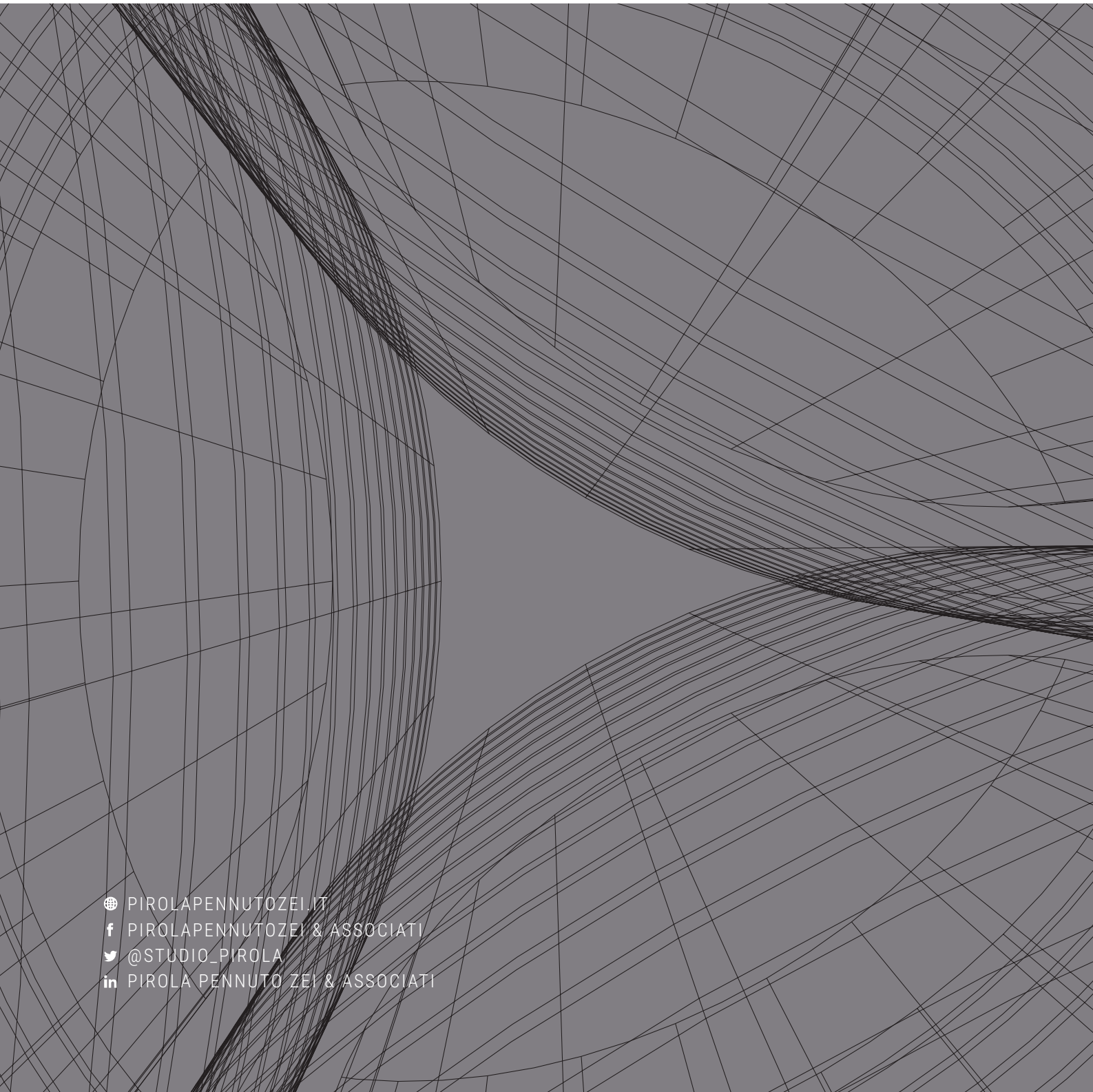
NEWSLETTER / AUGUST 2019



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LEGISLATION

1.1

Job reform in the sports industry

Law No 86/2019, delegating powers to the Government to reform jobs in the sports industry ("*Deleghe al Governo e altre disposizioni in materia di ordinamento sportivo, di professioni sportive nonché di semplificazione*"), was enacted on 31 August.

Chapter 2 in particular ("*Disposizioni in materia di professioni sportive*" - rules on professional sports activities) introduced a number of changes to afford greater protection in the sports industry. It states the general principle of specificity of jobs in the sports industry and identifies workers in the sports industry, including referees, without distinction as to gender, regardless of the amateur or professional character of the sports activity carried out.

The Government will also establish the insurance, social security and tax treatment of workers in the sports industry, as well as the rules for the management of their social security scheme.

