

The concept of “well-being” in (and outside) the workplace^{**}

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SUMMARY: 1. Introduction: the notion of well-being. – 2. Well-being in the employment contract and in the work activity. – 2.1. The link between part-time work and well-being. – 2.2. Temporary work as a well-being tool? The case of “stability agreement” in management employment contract. – 2.3. The use of smart working as a means for well-being. – 3. Well-being in the employment contract and outside the work activity: the corporate welfare and its sources. – 4. Well-being inside and outside the workplace: the environmental dimension. – 4.1. How the (work) environment shapes the well-being of the workplace. – 4.2. The impact of sustainable approaches to well-being on the (work) environment. – 5. Conclusions.

1. *Introduction: the notion of well-being*

The notion of “well-being” constitutes a multifaceted concept that presents several connotations and can be analysed from different perspectives¹. The term can be defined in many ways depending on the context in which it is considered; for instance, the “well-being of a person” can be identified with what is intrinsically valuable in relation to someone and what is good for that person², while “subjective

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¹ In this regard, see J. COSTELLO, *Workplace Wellbeing – A Relational Approach*, London, Routledge, 2019, pp. 5-6, who defines the notion of well-being, like the WHO, as a state *«in which every individual realises his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully and is able to make a contribution to her or his community»*.

² Cfr. R. CRISP, Entry *Well-Being*, in “The Stanford Encyclopaedia of Philosophy”, Stanford, Metaphysics Research Lab of the Stanford University, 2021.

well-being” refers to individuals’ personal sense of how well their lives are going³. The term well-being is also tied to many layers, like physiological health, social harmony, sound emotionality, and positive cognitive appraisal of one’s situation⁴.

In addition to these classifications, the concept of well-being can be observed from different perspectives that are often closely interconnected, such as the mental, physical, economic, or emotional ones: this means that an improvement of well-being from a physical perspective would result in a betterment of the mental and emotional levels as well, and the same can be said for the well-being in relation to work. For these reasons, the notion is often interpreted according to differing degrees, given that the common interpretation of well-being is generally associated with “happiness” and “pleasure”⁵ in spite of the different technical connotations of the two terms. In fact, on the one hand, “happiness” is a positive and pleasant emotion strictly correlated with levels of life satisfaction and well-being⁶, and, on the other hand, “pleasure” means feeling good about something and derives from the sense of satisfaction of enjoying something⁷.

In this regard, the concept of well-being can be better investigated on account of three theories that aim to identify the specific elements contributing to an individual’s overall sense of well-being: hedonistic, desire, and objective list. The hedonistic theory derives from ancient philosophies and claims that the purpose of life is to maximize pleasure and minimize pain, stating that well-being is synonymous with the experience of pleasure and the absence of suffering⁸. However, due to its simplistic perspective, it is often criticized, and it struggles with the difficulties of defining and measuring pleasure, recognizing different sources of well-being, and addressing the issue of long-term versus momentary gratification.

Regarding the desire theory, it is stated that an individual’s well-being is determined by the fulfilment of one’s desires, thus linking well-being not only to pleasure, but also to the satisfaction of one’s preferences, aspirations, and goals⁹.

³ Cfr. W. UNANUE-MANRIQUEZ, *Materialism, personal well-being and environmental behaviour: cross-national and longitudinal evidence from the UK and Chile*, Sussex, University of Sussex DPhil thesis, 2014, pp. 20-26.

⁴ See: S. DORNISCH, *The Evolution of Well-Being: An Anthropology-Based, Multidisciplinary Review*, in “Humans”, 2022, pp. 161-176.

⁵ While happiness and pleasure can contribute to the subjective well-being levels in different parts of life, their respective notions have a different meaning.

⁶ Cfr. J. ANNAS, *The Morality of Happiness*, Oxford, Oxford University Press, 1995, pp. 45-46; D. HAYBRON, Entry *Happiness*, in “The Stanford Encyclopaedia of Philosophy”, Stanford, Metaphysics Research Lab of the Stanford University, 2020.

⁷ In essence, pleasure represents the gratifying and enjoyable aspects of an experience, contributing to an overall sense of well-being and it is likely connected to value, desire, and action. See: L. D. KATZ, Entry *Pleasure*, in “The Stanford Encyclopaedia of Philosophy”, Stanford, Metaphysics Research Lab of the Stanford University, 2016.

⁸ It emphasizes the pursuit of happiness and the fulfilment of desires as central elements of a good life. On this regard, see: A. MOORE, Entry *Hedonism*, in “The Stanford Encyclopaedia of Philosophy”, Stanford, Metaphysics Research Lab of the Stanford University, 2019.

⁹ Proponents argue that true well-being occurs when an individual’s desires are fulfilled, regardless of whether these desires lead to pleasure. Heathwood claims the importance of looking

This theory recognizes the subjective nature of well-being on account of the volatility of individual preferences, and – despite the critics related to the inability to satisfy all of the desires due the potential conflicts between them – it offers a nuanced perspective highlighting the importance of personal fulfilment beyond hedonistic considerations¹⁰.

Finally, the objective list theory asserts that a person's well-being is determined by the fulfilment of certain objective goods, encompassing a range of valuable capabilities and experiences. Unlike hedonistic or desire theories, this perspective posits that well-being is not solely subjective, but also grounded in an objectively defined set of elements (e.g. health, knowledge, meaningful relationships, personal achievement). Besides, such theory acknowledges a pluralistic view of well-being by not only recognizing the different aspects that contribute to a flourishing life¹¹, but also providing a comprehensive framework for evaluating well-being beyond individual preferences despite the lack of a universally agreed-upon list¹².

