



**2023 Whistleblowing Decree.  
Make yourself heard.**



## SUMMARY

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- 2) Amendments to the labour decree
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### COLLECTIVE LABOUR AGREEMENT RENEWAL

- 1) METALWORKING INDUSTRY COLLECTIVE LABOUR AGREEMENT: Increase in base pay, and travel and on-call allowances

## NOVITÀ NORMATIVE

### WHISTLEBLOWING DIRECTIVE

## WHISTLEBLOWING DIRECTIVE: right to report wrongdoing.

### WHISTLEBLOWING and WHISTLEBLOWER.

European anti-money laundering legislation has led to the introduction of a fully-fledged right to report wrongdoing, with consequent protections for the whistleblower.

In our legal system, the transposition measure for the European Directive is Legislative Decree 24/2023, a single text that regulates the subject of WHISTLEBLOWING, identifies the protected persons and the subject of the whistleblowing report, and defines the protections in place, the foreseen procedures and the sanctions to be imposed on the party in error.

### COMPANIES WITHIN THE SCOPE OF THE LEGISLATION.

The legislation applies to all public and private sector companies:

- With an average, over the year, of at least 50 employees on open-ended or fixed-term employment contracts
- That engage in financial or banking activities, regardless of the size of the company
- That have adopted the organisational model required by Legislative Decree 231/2001, regardless of the size of the company.

### ENTRY INTO FORCE.

Companies must adopt the internal reporting channel, following the relevant procedure, by the following dates

15 July 2023	<b>Companies with at least 250 employees on open-ended or fixed-term contracts, averaged over the year</b>
17 December 2023	<b>In all other cases</b>

Only employees on the employment contracts indicated are included in the calculation.

## WHISTLEBLOWING DIRECTIVE

### **SUBJECT OF A REPORT.**

Breaches of Italian or European law that damage the public interest or the integrity of the public administration or a private entity on which the whistleblower depends and that have come to the whistleblower's attention in the course of his/her work may be reported. Reports of a personal nature are not permitted.

### **REPORTING CHANNELS.**

Whistleblowing should primarily be through the internal (company) channel. Only under certain conditions is it possible to use an external channel, (managed by ANAC – the Italian Anti-corruption Authority), public disclosure and reporting to the authorities.

### **INTERNAL COMPANY CHANNEL AND PROCEDURE FOR ESTABLISHMENT.**

The companies in question are required to set up the internal reporting channel, under penalty of sanctions.

This involves **appointing** one or more persons, potentially creating a specific, autonomous office, made up of specially **trained** staff.

Companies initially have to consult the company unions or the comparatively most representative unions in the area and then implement the internal reporting channel, which must guarantee:

- The confidentiality of the identity of the whistleblower (anonymity), the person involved and the person identified
- The confidentiality of the contents of the whistleblowing report
- The confidentiality of the relevant documentation.

Managing the company's whistleblowing channel can be entrusted to an autonomous external entity, which can use specially trained staff.

Reports must be made in writing, including using specific software that can be implemented, or verbally.

### **PROTECTING THE WHISTLEBLOWER and GOOD FAITH.**

The whistleblower will only benefit from the protections if, at the time of reporting, he or she had reasonable grounds to believe that the information about the identified, disclosed or reported breaches was true.

## WHISTLEBLOWING DIRECTIVE

The following is a summary of the protections provided:

- Limitation of liability: a person who discloses or disseminates information, having reasonable grounds to believe that the disclosure of the information was necessary to expose the breach and where the report was properly made, shall not be punished with respect to the information.
- Protection from retaliation: any form of retaliation, even if only attempted or threatened, taken because of a whistleblowing report, a report to judicial or accounting authorities, or a public disclosure, which causes or could cause, directly or indirectly, unfair damage to the whistleblower or the person who filed the report, is prohibited.
- Protection of confidentiality (anonymity): the whistleblowing report is exempt from the right to access public records and the general right of access (freedom of information) operates a prohibition on disclosing the identity of the whistleblower.

