FOCUS LAVORO

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1. Introduction

The following document provides an overview of the most significant updates in employment law, focusing on legislative updates and judicial decisions of interest to professionals in the field.

Its aim is to offer, through a series of concise articles, brief insights into current issues stemming from legislative developments and from the evolving and, at times, divergent lines of case law at both first-instance and Supreme Court level.

2. Legislative updates

Health and safety developments in remote work

Under Law No. 34 of 11 March 2026 – which came into force on 7 April 2026 – the Italian legislator has addressed the issue of health and safety protection in relation to work performed remotely, by directly amending Legislative Decree No. 81/2008 (the Consolidated Act on Occupational Safety).

Article 11 of said law has added new paragraph 7-*bis* to Article 3 of the Consolidated Act, establishing annual written information – containing details of the general and specific risks associated with the particular manner in which the employment relationship is performed – as the instrument through which the employer fulfils all safety obligations compatible with remote work, including those relating to the use of display screen equipment.

Indeed, the rules on remote work, introduced by Law No. 81 of 22 May 2017, already provided (Article 22) that the employer must ensure the health and safety of the worker by delivering, at least once a year, written information on the general and specific risks associated with this form of work performance.

However, this provision was located outside the Consolidated Act, giving rise to uncertainty regarding coordination between the two sets of rules and leaving certain issues unresolved as to the scope of employers' obligations.

As mentioned, the new provision now clarifies that the employer's compliance with all safety obligations relating to work carried out remotely in workplaces not under the employer's legal control is ensured by providing annual written information to the employee and the workers' safety representative, without prejudice to the employer's obligation to cooperate in implementing preventive measures.

In essence, the 2026 legislation has consolidated the two paragraphs of Article 22 into a single provision (which should therefore be considered implicitly repealed), specifying – and this is the first significant innovation – that the specific application of safety obligations in remote work concerns workplaces outside the employer's legal control.

A further innovation is the introduction of a specific penalty in the event of breach of the obligation to provide the information: Article 11 of Law No. 34/2026 – amending Article 55(5)(c) of the Consolidated Act – provides that the employer and the manager are liable to imprisonment from two to four months or a fine.

In this context, companies must pay particular attention to compliance with the information obligation, which now also has criminal law implications.

In particular, it will be necessary to:

- prepare comprehensive and up-to-date information precisely identifying the general and specific risks of remote work;
- ensure effective delivery of the information to both the employee and the workers' safety representative;
- implement traceability systems for delivery (for example, by means of digital logs, receipts or electronic signatures);
- retain adequate documentation to demonstrate compliance.

In conclusion, the recent legislative intervention represents a significant step in defining the regulatory framework on health and safety in remote work, as it clarifies the exact scope of employers' obligations by assigning a central role to written information as a protective tool, while at the same time introducing a stringent sanctioning regime that requires companies to implement more rigorous organisational controls.

3. Case law developments

Remote work location does not determine the court having territorial jurisdiction in the absence of a sufficient link with the employer's organisation
Court of Locri, Labour Division, order of 9 April 2026

The Court of Locri follows the approach adopted by the Court of Vicenza in judgment No. 315 of 5 June 2025 concerning the determination of the competent court in cases involving remote work, reiterating that the place where the employee's home is located and from which the work is performed cannot, in itself, establish territorial jurisdiction in the absence of an actual and stable link with the company's organisational structure.

In the case examined by the Court, the employee argued that the place where the remote work was carried out, corresponding to her temporary residence, should establish the territorial jurisdiction of that Court. The defendant company challenged the Court's territorial jurisdiction, highlighting the absence of any form of connection between that location and the company.

The Court upheld the objection, clarifying – also in light of the most recent case law of the Court of Cassation –

that, although the concept of a business establishment may be interpreted broadly, an objective or subjective link with the company is nevertheless required, such as to constitute a stable functional integration of the place where the work is performed within the employer's organisational structure. This requirement cannot be regarded as satisfied when remote work merely constitutes a flexible method of performing the work, allowing the employee to freely choose where to work from.
In the present case, the Court also highlighted that the address provided by the employee corresponded to a location chosen on a temporary basis and used for contingent needs (during illness, holidays or the pandemic emergency), and therefore lacked the stability required for classification as a business establishment.
Having ruled out its own jurisdiction, the Court clarified that the competent court must be identified in accordance with the criteria set out in Article 413(2) of the Italian Code of Civil Procedure, based on the claim as pleaded.
The decision reinforces a line of case law aimed at preventing the flexibility of remote work from affecting the determination of the competent court, which remains anchored to statutory criteria rather than to the employee's unilateral choice.

Transfer, production unit and workplace incompatibility: clarifications on the scope of Article 2103 of the Civil Code