The new rules also promote the growth of workers in the sports industry, especially young athletes, as well as professional training to ensure that athletes can find a job after the end of their career in sports.

Changes have been introduced also with regard to the work of sports agents and representatives of athletes and of sports companies, focusing on a more specific identification of the manner in which financial arrangements are to be reached, including the relevant tax and social security issues, to ensure their correctness, transparency and compliance with the rules.

1.2

Protections for Riders and other labor changes

On 4 September, the Council of Ministries approved a decree law introducing urgent provisions for the protection of some categories of workers and the resolution of business crises.

These include, for instances, protection for riders: it has been specified that riders may be remunerated, but not on a prevailing basis, according to the number of deliveries made. Furthermore, collective bargaining agreements may establish incentive-based remuneration schemes having regard to the manner in which work is carried out. Hourly remuneration will be granted if the worker accepts at least one call during one hour of work.

The decree also extended the protection of quasi-employees (employees under an agreement for "*coordinated and continuous cooperation*" – *collaborazione coordinata e continuativa*) in order that they may be eligible for unemployment benefits (*Dis-Coll*), and that of socially useful workers in order to encourage their employment.

Further protection has also been introduced for workers registered with "*gestione separata INPS*" (separate INPS social security scheme for certain categories of independent workers), including a proposed increase in the daily hospitalization coverage and daily sickness allowance.

Finally, social security relief is being proposed for companies located in areas affected by industrial crisis, subject to the European Commission's authorization.

GUIDANCE

2.1

Clarification by the Italian social security authority – INPS – on the reduction of pension benefits above 100,000 Euro

On 9 August, INPS issued circular No 116 providing clarification on the reduction of annual pension benefits exceeding 100,000 Euro, pursuant to article 1 (261) to (268) of law No 145/2018.

Following up recent circular No 62 of 7 May 2019, the Ministry clarified that the reduction will not affect retirement benefits deriving from contributions paid into a combination of pension schemes (*pensioni da totalizzazione o da cumulo*), in respect of which at least during one contribution period, contributions were paid into a separate private pension scheme (*Cassa professionale*).
If instead no contribution was paid into a *Cassa professionale*, the retirement benefits exceeding Euro 100,000 will be affected by the reduction, regardless of the calculation method adopted for the determination of the portion of retirement benefits payable by each pension scheme concerned.

2.2

Retirement under the *Quota 100* regime: new INPS circular on the impossibility to take into account periods worked abroad, on the effective date of the payment of retirement benefits and the estimation of the period of work abroad

On 9 August, INPS issued circular No 117, providing clarification on the Retirement under the Quota 100 regime, with a focus on the impossibility to take into account periods worked abroad, on the effective date of the payment of retirement benefits and the estimation of the period of work abroad.

First of all, the Italian social security authority clarified that in order to qualify for retirement under the Quota100 regime, individuals are required to terminate their employment contract, but not necessarily any self-employment agreement in place (the law provides that the earning of self-employment income above certain limits results in a decrease of the retirement benefit – *incumulabilità* – but does not prevent a retiree from continuing to carry on an activity as a self-employed).

The Authority has provided a number of practical indications as to the criteria and limits for aggregating retirement benefits and other income without affecting the amount of the former, as follows:

- If occasional self-employment income is less than €5,000 per year, the amount of retirement benefits remains unchanged;
- As regards income from work other than occasional self-employment work, the relevant amount will be that received between the effective date of the entitlement to retirement benefits and the date on which the recipient reaches the age for old-age pension benefits, provided that the income relates to work carried out in the same period. If this type of income is received, payment of retirement benefits is suspended.

Individuals entitled to retirement benefits will have to submit a special-purpose declaration to INPS concerning their self-employment income, except if this consists of occasional self-employment income below €5,000 per year. Subsequently, the Authority will suspend payment of the retirement benefits and possibly recover any amounts paid but not due.

As concerns the effective date of payment of retirement benefits, the Authority specified that, as regards members of private pension schemes, if in his/her application for pension under the Quota100 regime the applicant specified that he/she wished to defer the effective date of payment of the benefits to a later date, provided the relevant requirements and conditions are satisfied, the applicant's request will have to be met. In this case, any income from work activities received before the date so specified by the applicant and before the effective date of payment of the benefits is not relevant for the purposes of *incumulabilità* of pension benefits and other income from work.

Finally, as concerns the periods of work abroad, the authority specified that the principles stated by the Labor Ministry for the entitlement to seniority of service pension/early retirement benefits shall apply.

CASE LAW

3.1

The failure to assess risks results in the fixed-term employment contract becoming null and void

On 23 August, the Italian Supreme Court issued decision No 21683/2019 on the consequences of the failure to carry out the required prior assessment of the risks to the health and safety of workers in respect of a fixed-term employment contract.