However, such definitions might be unable to fully grasp the concept of well-being when it comes to the dimension of work on the account of the different factors to take into account¹³. In particular, in order to approach towards the concept of employee's well-being the definition of "health" itself must be better investigated and clarified¹⁴. After all, the two notions appear deeply intertwined, given that the health and safety of workers represent a prerequisite for their general well-being.

Regarding the well-being of workers, it can be said that the notion is closely linked to the definition of health as formulated by the Constitution of the World Health Organization (WHO) in 1946, which defines it as «*a state of complete physical,*

at the overall desire satisfaction: C. HEATHWOOD, *The problem of defective desires*, in "Australasian Journal of Philosophy", 2005, pp. 487-507.

¹⁰ Cfr. C. HEATHWOOD, *Which Desires are Relevant to Well-Being?*, in "Noûs", 2019, p. 664 ss.

¹¹ Cfr. E. LIN, *Pluralism about Well-Being*, in "Philosophical Perspectives", 2014, p. 127 ss.

¹² G. FLETCHER, *A Fresh Start for an Objective List Theory of Well-Being*, in "Utilitas", 2013, p. 206 ss.

¹³ See: D. WEZIAK-BIALOWOLSKA, P. BIALOWOLSKI, P. L. SACCO, T. J. VANDERWEELE, E. MCNEELY, *Well-Being in Life and Well-Being at Work: Which Comes First? Evidence From a Longitudinal Study*, in "Frontiers in Public Health", 2020, p. 1 ss.

¹⁴ Some regulatory frameworks also show the importance of health and protection of the individuals and employees. In Italy, for example, art. 32 of the Constitution enshrines the fundamental right to health for both individuals and the collective. while art. 41 places a duty on individuals to refrain from actions that could harm health, safety, liberty, and human dignity. This highlights the delicate balance between the freedom of the private economy, as mentioned in the Constitution, and the imperative that such freedom is not absolute. Moreover, art. 2087 of the Italian Civil Code serves to safeguard physical integrity and moral personality. The interpretation of this article extends to encompass a psychophysical perspective, emphasizing the protection of both moral and personal well-being. This legal framework underscores the significance of health and well-being within the broader context of individual rights, societal responsibilities, and the constraints placed on economic freedom to ensure the welfare of citizens. In this regard, see: G. G. BALANDI, *Il contenuto dell'obbligo di sicurezza*, in "Quaderni di diritto del lavoro e delle relazioni industriali", 1994, pp. 79-91.

mental and social well-being and not merely the absence of disease or infirmity»¹⁵. Nonetheless, this definition has been criticized on two fronts: first and foremost, due to the utopian nature of the definition, which evokes an idealized state that is unattainable for any individual on account of the use of the term “complete”. In fact, by classifying all people as unhealthy, it implies that everyone is eligible for corrective medical intervention, an approach that may not correspond to the reality of different health conditions. A second criticism is directed at the lack of an explicit reference to the concept of well-being in the WHO definition: “flourishing” – which can be seen as a synonymous of “the power to be” or “the ability to adapt and self-manage” – is important in the contemporary interpretation of health¹⁶.

Understanding these issues is critical in order to correctly frame the debate regarding employees’ well-being, as it recognizes the complexities and nuances involved in the definition and promotion of health in different occupational contexts. In this regard, a change of perspective in the adoption of a definition for health can be observed, which is also accompanied by the constant development and evolution of the concept of well-being according to the needs and interests of the society and the employees. After all, the concept of well-being is understood differently, depending on one’s cultural background, values, and individual or community needs. The concept of well-being affects all the different areas of an individual’s life and, inevitably, the state of well-being is the result of the fulfilments and achievements in all those different fields. For these reasons, regarding the individual’s life work, personal goals, and work achievements are not the only factors to have an impact on the individual dimension, thus requiring taking into account many elements that are related to it.

To begin with the “well-being” of a person as an employee, the general approach towards health and safety at the workplace represents the first step¹⁷. The development of a risk management and prevention system was required and necessary to ensure a safe environment which is the first approach to enable the employees state of well-being¹⁸. After all, the employer is required by law to protect the employees and others from harm and risks, which can be intended as physical safety and as a result about physical well-being.

In this regard, the guarantee of the fundamental right to a safe and healthy working environment is an essential precondition that is necessary to prevent

¹⁵ J.S. LARSON, *The World Health Organization’s definition of health: Social versus spiritual health*, in “Social Indicators Research”, 1996, p. 181 ss.

¹⁶ This is particularly relevant in the context of multiple chronic morbidity, given that in this case people often demonstrate high levels of well-being despite persistent, protracted illness. See: T. SCHRAMME, *Health as Complete Well-Being: The WHO Definition and Beyond*, in “Public Health Ethics”, 2023, p. 1 ss.

¹⁷ See: K. POLANYI, A. SALSANO, *La grande trasformazione, Le origini economiche e politiche della nostra epoca*, Bologna, Piccola Biblioteca Einaudi, 2010, p. 93 ss.

¹⁸ In this regard, see: P. PASCUCCI, *La tutela della salute dei lavoratori e il benessere organizzativo*, in S.M. CORSO (eds.), *Stress lavoro correlato. Aspetti giuridici e medico legali. Atti del Convegno nazionale 24/25 gennaio 2020 Associazione Ubaldo Spanghero*, Piacenza, La Tribuna, 2021, p. 117 ss.

work-related accidents and diseases and to protect and promote employees' health and well-being. In Europe, the awareness of the need for a system regulating occupational health and safety emerged during the 19th-century Industrial Revolution: the shift of a large workforce from rural areas to urban centres for employment in burgeoning industries prompted workers to organize to protect and defend their health and safety at the workplace and their own well-being, which increasingly became widespread and gained prominence as an issue, leading to the enactment of legal provisions. In this early developmental phase, legislation gradually recognized the importance to ensure more humane working conditions¹⁹. This development led to increase the understanding of how much influence has the workplace on worker health, as well as on worker well-being, which again affects the productivity and the good ongoing of the company²⁰.

