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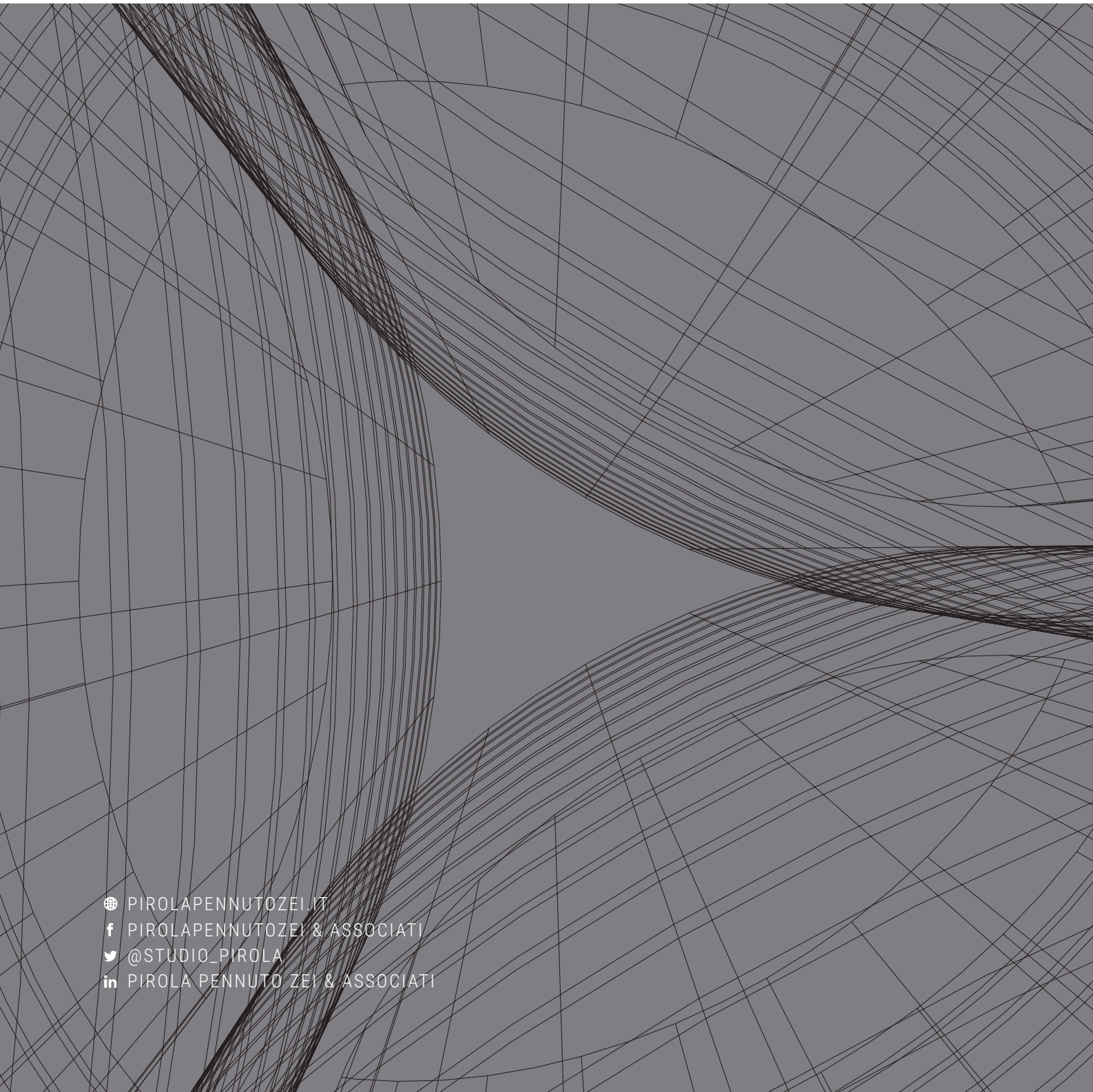
# LABOUR

## NEWSLETTER / JANUARY 2018



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# LEGISLATION

## 1.1
### 2018 Italian Budget and three-year budget 2018-2020 – Law No 205 of 27 December 2017 – Italian Official Journal dated 29 December 2017

The 2018 Budget (law No. 205/2017) introducing changes in tax, labor and funding matters, entered into force on 1 January 2018 and was published in the Italian Official Journal on 29 December 2017. We describe below the main newly introduced labor and social security provisions.

