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LABOUR

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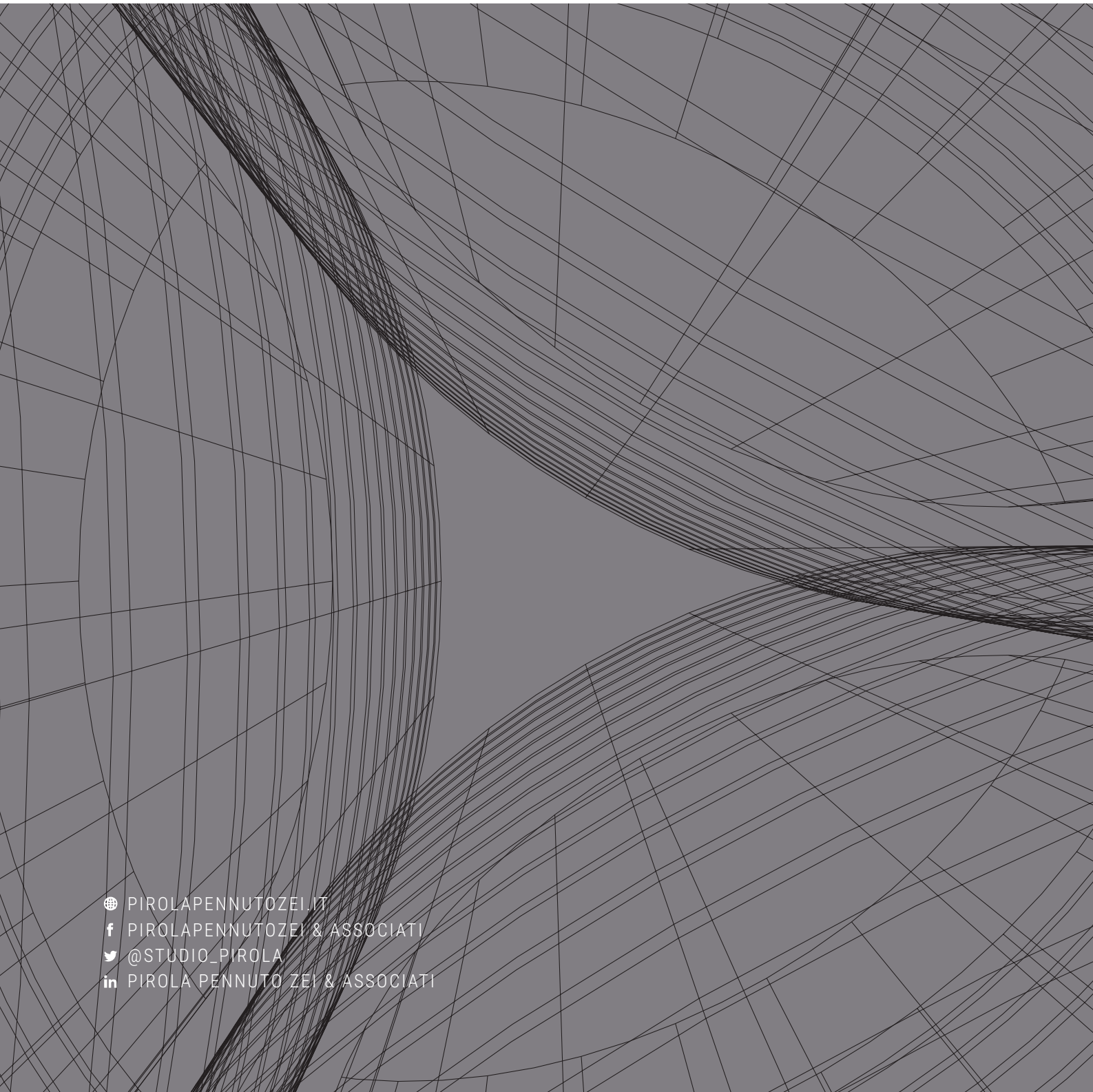

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LEGISLATION

1.1

The Decree Law containing provisions for active labor policies has been approved – Council of Ministries session No 23 of 15 October 2018

In session No 23 of 15 October 2018, the Council of Ministries approved a decree-law introducing, *inter alia,* urgent provisions concerning the simplification of bureaucratic procedures, the protection of health, active labor policies and other non-deferrable needs.

