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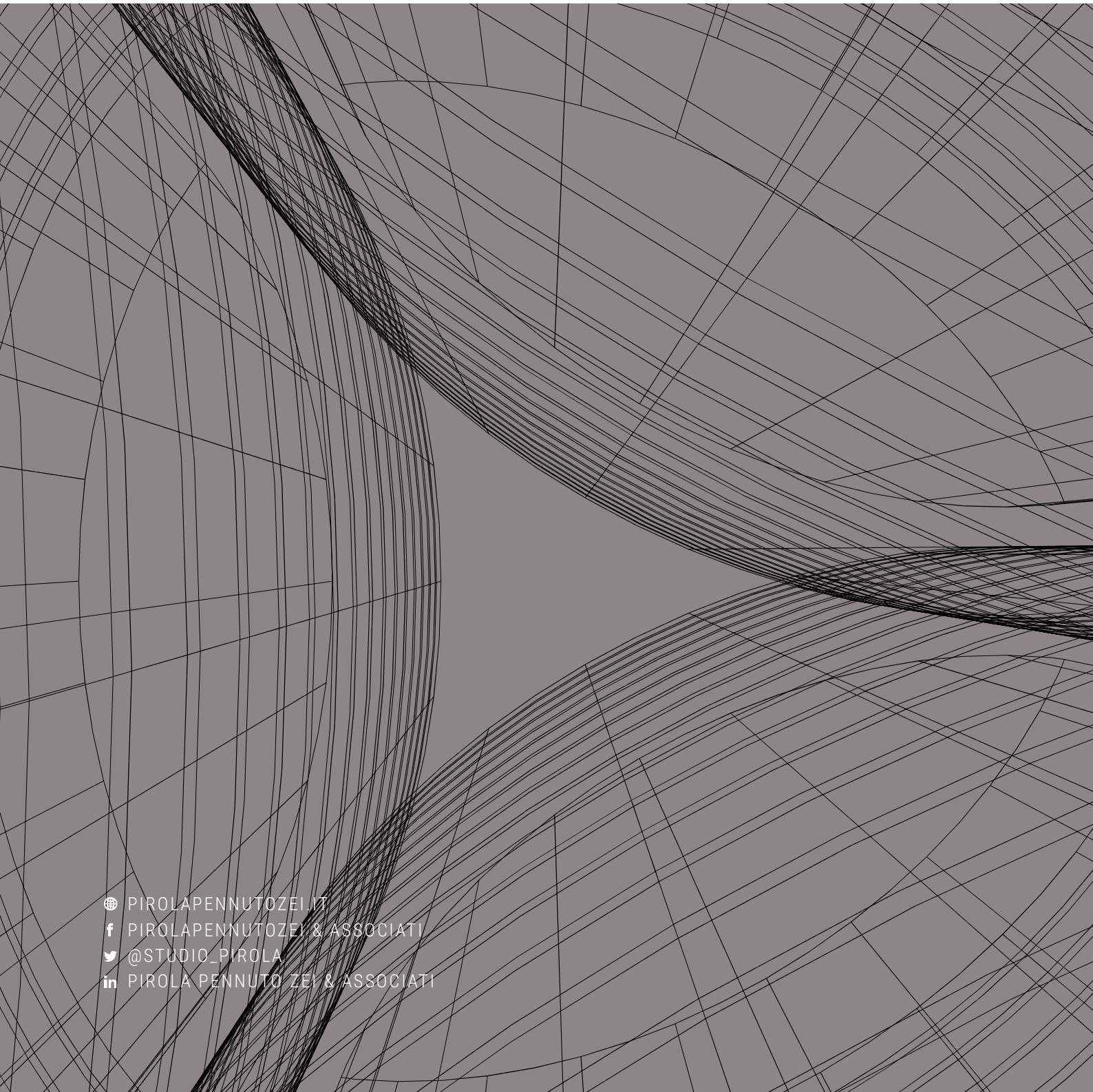
LABOUR

NEWSLETTER / AUGUST 2021



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LEGISLATION

1.1

Draft *Decreto anti-delocalizzazioni* (anti-delocalization decree)

The Draft anti-delocalization decree has introduced a specific procedure, which companies with more than 250 employees are required to follow if they close down a production site resulting in the cessation of business activities for reasons other than crisis.

The Draft decree provides that a company intending to close a production site is required to file a preliminary notification with the competent Authorities and the trade union representatives, sending them the shutdown plan.

The notification, preparatory to the collective dismissal procedure, will set out the economic, financial, technical or organizational reasons for closing the site, the number and professional profile of the staff employed and the planned closing date.

After the preliminary notification, the company will file with the Authorities a plan to limit the occupational and economic implications of the shutdown, containing:

a) the actions planned to safeguard occupational levels and the measures for a non-traumatic handling of possible redundancies, such as the reassignment to another company and active labor policy measures;
b) business sale prospects with a view to the continuation of the activity;
c) any plans for the conversion of the production site for the benefit of the territory concerned;
d) the timeframe, stages and manner of implementing the actions planned.