In this context, the identification of hazards arising in or from the workplace and the assessment and control of associated risks that could affect the health and well-being of employees are the key principles for providing a safe and healthy workplace. In the past few decades, the increasing complexity, and rapid changes in the world of work have necessitated a more systematic approach to manage and maintain a safe and healthy working environment²¹.

Ensuring the fundamental right to a safe and healthy working environment is essential to prevent work related accidents and diseases and protect and promote the health and of course the well-being of workers; it starts with well-being as the form of safety at the workplace, the risk management and prevention to create a protected environment at the workplace and to reduce and prevent risks and injuries. Then it develops towards certain groups or individuals who need another additional step to provide for their individual well-being, for example, the protection of persons with disabilities. Ensuring that there is no form of discrimination on the workplace. Therefore, for example, the concept of reasonable accommodation also represents an essential step to enable the concept of well-being of employees.

Once the environment is safe for the employees the workplace, the analysis in terms of well-being goes further: well-being in the workplace involves various and different aspects of the working environment, from the quality and safety of the physical workspace to the emotional and psychological aspects of work. It takes into consideration how employees perceive their tasks, the general working atmosphere, and the organizational structure. The aim of workplace well-being

¹⁹ Cfr. R.J. GATCHEL, N.D. KISHINO, *Conceptual Approaches to Occupational Health and Wellness: An Overview*, in R.J. GATCHEL, I.Z. SCHULTZ (eds.), *Handbook of Occupational Health and Wellness*, Berlin, Springer, 2012, p. 4 ss.

²⁰ S. GIUBBONI, A. ROSSI, *Infortuni sul lavoro e risarcimento del danno*, Milan, Giuffrè, 2012, pp. 56-58, and 76 ss.; L.B. HAMMER, J.M. BRADY, *The Evolution of Worker Well-Being and Work-Life Issues*, in L. KOPPEL BRYAN (ed.), *Historical Perspectives in Industrial and Organizational Psychology*, London, Routledge, 2020, pp. 270-291.

²¹ C.D. REESE, *Occupational Health and Safety Management. A Practical Approach*, London, Routledge, p. 33 ss.; CENTER FOR CHEMICAL PROCESS SAFETY, *A Practical Approach to Hazard Identification for Operations and Maintenance Workers*, Hoboken, John Wiley & Sons, 2010, p. 14 ss.

initiatives is to complement health and safety measures in the workplace²²: this is to ensure that employees not only have a safe and healthy working environment, but also experience satisfaction and commitment from their work. The goal is to create conditions in which employees are safe, healthy, satisfied and actively engaged in their job role²³. The employee’s engagement goes beyond mere satisfaction and represents a psychological construct in which workers not only find fulfilment in their work but are also actively engaged and committed to the interests of their company. By doing so, engaged employees surpass routine tasks, they identify with the mission and values of their organization and embody them outside of formal work hours. This engagement reflects a deeper connection and involvement and leads the employees to not only be satisfied but also contribute enthusiastically by harmonizing their personal values with those of the organization, fostering a sense of purpose and commitment that positively impacts individual and collective performance²⁴.

According to the International Labour Organization ILO, enterprises and organizations are increasingly recognising the need to tackle the well-being of their workers in a comprehensive way. After all, employees’ well-being of is a key factor for the long-term efficiency of a company, and numerous studies have consistently found a direct correlation between productivity levels and the overall health and well-being of the workforce: when employees experience a positive work environment that includes their physical and mental well-being, it tends to increase their job satisfaction and performance.

In this regard, there is a conceptual distinction between employee satisfaction and job satisfaction, the second being the most used measure in business studies: job satisfaction is usually related to employee’s feelings about their specific workplace, thus abstracting from the broader organizational context. However, it can be assumed that there is a close relationship between employee satisfaction and job satisfaction. Usually, the focus is on employee’s satisfaction with the organization as a workplace rather than on general satisfaction with the organization or company²⁵.

It can also be observed that companies with a strong focus on employee well-being often see higher productivity, less absenteeism, and improved morale²⁶.

²² D.M. DEJOY, M.G. WILSON, *Total Worker Health®: Evolution of the concept*, in H.L. HUDSON, J.A.S. NIGAM, S.L. SAUTER, L.C. CHOSEWOOD, A.L. SCHILL, J. HOWARD (eds.), *Total worker health*, Massachusetts, American Psychological Association, 2019, pp. 11-28.

²³ See the ILO insights about “Occupational health promotion and well-being” (<https://www.ilo.org/safework/areasofwork/workplace-health-promotion-and-well-being/lang-en/index.htm>); M.M. PETTY, G.W. MCGEE, J.W. CAVENDER, *A metaanalysis of the relationship between individual job satisfaction and individual job performance*, in “Academy of Management Review”, 1984, pp. 712-721.

²⁴ C. KREKEL, G. WARD, J.E. DE NEVE, *Employee Wellbeing, Productivity, and Firm Performance*, in “Saïd Business School Research Paper Series”, 2019, pp. 9-12.

²⁵ J.K. SINGH, M. JAIN, *A Study of Employees’ Job Satisfaction and its Impact on their Performance*, in “Journal of Indian Research”, 2013, pp. 105-111.

