LABOUR

NEWSLETTER / DECEMBER 2018

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LEGISLATION

1.1
The rule which required the keeping of the Employment Ledger (*Libro Unico del Lavoro*) at the Labor Ministry has been abolished – Decree Law 14 December 2018 No 135

Decree Law No 135/2018, published in the Italian Official Journal on 14 December 2018, repealed article 15 of legislative decree No 151/2015 according to which, starting from 1 January 2019, the Employment Ledger (*Libro Unico del Lavoro*) was to be kept at the Labor Ministry.

1.2
Budget Act 2019 – law No 145 of 30 December 2018 published in Italian Official Journal No 302 of 31 December 2018

Article 1 of the Budget Act 2019 (approved on 30 December 2018) has introduced, *inter alia*, changes to labor legislation. These include, for instance:

- the extension of the incentive to employment in Southern Italy ("*Occupazione Mezzogiorno*") to promote the hiring under indefinite-term contracts of individuals of less than 35 years of age, or of older individuals who have been unemployed for at least six months in any of the following regions: Abruzzo, Molise, Campania, Basilicata, Sicily, Apulia, Calabria and Sardinia;
- extension of *mobilità in deroga* (Government benefit scheme providing for payment of an unemployment allowance to employees affected by collective redundancies, additional to the standard *mobilità*), up to 12 months, in favor of employees who are no longer qualified for the payment of the benefits under the wage guarantee fund (*cassa integrazione guadagni*) *in deroga* between 1 December 2017 and 31 December 2018 and not eligible for the *NASpI* monthly unemployment benefits;
- for 2019, working fathers are entitled to 5 days of compulsory paternity leave to be taken within 5 months of the child's birth or from the adopted/foster child's joining the family or arriving in Italy, plus an additional day's leave in 2018, replacing the mother during the term of her compulsory maternity leave. Days may be taken individually or together and the leave does not require the employer's consent;
- measures against unregistered employment, including the hiring of new inspectors and the enhancement of the penalties against hidden employment and violations of workplace health and

safety measures; penalties will increase by 20% for employees in respect of whom no prior employment notification was filed with the competent authorities, for violations of the rules on staff leasing, labor contracting and secondment, violation of the rules on working hours, daily and weekly resting time and other cases identified by a special-purpose ministerial decree. Furthermore, the amounts due for the violation of the workplace safety legislation subject to administrative or criminal penalties will increase by 10%. The above penalties are doubled if, in the three prior years, the employer was subject to administrative or criminal penalties for the same violations;

- changes to law No 81/2017 regarding smart working, introducing a priority access for female workers in the three years subsequent to the end of maternity leave. The provision applies to public and private workers who have entered into agreements for the implementation of smart working arrangements;
- introduction of the "*Bonus giovani eccellenze*", i.e., a relief from social security contributions of up to €8,000 in connection with the hiring by private employers (under new indefinite-term contracts or by transforming fixed-term into indefinite-term contracts) in 2019 of (i) holders of a Master's degree from State or legally recognized non-State universities, obtained in the period between 2018 and 30 June 2019 (with honors and weighted average marks of at least 108/110) within the regular term of the relevant course of studies and before the age of 34, or (ii) holders of a Ph.D. degree from State or legally recognized non-State universities obtained in the period between 2018 and 30 June 2019 and before the age of 30.

GUIDANCE

2.1
Use of the work-life balance benefit – INPS message No 4823 of 21 December 2018

In its message of 21 December 2018, the Italian social security authority declared that it had completed the checks on the corporate agreements containing work-life balance measures and the calculation of the associated benefit.

By a notification sent through the "*DiResCo*" platform, the authority informs employers of the outcome of their request and the amount of the 2018 work-life balance benefit granted, if any.

2.2
Possibility to cumulate nursery school allowance with corporate welfare benefits – Italian Revenue Agency ruling No 164 of 28 December 2018

In its ruling No 164 of 28 December 2018, the Revenue Agency has once again dealt with corporate welfare benefits and in particular with the possibility to take advantage of both the nursery school allowance granted by the Italian social security authority and the tax relief in connection with nursery school tuition fees (pursuant to article 51(2)(f-*bis*) of the Italian Income tax code).

According to the Revenue Agency, a taxpayer who has received INPS's nursery school allowance – which is not included in taxable income – is not eligible for the tax relief in connection with the nursery school tuition fees for the entire amount corresponding to the sum of such allowance plus the employer's reimbursement of nursery school tuition fees.

Therefore, only the difference between the reimbursement made by the employer to cover nursery school tuition fees and the INPS allowance is not included in taxable income pursuant to article 51(2)(f-*bis*) of the Italian Income tax code, since the amounts paid by the employer are in connection with educational purposes and the nursery school tuition fee is actually paid for by the employee.

The Revenue Agency specifies that the same treatment applies even if the employer's welfare benefit

replaces the performance bonus (*premio di risultato*) paid pursuant to article 1(182-189) of law No 208/2015 (Stability law 2016) as amended.