***I. Article 1(100-108), (114 and 115) - Youth employment incentives***

In order to encourage stable youth employment, with effect from 1 January 2018 private employers hiring youth under a special-purpose indefinite-term employment contract named "*contratto a tutele crescenti*" pursuant to legislative decree No. 23/2015, will benefit from a 50% reduction – for a maximum period of thirty-six months – of the employer social security contributions, with the exclusion of the INAIL (Italian Workers' Compensation Authority)'s premiums and contributions, up to a maximum of €3,000 per annum, or the corresponding amount per month.

The incentive applies in respect of young workers who, at the date of the first employment under the beneficial conditions have not yet turned thirty (or thirty-five for 2018 only) and were not hired under an indefinite-term agreement with the same or another employer. The incentive is granted even if the worker started under an apprenticeship contract with another employer which did not change it into an open-term employment contract.

The benefit is granted solely to employers who, in the six months prior to hiring, did not make individual dismissals for objective justified reasons or implement collective redundancy procedures pursuant to law 223/1991 in the same productive unit.

***II. Article 1(132) – increase in the threshold of income for entitlement to the € 80 bonus***

The thresholds of income for entitlement to the "*Renzi Bonus*" have been raised from 24,000 euro to

24,600, (minimum) and from 26,000 euro to 26,600 euro (maximum). No benefit applies to income above 26,600 euro.

***III. Article 1(133) – extension of the extraordinary wage guarantee fund (CIGS) benefits due to corporate reorganization or crisis***

In 2018 and 2019, companies with strategic economic significance and a headcount of more than 100 may obtain an extension of the extraordinary wage guarantee fund benefits for a maximum of twelve months.

***IV. Article 1(136) – outplacement arrangements***

In order to reduce redundancies on completion of the period covered by extraordinary wage guarantee fund benefits in cases of corporate reorganization or crisis when not all employees are expected to be hired back, an outplacement arrangement may be reached in the negotiation stages of the agreement, specifying the company segments and the positions at risk of redundancy. The affected workers may ask the Italian National Agency for Active Employment Policies for early allocation of the "*outplacement indemnity*" (*assegno di ricollocazione*) referred to in article 23 of legislative decree No. 150 of 14 September 2015, within thirty days from the execution of the agreement.

***V. Article 1(137) – Increase of the employer contribution in case of dismissal***

Starting from 1 January 2018, for each collective dismissal eligible for the extraordinary wage guarantee fund (CIGS) benefits, the employer's contribution is doubled, from 41% to 82% of the maximum monthly unemployment benefit (NASPI). If the collective dismissal procedure is implemented without prior agreement with the relevant trade union organization, the contribution is tripled.

The above does not apply to dismissals implemented as a result of collective dismissal procedures started by 20 October 2017.

***VI. Article 1(139-144) – State-funded income support programs for employees of companies engaged in areas characterized by complex industrial crisis***

Companies engaged in an area characterized by complex industrial crisis recognized in the period between 8 October 2016 and 30 November 2017, which no longer qualify for the extraordinary wage guarantee fund (CIGS) benefits, may qualify for an additional income-support scheme in the period between 1 January and 30 June 2018, up to a maximum of twelve months and in any case not beyond 31 December 2018.

***VII. Article 1(145) – extension of special wage guarantee fund (CIG) benefits***

With a view to the implementation of new industrialization plans or schemes for the recovery or preservation of jobs submitted to the "*crisis units*" of the Ministry for economic development or of the Regions, the latter may authorize extensions of the special wage guarantee fund (CIG) benefits granted by 31 December 2016 with effect for 2017 – to be covered by up to 50% with of the financial resources made available to Regions and pursuant to specific agreements entered into between the parties – for a maximum period of 12 months.

***VIII. Article 1(147-150) – Exclusions from the extension of pensionable age***

Starting from 1 January 2019, the pensionable age will increase 5 years, reaching 67 years, except for employees who in 7 out of the 10 prior years were engaged in one of the activities listed in Annex B to the law (e.g., workers in the extraction, building, farming businesses, waste collectors and street cleaners and others) and have accrued at least 30 years of social security payments, as well as workers engaged in specially arduous and hazardous jobs.