²⁶ M.D. PUSHPAKUMARI, *The Impact of Job Satisfaction on Job Performance: An Empirical Analysis*, in “City Forum”, 2008, p. 89 ss.

On the other hand, when people face physical or mental health issues, it can have a negative impact on their productivity and concentration in the workplace; in fact, physical health problems, illness, or injuries can lead to lower energy levels and a reduced ability to complete work assignments efficiently. Likewise, mental health²⁷ issues such as stress or anxiety can affect concentration and general cognitive function. Many problems at the workplace are caused by not prioritizing or committing to the needs of the employees. Neglecting to promote employee well-being can lead to problems such as stress, bullying, conflict, substance abuse and mental health issues.

Going back nearly a century, the human relations movement has hypothesised that higher employee well-being (measured in terms of job satisfaction) is associated with higher morale, which leads in turn to higher productivity²⁸. The relationship between productivity and well-being has been studied extensively, with much attention paid to the “happy and productive worker” theory²⁹: this theory assumes that employee well-being is a positive determinant of higher work productivity at both the individual and the organizational level. In this perspective, the focus is on well-being as a key factor in driving productivity and challenging the conventional notion that productivity determines well-being. Given the complex relationship between these factors, this approach emphasizes the importance of fostering a positive and supportive work environment to increase both employee satisfaction and overall organizational productivity³⁰.

Appreciating the most important resource, the human resources – the people, and recognizing and addressing the health needs of individuals is critical to promoting a work environment that supports both employee well-being and sustainable productivity³¹.

For these reasons, effective solutions – including strong leadership, open communication, and a commitment to both learning and developing – are crucial for those who want to create a respectful and fulfilling workplace: by recognizing and addressing the basic needs of employees, organizations can create a healthier

²⁷ According to the World Health Organization (WHO) factsheet of 2007 “*Mental health: strengthening mental health promotion*”, mental health describes «a state of wellbeing in which the individual realises his or her abilities, can cope with the normal stresses of life, work productively and fruitfully, and is able to make a contribution to his or her community».

²⁸ G. STRAUSS, *Human relations – 1968 style*, in “*Industrial Relations*”, 2008, p. 262 ss.

²⁹ S. SONNENTAG, *Dynamics of Well-Being*, in “*The Annual Review of Organizational Psychology and Organizational Behavior*”, 2015, p. 261 ss.

³⁰ See: M. CHRISTENSEN, *Healthy Individuals in Healthy Organizations: The Happy Productive Worker Hypothesis*, in M. CHRISTENSEN, P.Ø. SAKSVIK, M. KARANIKA-MURRAY (eds.), *The Positive Side of Occupational Health Psychology*, Berlin, Springer, 2017, p. 155 ss.; C.H. DIMARIA, C. PERONI, F. SARRACINO, *Happiness Matters: Productivity Gains from Subjective Well-Being*, in “*Journal of Happiness Studies*”, 2019, p. 139 ss.; J.M. ZELENSKI, S.A. MURPHY, D.A. JENKINS, *The Happy-Productive Worker Thesis Revisited*, in “*Journal of Happiness Studies*”, 2007, p. 269 ss.; C. KREKEL, G. WARD, J.E. DE NEVE, *Employee Wellbeing, Productivity, and Firm Performance*, in “*Saïd Business School Research Paper Series*”, 2019, pp. 9-12.

³¹ R.M. RYAN, E.L. DECI, *On happiness and human potentials: A review of research on hedonic and eudaimonic well-being*, in “*Annual Review of Psychology*”, 2001, pp. 141-166.

and more positive work environment, alleviating potential problems and encouraging a culture of support and satisfaction³². It contributes not only to promote a healthier workplace culture, but also to generate a positive impact on the overall success and sustainability of the business in the long term³³. In conclusion, it can be said that nowadays there are many different ways and various possibilities to adapt as an employer which can contribute to an increased state of well-being of their employees³⁴.

2. *Well-being in the employment contract and in the work activity*

After the analysis of the notion of well-being and its different connotations, it would indeed be helpful to shed light on specific examples through which the legislator has sought to improve the ways of working and the work environment in the broadest sense. However, in addition to the examination of some legal concepts that prove particularly useful for enhancing working conditions, it is important to concentrate on a specific category of employment relationships – namely flexible contracts, progressively examining part-time, fixed-term, and smart working job – rather than focusing on the traditional tools for health and safety protection at work.

As emphasized by the doctrine³⁵, flexibility is a necessity in modern systems of production that cannot simply be ignored, and it is crucial to regulate it in order to make it compatible with decent work standards. It is undeniable that labour laws have been evolving since the beginning to meet the demands of changing times, especially on account of the issues connected to human rights³⁶. In a broader sense, the protection of workers’ well-being in the workplace and work-life balance become decisive parameters in order to select a job when demand of employees is high. Such results have been recently observed in specialized fields like software engineering in emerging technologies such as AI, or in efforts by some States to retain highly specialized professionals (e.g. medical sector).

Starting from these sectors that present a shifting bargaining power between employers and workers to the point of allowing these latter to demand their own conditions, a new concept of work is emerging across various industries; it is increasingly becoming common knowledge, especially for the younger generations,

³² See the ILO insights about “Occupational health promotion and well-being” (<https://www.ilo.org/safework/areasofwork/workplace-health-promotion-and-well-being/lang-en/index.htm>).