CASE LAW

3.1

It is lawful to dismiss an employee who made severe threats against the employer – Italian Supreme Court Order No 31155 of 3 December 2018

In its order of 3 December 2018, the Italian Supreme Court ruled that an employee can be dismissed with cause if the threats he/she has made against the employer are such to result in the breach of trust between the parties and the inability to maintain an employment relationship, since the threat, even if made in general terms, can cause an alteration to the personality of the parties involved; a threat is designed to intimidate or unsettle the mind of the person against whom it is directed and needs not necessarily be followed by the threatened act.

The severity of a threat at the workplace should be evaluated having regard to its unsettling impact on the activity of the business, when the threat becomes public knowledge in the workplace, and to the fact that it breaches an employee's obligations to cooperate with, be a subordinate to and loyal towards his/her supervisor.

3.2

An employee's justifications are considered acceptable if sent within five days - Italian Supreme Court decision No 32607 of 17 December 2018

In its decision No 32607, the Supreme Court ruled that justifications as part of disciplinary proceedings posted by the employee by registered mail with recorded delivery before the end of the 5-day term (after which the employee's right to his/her defense is time-barred) are considered to have been timely sent, on the basis that the collective bargaining agreement and the taxpayers' bill of rights refer to the time of forwarding of the justifications by the employee, and not to the time they are received by the employer.

The 5-day term available to the employee to rebut the employer's claims, during which no disciplinary measures may be enforced, is provided for the employee's protection. Therefore, the Supreme Court concluded by stating that an employer's claiming that written justifications were late, while in fact they were sent in due time, is equivalent to denying the employee the right to defense and to submitting his/her own case, and to violating the procedure established by article 7 of law No 300/1970, which is similar

to the violation committed by failing to hear out an employee who asked to be given an opportunity to tell his side of the story.

3.3
The violation of the 7-day term for trade union notification of the collective dismissal procedure due to cessation of business results in unfair termination and triggers liability for the relevant penalties – Decision by the Italian Supreme Court – labor section – No 89 of 4 January 2019

The Supreme Court confirmed the principle according to which, in the event of a collective dismissal procedure due to cessation of business, an employer who breached the 7-day term for notifying the competent bodies of the list of employees made redundant pursuant to article 4(9) of law 223/1991 may be liable to damages for unfair termination in an amount ranging between 12 and 24 monthly salary payments.

This penalty is provided by article 1(46) of law 92/2012, which amended article 18 of the taxpayers' bill of right, expressly referred to in article 5(3) of Law 223/1991, regulating the effects of "*procedure violations*".

3.4
It is unlawful to refuse leave of care to a son who at the time of the application for leave was not living with his sick father but later on moved in with him – Constitutional Court decision No 232 of 7 December 2018

In its decision, the Constitutional court declared that the section of article 42(5) of legislative decree No 151 of 26 March 2001 which does not grant paid extraordinary leave to a child who is not living with his disabled parent, is unconstitutional.

Paid extraordinary leave is granted only in specific cases and if given conditions are met, namely to care for a person in a severe state of disability or suffering from one or more handicaps which, combined with age, have reduced his/her physical independence, resulting in the need for continuing care (article 3(3) of law 104/1992).

Paid leave is first of all granted to the live-in spouse, but over the years the Constitutional Court has issued a number of pronouncements which have significantly extended the list of eligible individuals.

In the case in question, the Court stipulated that, although it was a priority that the person applying for paid leave of care lived with the person requiring such care in the best interests of the disabled, this condition was not so exclusive that a son who did not currently live with his disabled parent – but would move in with him/her at a subsequent time – could be prevented from taking care of the disabled if no other member of the family lived with him/her.

For this reason, the Court declared that "*article 42(5) of legislative decree No 151 if 26 March 2001 (Legislation on the protection and support of maternity and paternity pursuant to article 15 of law No 53 of 8 March 2000) is unconstitutional as to the part which does not include among the individuals eligible for the leave provided for therein, on the conditions laid down by law, a child who, at the time of filing the application for paid leave was not yet living with his/her severely disabled parent, but who subsequently does, in the event that the live-in spouse, the mother and father (including adoptive parent), live-in siblings or other blood relatives or in-laws up to three times removed living with the disabled and entitled to apply for the leave in the order established by law, are either absent, dead or themselves disabled*".

3.5
The application of the prohibition to terminate employment as a result of marriage (article 35 of legislative decree 198/2006) solely to female workers is not discriminatory – Decision by the Italian Supreme Court – labor section No 28926 of 12 November 2018

In its decision, the Supreme Court stated the principle according to which the fact that a male worker can be dismissed in the year subsequent to marriage, whereas termination of female workers by reason of marriage is null and void pursuant to article 35(2) of legislative decree 198/2006, does not constitute discrimination.

In the Court's opinion, the apparent disparity of treatment is related to maternity and to the constitutional requirement to protect women and their newborns in the early stages of the children's life, to ensure that they receive the physical as well as the relational and emotional care required for the proper development of their personality.

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LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 31 DECEMBER 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