### APPLICABLE SANCTIONS.

ANAC can impose the following sanctions:

- €10,000 to €50,000 if it finds that there has been **retaliation**, or if it finds that there has been **obstruction** or an **attempt to obstruct** whistleblowing, or that there has been a **breach of confidentiality**;
- €10,000 to €50,000 if it finds that **whistleblowing channels** have **not been established**, that **procedures** for **making and handling whistleblowing reports** have not been adopted or that the **adoption of such procedures** does not comply with those laid down, and that **verification and analysis** of the whistleblowing reports received have not been carried out;
- €500 to €2,500, **in the event of loss of the protections**, unless the person making the report has been convicted, even in the first instance, of defamation or libel or, in any case, for the same offences committed with making the report to the judicial or accounting authorities.

Private sector entities that adopt organisational models pursuant to Legislative Decree 231/2011 provide, in the adopted disciplinary system, for sanctions against those found responsible for the reported offences.

Any waiver or settlement, in whole or in part, of any of the rights and protections provided for whistleblowing shall be valid only if made in the form and manner indicated Section 2113, fourth paragraph, of the Italian Civil Code.

## LABOUR DECREE RATIFICATION

### **Amendments to the labour decree - ratification.**

The so-called Labour Decree outlined in the previous newsletter and approved by the cabinet on the symbolic date of 1 May was ratified to become a law on 27/06/2023.

In their respective passages through the Italian Senate and the Chamber of Deputies, some relevant amendments were introduced, which are explained below.

### **2.1 RENEWAL OF FIXED-TERM CONTRACTS**

#### **RENEWAL OF FIXED-TERM CONTRACTS WITHOUT A REASON.**

The ratification of the Labour Decree included the provision that it is no longer necessary to state the reason when renewing the contract if the total period of work in the company remains less than 12 months.

According to the new wording of the Labour Decree, it will only be necessary to include into the contract the motivation of the fixed term if the total number of employment relationships with the same company (including extensions and renewals) exceeds 12 months.

### **2.2 CRITERIA FOR CALCULATING 12 MONTHS**

#### **CRITERIA FOR CALCULATING 12 MONTHS OF FIXED-TERM CONTRACTS.**

Another interesting provision included when the decree was ratified into law is that, for the purpose of calculating the 12-month period provided for in the legislation as the limit beyond which it becomes necessary to state the reason for extension and renewal, only contracts entered into on or after the date of entry into force of the Labour Decree, i.e. 5 May 2023, will be taken into account.

In practice, this means that if an employee previously had an 8-month contract (which ended before May 2023) and this is extended today for another 6 months, it is no longer necessary to enter the reason for the extension.

### **2.3 SIMPLIFIED REMOTE WORKING**

#### **EXTENSION OF SIMPLIFIED REMOTE WORKING FOR FRAIL WORKERS and PARENTS**

When the Labour Decree was ratified with changes to become law, the extension of the right to work remotely (also called smart working) for frail

## 2.3 SIMPLIFIED REMOTE WORKING

workers and parents with children under the age of 14 became law. For frail workers the extension is approved up to 30 September 2023, for parents up to 31 December 2023.

To be classified as a frail worker, it is necessary to present one's employer with a medical certificate attesting to the pathologies and conditions previously identified in article 17(2) of Decree Law no. 221 of 24 December 2021 and, more specifically, in the Decree of 4 February 2022.

Private-sector employees with at least one child under the age of 14 are entitled to work remotely, even in the absence of individual agreements, provided that the other parent does not receive income support or is not working.

An employer has the right to assess whether the request to work remotely is compatible with the characteristics of the service provided at the company, taking into account how the company is organised. Our view is that this assessment could also be used to allow remote working part of the time – perhaps a few days a week or month – until the end of the period in question.

## Approval of relief for under 36 and disadvantaged women.

## APPROVAL OF RELIEF FOR UNDER 36

In a press release dated 19 June 2023, the European Commission announced the approval of aid for the recruitment of young people “under 36” and “disadvantaged women” for the period from 1 July 2022 to 31 December 2023.

These benefits were introduced by the 2021 Budget Law (for 2021 and 2022) and extended by the 2023 Budget Law until 31 December of the current year.