³³ J. MILLER, *The well-being and productivity link: a significant opportunity for research-into-practice*, in “Journal of Organizational Effectiveness: People and Performance”, 2016, pp. 289-311; M.T. FORD, C.P. CERASOLI, J.A. HIGGINS, A. L. DECESARE, *Relationships between psychological, physical, and behavioural health and work performance: A review and meta-analysis*, in “Work & Stress, 2011, pp. 185-204.

³⁴ Cfr. P. PASCUCCI, *La tutela della salute dei lavoratori e il benessere organizzativo*, cit., p. 120 ss.

³⁵ Cfr. T. TREU, *Labour Law and Sustainable Development*, in “WP C.S.D.L.E. “Massimo D’Antona”.INT.”, 2016, p. 247

³⁶ S. DEAKIN, M.S. PRIYA LELE, *The evolution of labour law: Calibrating and comparing regulatory regimes*, in “International Labour Review”, 2007, pp. 133-162.

that simply raising wages is not enough if working conditions do not allow for the full development of individuals and, more generally, their well-being and happiness. The adaptation of family and social organizations to modern cultural values requires a corresponding adaptation of the work environment, leading to an evolution of employer health and safety obligations.

Despite the legal tradition followed in each country, the present legal legislative system is primarily confronted with issues such as: (i) providing a better protection mechanism for workers to safeguard their basic rights, which include their trade union rights; (ii) increasing the amount of flexibility available in the relationship between an employer and an employee, resulting in increased productivity and economic growth. These difficulties have evolved in the modern world into the necessity to strike a balance between social protection and economic efficiency, which is where the notion of sustainable development comes in and offers an appropriate solution by not sacrificing one part for the sake of the other.

As a result, the field of labour law is in desperate need of sustainability right now³⁷, thus making well-being improvement measures necessary to give meaning and fulfil what is provided by regulations for the protection of the health and safety of workers. After all, the art. 23 of the Universal Declaration of Human Rights (1948) highlights everyone's right to "just and favourable conditions of work". This allows one to better understand the goals and characteristics of labour law, leading to the realization that this field regulates not only employment and remuneration, but also an equal opportunity and human dignity, fair treatment, a decent standard of living, trade unions, and is an all-rounder, focusing on economic, social, and political development, as well as the challenges posed by them³⁸.

To further support the argument, it is essential to highlight the growing sensitivity of legislators to these issues not only in relation to the Italian case. The correct approach when addressing workplace health and safety is to focus on "subjective well-being", despite the common perception of health and safety protection as static and standardized, adaptation is essential to address its inevitable evolution. Therefore, a flexible interpretation of legal institutions in line with contemporary socio-economic developments is crucial. The flexible contracts to examine should be viewed as tools granted by the legal system to operators in the labour market to realize their personal concept of well-being. Discussions often concentrate on objective parameters (such as income, health, employment, social relationships, leisure time, living conditions, and education) used to evaluate intrinsically subjective concepts like well-being, happiness, and personal

³⁷ See: B.K SHARMA, K. KIRANDEEP, *Sustainability and labour laws: A mutually benefiting paradigm*, in "International Journal of Civil Law and Legal Research", 2021, pp. 48-52.

³⁸ In this sense C.W. JENKS, J. SCHREGLE, *Labour law*, in "Encyclopaedia Britannica", Encyclopaedia Britannica, 2023. See also: B.K SHARMA, K. KIRANDEEP, *Sustainability and labour laws*, cit., p. 48 ss.

fulfilment³⁹. In this sense, well-being is «a state of being satisfied, which is achieved by meeting human needs but does not always correspond to the objective conditions»⁴⁰.

For these reasons, the correct interpretative approach to legal tools at disposal should be oriented towards their use as factors for improving well-being in the workplace, allowing each worker to create the place and manner of work that suits them best, thereby fully implementing the employer’s duty to protect their health and safety⁴¹.

2.1. *The link between part-time work and well-being*

The concept of part-time work is often seen as a type of employment relationship that is not immediately associated with improving worker conditions. After all, it is frequently considered more as a flexibility element in the employment contract beneficial to the employer, who can determine the work period most suitable for their business structure regardless of the worker’s needs. However, this perspective is shortsighted and fails to consider the potential of this institution and the regulatory framework governing it.

For instance, the Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work can be analysed, especially regarding the part in which it states «(3) Whereas point 7 of the Community Charter of the Fundamental Social Rights of Workers provides, inter alia, that ‘the completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community. This process must result from an approximation of these conditions while the improvement is being maintained, as regards in particular (...) forms of employment other than open-ended contracts, such as fixed-term contracts, part-time working, temporary work, and seasonal work’». In this perspective, part-time work, is considered a tool to enhance working conditions for workers rather than

³⁹ On the subject, refer to J. BORODKINA, *Osmislenost žizni kak faktor subjektivnogo blagopolucija*, in “*Molodoj ucenij*”, 2009, pp. 90-93; B. FROLENOKA, O. DUKULE, *Personnel adaptation in the workplace, the quality of working life and subjective well-being*, in “*Information Technologies, Management and Society*”, 2017, pp. 7-12

⁴⁰ In this sense: J. BORODKINA, *Osmislenost žizni kak faktor subjektivnogo blagopolucija*, cit., p. 90 ss.