The Decree contains the following labor law measures:

- extraordinary wage guarantee fund (CIGS) in connection with corporate reorganizations or financial difficulties: the state-funded income support programs for the unemployed have been extended for 2018 and 2019 for companies in financial difficulties which have more than 100 employees. Benefits are paid over 12 months in case of corporate reorganization and 6 months in case of financial difficulties;
- *mobilità in deroga* (Government benefit scheme providing for payment of an unemployment allowance to employees affected by collective redundancies, additional to the standard *mobilità*): the benefit is granted over 12 months to employees who no longer qualified for *mobilità ordinaria* or *in deroga* between 22 November 2017 and 31 December 2018, provided that active labor policy measures are applied to such employees. The same measure applies to workers of the Termini Imerese and Gela industrial areas who have been qualifying for the benefit since 2016;
- reform of the Italian National Labor Agency (Anpal)'s governance;
- abolition of *libro unico del lavoro* (Integrated Payroll Register);
- simplification of the two-yearly personnel report;
- simplifications for companies in the entertainment business;
- simplifications concerning the filing of collective bargaining agreements;
- simplifications for procurement and work contracts;
- simplification of *gestione separata* INPS (separate INPS social security scheme for certain categories of independent workers).

GUIDANCE

2.1

Publication by the Italian workers' compensation authority (INAIL) of a workplace first aid manual

On 25 September 2018 **the Italian workers' compensation authority** published a workplace first aid manual, on the assumption that a company's first aid organization is of the essence to promptly set in motion the emergency procedures which are a key step to contribute to the victim's survival until professional medical help arrives. In INAIL's opinion, workplace first aid should be regarded "*as a process integrated in the accident prevention and mitigation system. Creating an effective workplace first aid system means not only having a decisive impact on the outcome of accidents but also positively contributing to the creation of a healthy and safe work environment, encouraging employees to engage in responsible conducts and improving their risk perception.*"

The Manual also addresses different topics – ranging from legislative issues, such as the analysis of the employer's health and safety obligations, to specific technical healthcare issues, such as the minimum content of the first aid kit, the use of equipment such as the external automatic defibrillator (EAD), the proper administration of external cardiac massage or basic information on anatomy or physiology.

The purpose of this first aid manual is to provide all workplace first aiders with legislative and healthcare guidance on how to respond to a workplace emergency.

2.2

Applicability of overtime rules to on call-workers – Labor Ministry ruling No 6 of 24 October 2018

In its ruling No 6/2018, the Labor Ministry provided its opinion on the application of the overtime rules (work above 40 hours per week) contained in Legislative Decree 8 April 2003 No 66 to on-call workers or whether it was possible to pay them only the consideration for their work as if they were carrying it out during regular working hours.

The Ministry first of all said that legislative decree No 66 of 2003 defined overtime as work carried out over and above the 40-hour-per-week working time, or such other working time as established by the

applicable national collective bargaining agreement, without providing for a maximum number of daily working hours. According to legislative decree No 66, working hours cover *"any period during which the worker is at work, at the employer's disposal and in the conduct of his activities or functions".* Thus, the rules apply to all forms of employment throughout the time in which the employee is at the employer's disposal, except for the exclusions expressly provided for by the decree.

Furthermore, the Labor Ministry specified that pursuant to legislative decree No 81 of 2015, the consideration for on-call work was determined in accordance with the proportionality principle, i.e. based on the service actually rendered, and with the principle of non-discrimination, that is to say that for the periods worked the on-call worker is entitled to financial and other conditions which must not be less favorable than those of other employees of an equivalent level.