With regard to the “Under 36” contribution relief, Law 178/2020 (Budget Law 2021) set out, for new hires on open-ended contracts and the conversion of fixed-term contracts to open-ended ones, contribution relief equal to the full amount of the social security contributions due, up to a maximum of €6,000.00 per year for a maximum duration of 36 months. The beneficiaries are all employers who hire persons who are under the age of thirty-six at the time of the first hiring.

## APPROVAL OF RELIEF FOR UNDER 36

The 36-month limit increases to 48 months for all those private employers with headquarters or production units located in the regions of Abruzzo, Molise, Campania, Basilicata, Sicily, Apulia, Calabria and Sardinia.

This exemption was later increased from €6,000.00 to a maximum of €8,000.00 by Law 197/2022 (2023 Budget Law) for the period from 1 January 2023 to 31 December 2023.

With regard to the exemption from contributions for “disadvantaged women”, Law 178/2020 sets out, only for the hiring of female employees in the two-year period 2021-2022, an exemption from contributions of 100% of the contributions due, up to a maximum of €6,000.00 per year for specific categories of women. These include women aged 50 and over who have been unemployed for more than 12 months, women of any age who live in regions eligible for financing via European Union funds and who have been out of regular paid employment for at least 6 months, women of any age who work in sectors characterised by marked gender inequality and have been out of paid employment for at least 6 months, and women of any age who have been out of paid employment for at least 24 months.

When the above conditions are met, the contribution exemption is for a maximum of 12 months for hiring women on fixed-term contracts and a maximum of 18 months for hiring women on open-ended contracts.

It should also be noted that Law 197/2022 provides for an increase from €6,000.00 to €8,000.00 also for this exemption, for hiring women before the end of 2023.

Just a few days after the European Commission’s approval, the Italian Social Security Institute (INPS) issued Circular 57/2023, which provides timely instructions on how to use the “Under 36” contribution relief, both for the recovery of potential arrears and for hirings that are finalised by 31 December 2023. In particular, INPS clarified how recovering the contributions must be done using specific adjustment codes within the monthly Uniemens report and has also provided guidance on the recovery of arrears, which is possible until October 2023.



## APPROVAL OF RELIEF FOR UNDER 36

Finally, to avoid any misunderstanding, INPS pointed out that the legitimate use of the exemption is subject to compliance with the following conditions:

- 1) The employee must not have turned 36 (so up to 35 years and 364 days)
- 2) The employee, during her working life, must not have been employed, at the same or any other employer, on an open-ended employment contract
- 3) The employer must not have dismissed any individual for objectively justified reasons or have collectively dismissed any employees with the same job description in the same production unit in the six months prior to the hiring
- 4) The employer must not dismiss any individual for objectively justified reasons or collectively dismiss any employees with the same job title in the same production unit in the nine months prior to the hiring.

With the subsequent publication of INPS Circular 58/2023, the green light was also given for the use of contribution relief for employers hiring disadvantaged women. The methods of recovering arrears mirror those for the "Under 36" exemption, that is, through the use of specific adjustment codes to be reported in the monthly Uniemens report. In addition to the recipient categories mentioned above, the Circular points out that in order to legitimately benefit from the relief, it is necessary to achieve a net increase in employment, calculated on the basis of the difference between the number of workers employed in each month and the average number of workers employed in the previous 12 months.

## COLLECTIVE LABOUR AGREEMENT RENEWALS

### METALWORKING INDUSTRY

## METALWORKING INDUSTRY COLLECTIVE LABOUR AGREEMENT: Increase in base pay, and travel and on-call allowances.

As regards the collective agreement of 5 February 2021 for employees in the private metalworking and plant installation companies, the social partners (e.g. trade unions, industry associations) agreed on a meeting protocol on 16 June 2023 in which they increased pay and the value of the travel and on-call allowances in accordance with the consumer price index.