⁴¹ Refer also to: T. TREU, *Labour Law and Sustainable Development*, cit., p. 245, which specifies that «*This is indeed the main orientation and source of inspiration which should guide the revision of labor law and social policies, our discipline has full title to contribute to a new direction of growth and of development for the very fact that decent work is an essential condition (to promote) for sustainable growth*». In addition, it is further noted that «The concept and the indicators of decent work were first launched by the Dir. Gen. of the ILO at the 87th Conference in June 1999, see the discussion paper by D. GHAY, *Decent work: concept, models and indicators*, in “*International Institute for Labour Studies*”, 2002, p. 4 ss. The ILO has repeatedly stressed that the quality and quantity of employment are themselves drivers of development: ILO *Developing with Jobs*, 2014, quoted, p. 33. See also with specific reference to development and security G.S. FIELDS, *Decent work and development policies*, in “*International Labor Review*”, 2003, p. 239 ss.; P. AUER, *Security in Labor markets: combining flexibility with security for decent work*, in “*ILO Economic and Labour Market Papers*”, 2007, p. 2 ss.

a flexibility tool for employers or a specific risk factor⁴². It is crucial to acknowledge within the concept of health protection the definition of the WHO Constitution and the specific interpretation of the CJUE, which “broadens the concept of risk from mere physical to psychical and psychosocial, thus emphasising the relevance of the workplace as ‘environment’ where the worker has the right to each a state of complete physical, mental, and social well-being”⁴³.

Furthermore, the specific function attributed to part-time work by the European Trade Union Confederation (ETUC) and the Union of Industrial and Employers’ Confederations of Europe (UNICE) must be investigated. In particular, the Framework Agreement On Part-Time Work, emphasizes that «whereas the parties to this agreement attach importance to measures which would facilitate access to part-time work for men and women in order to prepare for retirement, reconcile professional and family life, and take up education and training opportunities to improve their skills and career opportunities for the mutual benefit of employers and workers and in a manner which would assist the development of enterprises». Moreover, labour unions are aware of their role in regulating the part-time work⁴⁴, intending for it to evolve into an inherent right for workers that can significantly enhance working methods. Indeed, they have explicitly stipulated in the same agreement that «whereas the social partners are best placed to find solutions that correspond to the needs of both employers and workers and must therefore be given a special role in the implementation and application of this Agreement».

In this process, it is essential to balance the interests at play, particularly the impact on the employer’s freedom to conduct business (*ex art.* 41 of the Italian Constitution). Nonetheless, when this balance results in a prevalence of the worker’s needs, taking into account the needs and quality of life of workers becomes not optional but an actual right. In reality, this very recognition is the purpose of the aforementioned agreement. In fact, article 1 states that «the purpose of this Framework Agreement is to provide for the removal of discrimination against part-time workers and to improve the quality of part-time work; to facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organization of working time in a manner that takes into account the needs of employers and workers».

In addition, an examination of the interventions of the Italian legislator can show similar definitional approach: for instance, the Legislative Decree No. 81/2015 should be considered, given that it expressly establishes the right of part-time work for workers affected by oncological pathologies as well as severe degenerative and worsening chronic diseases, resulting in reduced work capacity

⁴² Refer to the comment of the Directive 91/383/EEC by: E. ALES, *Occupational Health and Safety: a European and Comparative Legal Perspective*, in “WP C.S.D.L.E. “Massimo D’Antona”.INT”, 2015, p. 22 ss.

⁴³ *Ibidem*, pp. 3-4.

⁴⁴ On the importance of elevating the discussion to a union level, please also refer to T. TREU, *Labour Law and Sustainable Development*, cit.

verified by a medical commission established at the locally competent health unit⁴⁵. At a different level and with the same balancing approach, such legislative act establishes priority to part-time work for: a) oncological diseases or serious chronic-degenerative diseases that worsen over time affecting the spouse, children, or parents of the worker; b) caregivers; c) workers with a cohabiting child under the age of thirteen or a cohabiting child with disabilities.

Therefore, the Italian legislation includes precedents of interest and specific situations in which the well-being of the worker affects the employer's freedom. In particular, in the case of part-time as a right, the worker has the freedom to choose the type of contract (full-time vs part-time), influencing the duration of working hours. In the second case, regarding the priority in recognizing part-time, the worker's choice impacts the employer's freedom to contract, or more precisely, the freedom to choose a different part-time worker. Thus, it is therefore clear that the concept of part-time work should be considered primarily as a tool beneficial to the worker for balancing work with non-working activities.

2.2. Temporary work as a well-being tool? The case of “stability agreement” in management employment contract

More than in part-time work, it is particularly challenging to recognize a specific form of well-being protection for workers in fixed-term contracts⁴⁶. The intuitive and classic perception of such a contract is that of a tool for the employer to utilize the workforce of certain resources for a specific period. The use of this term has always been considered, especially in Italy, as a disadvantageous treatment for the worker, who should always have an interest in being hired on a permanent basis.

The latter form of employment relationship, due to its stability, is considered the “classic” one, to be preferred in cases where the formal rules and limitations provided by law are not adhered to. Given the special protections under Italian law for generic subordinate workers, the legislator tends to impose various restrictions on the employer's freedom to conclude fixed-term employment contracts, aiming to encourage the establishment of stable and lasting employment relationships. However, in the specific case of executive employment, this generalization does not hold. It is known that the professionalism and independence characterizing the management category in Italy have led to the provision of a particular employment relationship, considered the “alter ego” of the employer.

⁴⁵ Additionally, please note that Italian law provides that upon the worker's request, the part-time employment relationship can be converted back to full-time employment.

⁴⁶ The need to provide them with specific safeguards has already been highlighted in different occasions. Regarding the health and safety issues, see: M.R.P. ROYO, *Protección de la salud y seguridad en el trabajo y trabajo temporal*, in “Relaciones laborales: Revista crítica de teoría y práctica”, 1992, p. 336 ss.