In the case at issue, the lower Court had declared the fixed term of an employment contract to be null and void since the employer had not conducted the required risk assessment. The employer had appealed against this decision with the Rome Appeals Court.

The Supreme Court, however, rejected the appeal on the basis that the prohibition to enter into fixed-term employment contracts for companies which did not carry out the assessment of the risks to workers' health and safety was a mandatory rule, whose rationale was to grant greater protection to those workers who are less familiar with the working environment and tools by reason of their more flexible employment.

Therefore, if an employer is unable to prove that it has conducted the required risk assessment before entering into a fixed-term employment contract, the fixed term becomes null and void and the employment contract becomes an indefinite-term contract.

3.2

Reason for replacement stated in a fixed-term employment contract

On 23 August, the Italian Supreme Court issued decision No 21672/2019 on the lawfulness of a reason for replacement stated in a fixed-term employment contract.

In the case at issue, the Milan Appeals Court had declared that the fixed term specified in the contract entered into to replace absence workers, was unlawful on the grounds that the employer – an airline – had failed to specify the relevant reasons, as required by article 1 of legislative decree 368/2001, as it did not give proof that the worker had replaced his/her absent colleagues every day and had actually worked on their routes.

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The Italian Supreme Court referred to the principle according to which the obligation to state the reasons for the replacement was in connection with the need to ensure the transparency and truthfulness of the reason for the fixed term of the contract and the impossibility to change it while the contract was in place.

Therefore, in complex business conditions, justifying a fixed-term contract simply by stating that there is a "*need to replace absent workers*" does not per se meet the relevant obligation, whereas it becomes legally acceptable where the general statement is supplemented by additional information (e.g., the relevant territory, the place of work, the duties of the workers to be replaced, the latter's entitlement to retain their job etc.) which makes it possible to determine the number of workers to be replaced, albeit not their exact identity, subject to the possibility to check that the conditions for the lawfulness of the contracts are met.

Therefore, the Italian Supreme Court quashed the Milan Appeals Court decision on the grounds that it was not in line with this approach, and pointed out that in previous similar cases, it had been considered that the lower court judge had issued a properly justified evaluation of the fairness of the number of replacement contracts entered into, when it had ascertained the number of fixed-term contracts entered into each month covered by the contract and compared such number with the number of days of absence due to illness, injury, holiday etc., of the staff on indefinite-term contracts.

3.3

Social security regime of a director who also carries out a commercial business

On 9 August, the Italian Supreme Court issued decision No 21295/2019 on the obligation of for a sole director to register both with the *gestione separata* INPS referred to in law 335/1995 and the gestione previdenziale INPS of traders.

In this specific case, the director of an S.r.l. who also carried out a separate commercial business and was registered with the *Gestione Separata* INPS pursuant to law 335/1995, had been served a payment demand by the Italian social security authority – INPS – for unpaid social security contributions to the traders' social security scheme and relevant penalties.

The Court of Parma had ruled that the Authority's payment demand was unlawful, as the two social security regimes could not co-exist. Subsequently, the Bologna Court of Appeal, while considering that

double registration was acceptable, had confirmed the lower court decision, on the basis that in that case the *fictio juris* of the unification of social security contributions on a prevailing activity basis did not apply.

INPS appealed against this decision to the Italian Supreme Court which, after extensively analyzing the matter, agreed with the Appeals court decision and stated that the concurrent performance of an independent contractor activity, subject to the payment of social security contributions to *Gestione separate,* and of a commercial, arts and crafts or farming business requiring an obligation to register with the relevant INPS *gestione assicurativa,* was not regulated by the principle of prevailing activity, being separate activities with a separate obligation to register with the respective INPS social security scheme.

However, INPS's appeal was rejected since the authority failed to provide evidence of the facts giving rise to the social security obligation in respect of the traders' social security scheme.

3.4
Italian Supreme Court: unlawful transfer of business concern and remuneration payable by the transferor

On 7 August the Italian Supreme Court issued decision No 21158/2019, providing details on the salary implications for a worker transferred as part of an illegal transfer of business concern.

The Court clarified that, in the event of a transfer of business, the employment relationship is considered transferred if the transfer takes place in accordance with the law; if the transfer is null and void, the employment relationship is not transferred. Should this occur, two separate work relationships exist: a *de jure* one with the original employer and a *de facto* one with the transferee.

Thus, the worker may claim payment of remuneration from the original employer, with the consequence that the remuneration received by the transferee may not be deducted from the remuneration payable by the transferor (in the Court's words "*just like the remuneration paid by any other employer whom the individual worker for would be added to that due by the transferor, similarly the remuneration paid by an entity which may no longer be regarded as a transferee in consideration for an activity rendered in the latter's interest and organization is not deductible from the amount of the remuneration payable by the transferor*").

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LABOUR NEWSLETTER | AUGUST 2019

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 31 AUGUST 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