Therefore, effective 1 June 2023, the new amounts for base pay are as follows:

Levels	Gross increase	New base from 1 June 2023
D1 (old cat. 2)	99,60 €	1.608,67 €
D2 (old cat. 3)	110,45 €	1.783,90 €
C1 (old cat. 3S)	112,83 €	1.822,43 €
C2 (old cat. 4)	115,22 €	1.860,97 €
C3 (old cat. 5)	123,40 €	1.993,04 €
B1 (old cat. 5S)	132,26 €	2.136,25 €
B2 (old cat. 6)	141,90 €	2.291,85 €
B3 (old cat. 7)	158,41 €	2.558,63 €
A1 (old cat. 8)	162,21 €	2.619,93 €

These increases can only be absorbed by other pay items if the pay item, granted after 1 January 2017, is categorised as an extra allowance to increase base pay ("superminimo") that can be absorbed.

## METALWORKING INDUSTRY

### TRAVEL ALLOWANCE FROM 1 JUNE 2023

TYPE	AMOUNTS
Whole trip	46,47 € (+ 2,35)
Lunch or dinner	12,41 € (+ 0,49)
Overnight stay	21,65 € (+ 1,37)

### ON CALL ALLOWANCE FROM 1 JUNE 2023

LEVELS	DAILY PAY		
	16 hours (working day)	24 hours (free day)	24 hours holidays
D1, D1 and C1	5,32 €	8,01 €	8,65 €
C3 and C2	6,34 €	9,95 €	10,67 €
B1 or higher	7,28 €	11,98 €	12,61 €

LEVELS	DAILY PAY		
	6 days	6 days with holiday	6 days with holiday and free day
D1, D1 and C1	34,61 €	35,25 €	7,94 €
C3 and C2	41,65 €	42,37 €	45,98 €
B1 or higher	48,38 €	49,01 €	53,71 €

### EQUALISING ELEMENT:

Workers who are employed, on 1 January, at a company without any second level agreements and who earned, in the preceding year (1 January to 31 December), only the pay elements in the National Collective Labour Agreement (workers without collective or individual extra allowances, annual bonuses or other compensation subject to contributions) must be paid an equalising amount of €485.00 or up to the equivalent of that amount, in cases where additional compensation is paid over and above that in the National Collective Labour Agreement. This extra amount is payable with the remuneration for June.

This amount does not affect employee severance pay.

Any portion of a month exceeding 15 days shall be calculated as an entire month, for the purposes of the equalising amount.

## **FLEXIBLE BENEFITS:**

From 1 June of each year, companies must make available to their staff welfare benefits totalling €200.00 that can be used up to 31 May of the following year.

These amounts cannot be recalculated for part-time employees and they are all-inclusive and excluded from the base used to calculate the severance indemnity (TFR).

The following employees, after the probation period, are eligible for these benefits if they are in employment on 1 June of each year or if they are hired by 31 December of each year:

- on an open-ended contract;
- on a fixed-term contract that has already been in effect for at least three months, even if not consecutive, during the year (1 January-31 December).

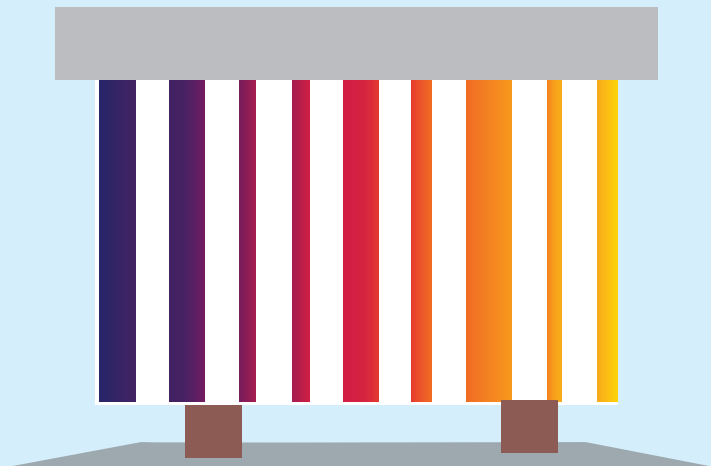
Employees on unpaid leave or leave without any allowance between 1 June and 31 December of each year are excluded from these benefits.

The amounts indicated above cannot be calculated proportionally for part-time employees and are inclusive only of any tax or contribution costs payable by the company.



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