This employment relationship is characterized by a significant emphasis on the trust bond between the worker and the entrepreneur. The employer delegates many powers and responsibilities for the management and organization of other workers to the executive. For these reasons, the executive employment relationship is subject to much fewer protections against dismissal compared to the employment relationships of other categories of workers, even though recent sectoral collective bargaining has intervened more often to limit the absolute freedom of the so-called “*ad nutum*” (at-will) dismissal (i.e. without explicit motivation). Note, therefore, that in the instability of executive employment, the provision of a precise termination date for the employment relationship proves to be particularly useful for the well-being of the worker.

Indeed, with a secure end date for his contract, the executive has the certainty of being able to stabilize their life for a certain period, having, for example, the time to learn new professional skills; to invest in his social relationships and personal life; to reduce employment-related uncertainty and promote continuity and stability in the employment relationship by investing in long-term projects. In fact, the impact from a psychophysical health perspective is not to be underestimated, as the executive thus has the opportunity to experience less stress from instability.

For these reasons, a specific contractual clause, sometimes taking the form of a separate agreement, called a “*patto di stabilità*” (stability agreement) has become widespread in practice. With this agreement, the employer commits to maintaining the employment relationship at least until the agreed-upon date, usually subject to the payment of a penalty or compensation for damages.

This is evidently a contractual clause that can improve the well-being of the worker; in fact, knowing with certainty when the relationship will end is better than being in a constant state of instability and precariousness. It is undeniable that the uncertainty of the stability of the employment relationship is directly linked to health and safety in the workplace, given the evident risks to mental and physical health. The point is to evolve the concept of health and safety, which can no longer be static and standardized but must keep pace with socio-economic evolution.

Therefore, these stability clauses can be useful in order to instil confidence and stability in the workers, enhancing their adaptation to the new workplace, increasing the chances of a longer permanence in the company, and improving their efficiency and alignment with company goals. This concept is also confirmed by recent research on the importance of adaptation of new workers. In particular, regardless of the previous job experience, a new employee’s efficiency is strictly related to the successful adaptation in the new company and the time that a new employee will spend in such environment. It was also noted that personnel’s adaptation in the company is directly connected with the specific corporate culture, its typology, etc. Taking into consideration the research findings, it is possible to assume that an employee’s quality of working life and professional well-being

depends on successful adaptation, given that all of this affects the operation of companies and society as well⁴⁷.

In conclusion, it is crucial to help the personnel to adapt to a new workplace, to overcome stress, to strengthen self-esteem, and to increase confidence in oneself and in one's profession in order to properly tackle the issue of workers' well-being. After all, the improvement of the quality of working life is directly connected to the increase of personnel's well-being⁴⁸, and – particularly in the specific case of executive employment – this means that it is necessary to provide stability and a sense of trust to the worker.

2.3. The use of smart working as a means for well-being

The latest technologies have certainly brought many new challenges to the legal world, but at the same time, they are tools that, if used correctly, can significantly improve our well-being at work. In this regard, a specific attention should be given to way of working known as “smart working” on account not so much of the specific framework or the challenges that it poses⁴⁹, but of the potential that it holds in improving the working methods. In fact, in addition to the flexibility in working hours and duration of the workday, smart working represents the ultimate expression of flexibility in time and space of work, since it can be observed in opposition to the classic method based solely on time.

The definition of a specific chronotropic dimension of subordinate work dates back to the dawn of industrial society, a period in which the need to rethink the connection between work and the natural rhythms of its time, typical of agrarian and artisanal societies, was becoming clearer. A social system was emerging in which the times and spaces of “working” tended to acquire standardized modes, following “uniqueness” (of the workplace) and “uniformity” (of activity times) patterns. Between the late nineteenth century and the very early decades of the twentieth century, coinciding with the definitive maturation of the production system based on industrial manufacturing, the model was codified through the theoretical-practical postulates of its main “demigods”, namely Charles Taylor and Henry Ford, not forgetting the decisive influence of Max Weber's theories on “bureaucracy”. Among the main morphological features of the model, the “synchronization of times and places” stands out, following the logic of the “closed system”. This one is compartmentalized into stagnant compartments, in which the areas of “working” are clearly delimited and separated from the places and times of “non-working” (while these latter remain functional for regenerating

⁴⁷ B. FROLENOKA, O. DUKULE, *Personnel adaptation in the workplace*, cit., p. 7 ss.

⁴⁸ *Ibidem*.

⁴⁹ For further reading, see: P. MONDA, *Il lavoro agile ‘emergenziale’ tra identità giuridica e problemi applicativi*, in L. ZOPPOLI (ed.), *Tutela della salute pubblica*, in “Quaderni della Rivista Diritti Lavori Mercati”, 2021, p. 290 ss.

energy for the start of a new working day)⁵⁰.

However, in the post-Fordist system, there is a progressive flexibilization of the space-time connection in work, also due to the advent of the outsourcing of large sectors of the economy, further reducing the rigidities of the industrialist model and creating innovative ways of organizing and managing work times and places⁵¹. The purpose of this specific working method in Italy is expressly contained in the Article 18 of the Law No. 81/2017, which states «The provisions of this section, aimed at increasing competitiveness and facilitating work-life balance (...)». In particular, a clear connection between “competitiveness” and “work-life balance” can be observed, once again highlighting the balance between entrepreneurial freedom (Article 41 of the Italian Constitution) and the right to health (Article 32 of the Italian Constitution), to which add the principle of good operation of public administrations (Article 97 of the Italian Constitution)⁵².