***IX. Article 1(162-167) – voluntary early retirement ("Ape Volontaria"), early retirement for social reasons ("APE sociale") and workers who started working early ("lavoratori precoci")***

The trial period of application for the early retirement program (APE) has been extended to 31 December 2019. For women, the conditions for eligibility are reduced by 12 months for each child for a maximum of two years.

### *X. Article 1(910-914) – Payment of remuneration and fees to workers*

Starting from 1 July 2018, employers will be required to pay any remuneration and advances due to their employees through a bank or post office only, using one of the following means of payment: (i) bank transfer to an account identified by the IBAN specified by the employee; (ii) e-payment instruments; (iii) payment order; (iv) check directly delivered to the employee or, if he/she were proven to be unable to receive it, to his/her appointed delegate. This provision does not apply to public authorities and to domestic workers.

# GUIDANCE

## 2.1

**National Labor Inspectorate Circular No. 3 of 25 January 2018: operating guidance on the supervisory activities to be conducted in the event of non-application of the national collective bargaining agreements signed by the comparatively most representative national trade union associations**

By Circular No. 3 del 25 January 2018, the National Labor Inspectorate provided his inspectors with operating guidance in respect of the supervisory activities to be carried out on companies which do not apply the national collective bargaining agreements signed by the comparatively most representative trade union organizations at the national level.

The National Labor Inspectorate confirmed the contents of its note No. 10599 dated 24 May 2016, on the need to conduct audits whenever the failure to apply the "*principal bargaining agreements*" could result in wage and social dumping issues.

The Authority emphasized the fact that by law certain rules may apply conditional on the execution or implementation of collective bargaining agreements with the most representative trade union associations and stipulated the following principles:

- *contratti di prossimità* (agreements derogating from the collective bargaining agreements, pursuant to article 8 of Decree Law No. 138/2011): any agreements signed by "*unauthorized*" parties may not introduce derogations from "*the provisions of the law (…) and the relevant regulations contained in the national collective bargaining agreements*". Accordingly, **during an audit, inspectors will consider such agreements to be null and void and take the relevant measures (recovery of unpaid contributions etc.);**
- legislative advantages and social security contribution relief: the implementation of collective bargaining agreements signed by the comparatively most representative trade union associations at the national level is a **key condition** to qualify for the legislative advantages and social security contribution relief established by 1(1175) of law No 296/2006;
- social security contributions due: **the collective bargaining agreement signed by the comparatively most representative trade union associations at the national level** is the benchmark for the calculation

of the social security contributions due, **regardless of the collective bargaining agreement applied for the determination of the remuneration due**, pursuant to the combined provisions of article 1(1) of Decree Law No 338/1989 and article 2(25) of Law 549/1995;

- delegation to collective bargaining agreements: this is a possibility granted by the law to supplement the regulation of specific arrangements. In particular, article 51 of legislative decree No. 81/2015 – containing, inter alia, the "*disciplina organica dei contratti di lavoro (…)*" (a set of rules governing employment contracts) – states that "***unless otherwise provided, for the purposes of this decree collective bargaining agreements shall mean national, territorial or corporate collective bargaining agreements entered into by the comparatively most representative trade union associations at the national level and corporate collective agreements concluded by their workplace union representation ("rappresentanza sindacale aziendale, RSA") or unitary workplace union representation (rappresentanza sindacale unitaria – RSU)".***

Therefore, each time the law defers any additions to the rules governing the types of work contracts to "*collective bargaining agreements*", **the rules introduced by agreements that have not been signed by "*the comparatively most representative trade union associations*" will be null and void.**

The National Labor Inspectorate specified that this could be the case, for instance, for "*intermittent*" work agreements, fixed-term employment agreements or apprenticeship contracts. Therefore, **where the employer adopted rules stipulated by a collective agreement other than that entered into by the (comparatively) most representative trade union organizations, any derogations or additions introduced by such agreement shall not apply.**

In the Authority's opinion, "*this may result in non-application of the flexible arrangements provided by legislative decree No. 81/2015 and, depending on the circumstances, of the "transformation" of the work relationship in what the Decree defines as the typical form of work contract, i.e. the open-term employment contract*".