Labor Ministry Circular No 4/2005 stated on the one hand that there was no contractual obligation concerning the working hours and the timeframe of the work, which were decided at the parties' discretion, and on the hand that that on-call work contracts were *"[…] after all employment contracts and as such subject to the applicable laws and national collective bargaining agreements, with particular regard to the rules on working hours."*

In the light of the above, the possibility given to employers to hire on-call workers in connection with unpredictable business needs and working periods does not allow them to disregard the rules on overtime and the payment of the relevant surcharges.

2.3

Exemption from the obligation to be found at home at pre-established times during sick leave – Clarification by the Italian social security authority (INPS) of 23 October 2018

Following news spread over the web on the exemption from the obligation to be present during a medical inspection house visit, INPS specified first of all that the rule does not concern the exemption from the medical inspection house visit but from the obligation to stay at home at pre-established times, meaning that scheduled medical inspection house visits are always an option.

Second, the doctor issuing the certificate can only apply the derogations from such stay-at-home obligation expressly provided by the decrees currently in force, i.e.:

- for private-sector employees: in case of severe diseases requiring life-saving therapies and pathological conditions related to an assessed degree of invalidity of 67% or more;
- for public-sector employees: in case of severe diseases requiring life-saving therapies; work-related disabilities included among the first three classes of Table A enclosed with Presidential Decree No 834 of 30 December 1982, or diseases included in Table E of the same decree; pathological conditions related to an assessed degree of invalidity of 67% or more.

With regard to these particular cases, the general practitioner will have to add the possible derogation from the stay-at-home obligation before issuing the certificate and not after.

2.4

Preliminary Labor Ministry interpretations on fixed-term employment contracts and staff leasing contracts – Labor Ministry Circular No 17 of 31 October 2018

In its circular No 17 of 31 October 2018, the Ministry of Labor and Social Policies provided its preliminary interpretations on fixed-term employment contracts and staff leasing contracts following the changes introduced by "*Decreto dignità*".

As regards the possibility for collective bargaining agreements to derogate from fixed-term employment contract rules, the Labor Ministry specified that, following *inter alia* the changes introduced by *Decreto dignità,* national, territorial or corporate collective bargaining agreements may continue to establish a different term, including a term longer than the new maximum 24-month. However, the clauses contained in the collective bargaining agreements executed before 14 July 2018 which provided for a length of fixed-term contracts of up to or exceeding 36 months, shall remain in force until the expiration of the collective bargaining agreement. Furthermore, the Labor Ministry specified that *Decreto dignità* left collective bargaining agreements no discretionary authority to derogate from the legally prescribed reasons for extending the fixed-term employment contracts.

On the matter of staff leasing agreements, the Labor Ministry has declared that the obligation to state the reasons for hiring fixed-term staff under such agreement arises not only when the same company is recruiting workers for periods in excess of 12 months but also when the same company had entered into a prior fixed-term agreement with the same worker for same-level tasks.

Thus the following cases arise:

- if a fixed-term work agreement for a term of less than 12 months had been previously concluded: a subsequent period of work with the same company always requires that the reasons for hiring the worker be stated, as this case is treated as a contract renewal;
- if a fixed-term work agreement for a term of 12 months had been previously concluded: the same parties may enter into a staff leasing agreement for the remaining allowable period, stating one of the conditions stipulated in article 19(1) of legislative decree No 81/2015;
- if a staff leasing agreement for a term of up to 12 months had been entered into: the company may hire the same worker directly under a fixed-term agreement for a maximum term of 12 months, stating the relevant reasons.