Court of Cassation, Labour Division, order No. 4198 of 25 February 2026

In the case under consideration, the relocation of a female employee engaged under a service contract had been classified by the local court as falling within the scope of Article 2103 of the Italian Civil Code, on the assumption that the permanent nature of the change of workplace was sufficient to constitute a transfer, with the consequent finding of unlawfulness due to the absence of proven technical, organisational and production-related reasons.
The Court of Cassation intervened precisely on this point, correcting the approach adopted by the appellate judges and redefining the scope of application of the provision with greater rigour.
First, the Court clarified a decisive point: not every permanent change in the workplace constitutes a transfer in the technical sense under Article 2103.
The distinguishing factor is the change of production unit. Only in such a case do the rules governing transfer apply, with the consequent requirement for technical, organisational and production-related reasons; otherwise, the measure falls outside the scope of the provision.
The Court referred to the functional concept of a production unit, understood as an organisational division possessing technical and administrative autonomy and capable of carrying out, even if only in part, the employer's business activities. In this regard, the Supreme Court observes that the lower court had limited its assessment to the mere physical change of workplace, without verifying the decisive element of the transfer between distinct production units.
From a different but closely connected perspective, the Court of Cassation also addressed the issue of justifying grounds. Although a transfer is not a disciplinary sanction, it may nevertheless happen that an employee's conduct simultaneously amounts to disciplinary misconduct and to one of the technical, organisational or production-related reasons justifying their transfer from one production unit to another.
In such cases, the employer remains free to choose whether to exercise disciplinary power or the *ius variandi*; if, on the other hand, the employee's conduct, whilst not amounting to breach of duty, creates disruption within the employer's organisational structure, the resulting situation of organisational incompatibility may legitimately constitute grounds for transfer.
It is in this context that the most significant passage of the decision is situated: the client's loss of confidence in an employee of the contractor was regarded as a factor capable of generating organisational conflict and

therefore as a valid reason for transfer.
Nor was any importance attached to the absence of a previously formalised contractual clause; rather, what mattered was the actual impact of the situation on the organisational balance of the service contract.
From this perspective, the change of workplace falls within the organisational choices reasonably available to the contractor-employer as a means of managing conflict with the client and safeguarding continuity of the contractual relationship, including for the purpose of avoiding more serious consequences in terms of employment.
Finally, the Court reaffirmed that judicial review must be limited to verifying the actual existence of the reason relied upon and its causal connection with the measure adopted, without extending to the merits of the employer's business decisions.
The decision follows established case law, reaffirming the centrality of the change of production unit for the purposes of determining whether a transfer has occurred, and the relevance of organisational requirements even in the context of service contracts.

The evolving boundaries of *repêchage*

Court of Cassation, Labour Division, order No. 31312 of 1 December 2025

The Supreme Court has ruled that, in cases of dismissal for objective justified grounds, the *repêchage* obligation (obligation to offer alternative employment) extends to any job position actually available within the company's organisational structure, regardless of the type of contractual arrangement – employment or self-employment – subsequently used by the employer to fill the role.
In the case at hand, an employee holding the rank of middle manager and serving as Technical Director had been dismissed on objective justified grounds. The Court of First Instance and the Court of Appeal found a that the employer had breached the *repêchage* obligation, noting that, shortly after the dismissal, the employer had assigned the duties of Human Resources Manager – a vacant position compatible with the dismissed employee's professional background – to another individual under a self-employment arrangement.
In dismissing the employer's appeal, the Court of Cassation affirmed the principle that, since any activity may equally be carried out under either an employment relationship or a self-employment arrangement, what matters for the purposes of *repêchage* is the existence of a position that can actually be assigned to the employee who would otherwise be dismissed.
The fact that such a position is subsequently filled through a self-employment arrangement (or through a new fixed-term hire) is entirely irrelevant, since – as the Court argued – otherwise "it would be all too easy for the employer to circumvent the limits of the *repêchage* obligation, satisfying unavoidable operational needs by resorting to contractual arrangements other than employment relationships".
The decision in question forms part of a well-established line of precedents, based on the principle that dismissal on objective grounds must be a last resort. In this context, case law – in an approach subsequently later reflected in new Article 2103 of the Italian Civil Code – has clarified that the *repêchage* obligation also extends to the offer of lower-level duties, provided that such duties fall within the employee's professional expertise and subject to the employee's consent.
In line with this approach, the Court has now broadened the scope of the *repêchage* obligation so as to encompass any means of meeting the employer's business needs, adopting a substantive interpretation of the concept of an "available position", based on actual organisational requirements rather than on the formal classification of the contractual relationship.
From a practical standpoint, the ruling imposes a stricter verification burden on employers before proceeding with dismissal on objective justified grounds: the employer can no longer discharge its burden of proof merely by demonstrating the absence of vacant employee positions, but must also establish the absence of any possible work opportunity, including outside the framework of subordinate employment.
Conversely, the decisions opens up new defensive arguments for employees, who may rely on the existence of assignments entrusted to self-employed workers as evidence of a breach of the *repêchage* obligation.

Just cause may be proven even on the basis of simple presumptions

Court of Cassation, Labour Division, order No. 7712 of 30 March 2026

The Court of Cassation, in upholding the full legitimacy of the dismissal for *just cause* imposed on an employee held responsible for the misappropriation of a pharmaceutical product, laid down an important principle regarding the allocation of the burden of proof.

According to the Supreme Court, where the employer – in accordance with the framework governing presumptions under Articles 2727 and 2729 of the Italian Civil Code – provides serious, precise and consistent evidence from which the unknown fact may be inferred (in this case, the intentional unlawful appropriation of the medicine), the burden of proof resting on the employer must be regarded as discharged.

Consequently, it is for the employee to demonstrate the "lawful alternative" (in the case at issue, that the medicine had been inadvertently left on the desk after having been taken in order to check its price).

This ruling forms part of a now well-established line of precedents recognising that presumptions may constitute "***full evidence upon which the trial court may rely, even exclusively, its assessment***" (see, *inter alia*, Supreme Court, No. 11586 of 2 May 2025), all the more so as, under the Italian system, save for cases involving statutory rules of evidence, there is no hierarchy of evidence (see, for example, Supreme Court, No. 21356 of 26 July 2021).

The above-mentioned principle represents a significant advantage for employers in all cases where there are objective difficulties in proving, through witness testimony or documentary evidence, that certain unlawful acts are attributable to a specific employee.