At present the Draft Bill provides that the approval of the plan by the competent Authorities is the condition required for initiating the collective dismissal procedure.

Finally, lawmakers are considering the appointment of a "corporate advisor", acting as the contact between the company and the Authorities, and are evaluating the penalties applicable to companies that start the collective dismissal procedure without the preliminary approval of the plan mitigating the occupational implications.

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1.2

Green pass (digital covid certificate) obligation in company canteens

The FAQs on the obligation to show the "Digital Covid Certificate" to obtain access to company canteens and other premises where food and beverage services are provided to employees, in connection with the management of the Covid-19 emergency, has been published on the Government's website.

The following text is written in the site:

"*must the COVID-19 green certificate be shown to eat and drink at tables in company canteens or in all premises used for the provision of catering services to public or private employees?*

Yes, to eat and drink at tables indoors, employees may have access to company canteens or premises used for the provision of food and beverage services to employees only if they have their COVID-19 green certificate, as in restaurants. For this purpose, the providers of the above-mentioned services are required to check the COVID-19 green certificates […]."

GUIDANCE

2.1

INPS message no. 2842 of 6 August 2021 – for 2021 INPS will not pay sick leave in case of quarantine resulting from being in close contact with someone who tested positive for Covid-19 due to lack of funds

With regard to the sick pay granted to workers in case of mandatory self-quarantine following contact with someone who tested positive for Covid-19, by the above-mentioned message INPS notified that it would pay the amounts due for sick leave in 2020 also on the basis of the certifications issued by family physicians.

However, INPS stated that since no funds had been allocated for the quarantine in respect of 2021, the allowance for mandatory "self-quarantine" would not be paid for the year in progress, unless otherwise provided by future rules.

With regard to the absence from work of "fragile workers", considered equivalent to hospitalization, INPS specified that since no funds had been allocated for the period after 30 June 2021, the allowance would only cover their absence until that date.

According to the interpretation contained in the Message, the non-allocation of funds to pay for absence from work after 30 June 2021 was the result of the provisions of Decree Law no. 105 of 23/07/2021, which extended to 31 October 2021 the right of "fragile workers" to work remotely or perform specific training activities remotely, in both cases outside the company's premises.

Finally, INPS specified that the above did not apply to actual cases of Covid-19 infection, in respect of which sick pay had already been authorized.

CASE LAW

3.1

Court of Cassation decision no. 22247 of 4 August 2021 – it is lawful to inflict a substantial penalty in the event of breach of a non-competition covenant

In its decision, the Court of Cassation dealt once again with the validity of the non-competition agreement and the prohibition to entice staff away, and the lawfulness of the application of a substantial penalty in the event of an employee's breach of the non-competition covenant.

The decision focused on a claim for damages filed by a credit institution against a former manager in respect of breach of the non-competition agreement and of the prohibition to entice staff away concluded with the employee.

The Court first of all deemed the non-competition agreement entered into between the Parties to be lawful since it satisfied the applicable criteria. These are as follows:

a) the agreement shall define the activities which the employee must refrain from conducting, that are not necessarily limited to the duties performed by the employee and may include any activities that may compete with the employer's;
b) the agreement shall in any case not be so broad as to compromise the employee's income-earning potential, with regard to the scope of prohibited activities and the extent of the territory where the prohibition applies;
c) finally, the agreement must provide for compensation in exchange for the restrictions imposed on the employee, which must not be symbolic or manifestly unfair with relation to the limitations required.

Furthermore, contrary to several lower court decisions and without providing specific grounds for its decision, the Court ruled that the payment of the remuneration during the working relationship did not impair the validity of the agreement.

With regard to the penalty for breach of the non-competition agreement, the Court ruled that one of the judge's legitimate powers was to evaluate whether the penalty established in the breach of agreement clause was excessive. To conduct such an evaluation, the judge had to consider not only the extent of the

damage suffered as a result of the breach but also the interest of the employer in securing the employee's compliance with the obligation not to compete, in terms of its incidence on the balance of their respective obligations and on the actual contractual situation.

Finally, the Court reiterated that the legislation governing non-competition agreements (art. 2125 of the Civil Code) was not applicable to the prohibition to entice staff away, since such prohibition did not prevent former employees from carrying out a working activity but only prohibited them from soliciting customers away from one company to the benefit of another, by taking advantage of the trust gained during the time they worked for the former company.

In the light of all the above the Court rejected the appeal filed by the manager and ordered him to pay the employer an amount corresponding to the penalty agreed for the damage suffered and to return the sum received as consideration for the covenant not to compete.

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LABOUR NEWSLETTER | AUGUST 2021

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 31 AUGUST 2021.
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