## 2.2

### INPS (social security authority) Message dated 17 January 2018: the ASDI unemployment benefit was abrogated on 1 January 2018

In message No. 196, the Italian Social Security Authority stated that, as provided by article 18 of legislative decree 147 of 2017, starting from 1 January 2018 the ASDI unemployment benefit is no longer available, except to those eligible persons who at that date satisfied the requirements established by the interministerial decree of 29 October 2015.

Therefore, the IT procedure for the management of ASDI benefits has been adjusted to appropriately evaluate and prepare applications after checking compliance with the conditions for eligibility to the unemployment benefit at 1 January 2018. In particular, it will be checked that at this date the individual concerned has received the maximum NASpI unemployment benefits payable.

# CASE LAW

## 3.1

**Secondment and liability in the event of accident – Italian Supreme Court, Third Civil Section, order No. 1574 of 23 January 2018**

By the above decision, the Italian Supreme Court stated that in the event of an accident occurred during the secondment period, liability pursuant to article 2049 of the civil code falls upon the host company where the injured employee was working and not on his/her actual employer (home company).

The case examined by the Italian Supreme Court concerned an arrangement whereby an employer had seconded an employee to a host company to which the home company (jointly with another company, who had seconded two of its employees) provided equipment maintenance service at the host company's factory.

The seconded employee was assigned to a maintenance team - composed of the shift supervisor at the host company's maintenance division and of the two employees from the other company in charge of maintenance, one of whom had the role of foreman - which had the task of checking implementation of the safety measures in connection with the tools used and the activities carried out by the team staff.

However, such controls were inadequate and, due to a worker's negligence, the seconded employee was severely injured while servicing a conveyor belt.

The injured worker and his family brought proceedings for damages before the *Isernia* civil court against all persons involved – i.e. the home company, the host company and the head of the maintenance division the injured worker had been assigned to, the other company in charge of maintenance and the latter's employee seconded to the host company as foreman.

The Court accepted the claim for damages only against the foreman and the shift supervisor at the host company's maintenance division, but rejected the one against the other defendants.

Some of the plaintiffs in the trial before the court of first instance – including the injured person – appealed

against this decision asking that all defendants in the trial before the court of first instance be sentenced to the payment of the damages liquidated by the Court of *Isernia.*

The *Isernia* Appeals Court rejected the appeal on the grounds that – while the criminal liability of the foreman (seconded from the other maintenance company) and shift supervisor (an employee of the host company) had been definitively ascertained – the home company could not be held accountable since only the host company where the injured worker had been seconded to was liable pursuant to article 2049 of the civil code.

The Italian Supreme Court confirmed the conclusions of the lower court judges, stating that "*where an employee is assigned to an entity other than his/her employer,* ***only the person who was in charge of directing and supervising the work, and had it carried out, was liable pursuant to article 2049.*** *This principle of law is based on the notion that* ***the firm to which a worker has been seconded shall be held accountable for an offence committed by the seconded worker during the time he/she carries out work under the host company's supervision*****".**

## 3.2

### Italian Supreme Court Decision No. 509 of 11 January 2018: an employee who during parental leave does not look after his child may be lawfully terminated

In decision No. 509 the Italian Supreme Court stated that the termination of an employee who, during his parental leave, spent with his child a period of time corresponding to half his working hours was lawful.

Although, as claimed by the worker, the legislation on parental leave does not expressly require a parent's prevalent presence with the child, the Supreme Court maintained that where the worker during parental leave engages in activities unrelated to the child's needs, he is not using the leave for the reasons it was meant for and therefore the employer's decision to terminate the employment for cause is legally justified.

Using parental leave to engage in another work activity (albeit beneficial to the family's economic and social organization) constitutes a misuse of this opportunity given to parents to meet the child's emotional and relational needs for a harmonious and serene development of his personality. Therefore, it is clear

that to this end the father would be required to stay with the child and that carrying out work would prevent him to do so.

## 3.3
### Italian Supreme Court Decision No. 1457 dated 15 January 2018: payment of unpaid social security contributions and penalty exemption for the employer

By decision No. 1457 of 15 January 2018, the Italian Supreme Court stated that no penalty is inflicted on an employer who failed to pay over the social security contributions on its employees' wages but who did so before the entry into force of the reform concerning the beneficial treatment of non-payments below €10,000 p.a. (Legislative decree No. 8/2016).

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# LABOUR NEWSLETTER | JANUARY 2018

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 31 JANUARY 2018.
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