CASE LAW

3.1

Oral dismissal is not subject to the regular term for appeal – Decision No 25561 dated 12 October 2018 of the Italian Supreme Court, Labor section

By this decision, the Italian Supreme Court ruled on the matter of the term for an employee's appeal against his dismissal, invalidated by the lower courts, confirming the latter's decisions that the standard 60-day term pursuant to article 6 of law No 604/1966 for appeal of oral dismissal was to be considered to be non-applicable due to the lack of a written document whose date could be taken as starting point for the standard period prescribed for the appeal. Instead, the appeal of oral dismissal is subject to the general time-bar under the Italian statute of limitation.

In the light of the above, the Italian Supreme Court confirmed the lower court decisions which had invalidated the oral dismissal even though the employee appealed against it after the term provided by article 6 of Law 604 of 1966.

3.2

Disciplinary dismissal and prohibition of repeated disciplinary action for the same occurrence – Italian Supreme Court Labor Section, Decision No 26815 of 23 October 2018

By this decision, the Italian Supreme Court invalidated the disciplinary dismissal of an employee based on factual complaints which had already been made by the employer company at the time of a prior disciplinary dismissal which was subsequently declared to be unlawful.

Based on the application of the ne bis in idem legal principle stated by article 7 of law No 300/1970 (double jeopardy) to disciplinary proceedings, the Supreme Court confirmed its prior approach according to which once an employer has exercised his disciplinary powers against an employee in connection with specific facts constituting disciplinary infringements, it cannot do so again in relation to the same circumstances, except to take account of the penalties applied in the last two years for the purposes of recidivism.

In the light of the above, the Supreme Court confirmed the lower-court decisions invalidating the dismissal.

3.3

It is unlawful for a worker to refuse to do a job which is not in line with his qualification – Italian Supreme Court – labor section – decision no. 24118 of 3 October 2018

By the above decision, the Supreme Court ruled that it is unlawful for a worker to refuse to do a job assigned by the employer on the grounds that he/she deems that the task assigned is not in line with his/her contractual qualification.

Both the lower court and the appeals court had ordered that the worker be reinstated on the grounds that the employer's claims fell well outside the scope of the worker's qualifications and that the worker's repeated refusals to comply with the employer's demands were immaterial.

The Supreme Court however, while confirming that the job assigned by the employer fell outside the scope of the employee's tasks, stated that, in line with previous decisions, a worker could request a court to demand that the company assign to him/her tasks falling within the scope of his/her qualification but was not allowed - *a priori* - to refuse to perform a job required of him/her, since he/she must in any case comply with the provisions regarding the execution of the work assigned by the employer; the employee may lawfully invoke article 1460 of the Civil Code and fail to meet his/her obligations solely in the event of the other party's non-compliance (that is to say if the employer demands that the employee carry out a task which could irremediably affect the employee's vital needs or expose him to criminal liability).

In the light of the above, the Court rejected the lower court decisions.

3.4

Paid leave pursuant to law 104 (for employees with disabilities or disabled family members) may be legally used to serve specific interests and needs of the disabled – Italian Supreme Court Decision No 23891 of 2 October 2018

In its decision No 23891 of 2 October 2018, the Italian Supreme Court invalidated the dismissal with cause of an employee caught doing grocery shopping, withdrawing money from a Post Office ATM and talking to a friend of his – a surveyor – and an architect during his paid leave to assist his disabled mother and sister.

However, the investigations did not substantiate the allegations against the employee for the following reasons: i) he had been grocery shopping but he had left the groceries at his mother and sister's apartment; ii) he had withdrawn money from the ATM of a Post Office where his mother and sister had a passbook savings account and iii) he was talking to his friend and to the architect to discuss a complaint filed in the interest of his mother in connection with water leaks in the flat.

Therefore, the Supreme Court concluded that the individual had not used his paid leave for personal reasons since, based on the evidence gathered, all of the activities carried out – such as grocery shopping, withdrawing money, meeting the surveyor and the architect – were all meant to serve specific interests and needs of the family members he had been granted paid leave to assist.

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LABOUR NEWSLETTER | OCTOBER 2018

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 31 OCTOBER 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