In this regard, a different perspective can be suggested here: despite constituting an undeniable risk⁵³, flexibility is also an opportunity to reinterpret the concept of a more suitable way of working for the well-being of the modern worker. After all, following its mandatory use during the Covid pandemic, this is a tool that can be reinterpreted so that each worker can create the best working environment on the individual level. This step requires to take into account the past experience time-to-time pandemic and the grey areas in the mass implementation of this form of work – involving even business structures not ready for this revolution – that have been highlighted.

However, it is important to note, even in this case, that if smart working transformed itself from a mere organizational tool for the employer and became a tool for the worker to improve their well-being, then it would be possible to associate to this working method a true right of the worker in certain circumstances. Despite the fact that this concept is not entirely new due to the specific examples observed during the pandemic, the idea of smart working as a right of the worker was only present in the private sector for two categories: vulnerable

⁵⁰ In this sense: G. RICCI, *Tempi e spazi di lavoro e dell'organizzazione sociale. Riflessioni a ridosso dell'emergenza pandemica*, in L. ZOPPOLI (ed.), *Tutela della salute pubblica*, cit., p. 177 ss. See also: S. MUSSO, *Le trasformazioni del lavoro nelle rivoluzioni industriali*, in E. MINGIONE (ed.), *Lavoro: la grande trasformazione. L'impatto sociale del cambiamento del lavoro tra evoluzioni storiche e prospettive globali*, Milan, Feltrinelli, 2020, p. 35; G. GASPARINI, *Tempi e ritmi nella società del Duemila*, Milan, Franco Angeli, 2009, p. 64 ss.

⁵¹ See also: M. REVELLI, *La politica senza politica. Perché la crisi ha fatto entrare il populismo nelle nostre vite*, Torino, Einaudi, 2019, pp. 125-126; D. DE MASI, *Il lavoro nel XXI secolo*, Torino, Einaudi, 2018, p. 704 ss.; also S. MUSSO, *Le trasformazioni del lavoro nelle rivoluzioni industriali*, cit., pp. 31-32, highlighting the gradual nature of changes, as extensively demonstrated by the «*history of Taylorisms and Fordisms, in the plural (...) as well as Toyotisms*».

⁵² For more on this, see P. PASCUCCI, *Modelli organizzativi e tutela dell'ambiente interno ed esterno all'impresa*, in “Lavoro e diritto”, 2022, p. 335 ss.

⁵³ For an in-depth analysis on the risks, see: M. D'ONGHIA, *Remotizzazione del lavoro, relazioni sindacali e tutela della salute dei lavoratori. Riflessioni a ridosso dell'emergenza pandemica*, in L. ZOPPOLI (ed.), *Tutela della salute pubblica*, cit., p. 251 ss. In the same journal, see also L. D'ARCANGELO, *Tutela della salute pubblica e privacy dei lavoratori: una nuova cultura dei controlli?* and G. RICCI, *Tempi e spazi di lavoro e dell'organizzazione sociale*, cit.

workers and parents with children up to 14 years old⁵⁴.

Therefore, smart working as an employee’s right it is not an unthinkable scenario, despite the fact that the focal point remains the same: the balance of interests at play. On the one hand, the employer’s right to organize their production structure as they see fit, deciding particularly how to arrange the working activities of their employees and how to exercise their right (and duty) to control them. On the other hand, the right of workers to arrange the flexibility granted by smart working when they are capable of providing a work performance comparable to that carried out on the company premises.

In this regard, the mistake would be to limit the aforementioned balance to extreme cases, such as protecting the right to health of citizens during a global pandemic, safeguarding the protection of vulnerable individuals or parents with young children. On the contrary, the key is to understand that, with an equivalent performance offered to the employer, there is no reason to deny the worker the opportunity to find their personal and subjective best way of working, allowing them to fulfil themselves as individuals in their specific uniqueness or, in short, for their own well-being.

3. Well-being in the employment contract and outside the work activity: the corporate welfare and its sources

The concept of the health and safety of the workers is firstly configured with a traditional hard core, with respect to which it is necessary to gradually intervene in order to extend the protection area of the employees. In particular, an extension of the notion of workers’ health and safety requires, on the one hand, to take action with flexibility tools in relation to the employment relationship, and, on the other hand, to go beyond and no longer look at the workers’ well-being only in close connection with the management of the typical obligations of the employment relationship (e.g. flexibility regarding the place and time of working performance). In fact, it can be observed that it is becoming increasingly important to consider both the concept of workers’ safety in carrying out their working activities and the notion in a broader sense of the notion of workers’ happiness, namely as people who work at certain moments of their day and enjoy and live their free time at other times.

In this regard, the protection of the happiness of the worker as a person can be achieved through corporate welfare tools, *i.e.* a system of services, supplies, and accessories to the employment relationship in the strict sense that the company

⁵⁴ A right that has been extended even after the post-pandemic period. In the public sector, during the pandemic, it was even defined as “one of the ordinary modes” of working. In this regard, see Article 87, paragraph 1, of Law March 17, 2020, No. 18, converted into Law April 24, 2020, No. 27. Following the amendment introduced by Article 26 of Decree-Law August 14, 2020, No. 104, converted into Law October 13, 2020, No. 126, smart working has become “one of the ordinary modes” of work performance.

grants to its workers and their families in order to improve their well-being⁵⁵. Given that in this case the objective is not only the well-being of the worker as a worker but the happiness of the worker as a person, it is important to note that the beneficiary of company welfare measures can also be the worker's family and the element belonging to the individual's private sphere.

Regarding the systematic framework of corporate welfare, it must be pointed out that there is no agreement about this point and that, on account of the variety of existing welfare measures, it is not appropriate to limit oneself to a framework within the dichotomy of social security and social assistance, related to art. 38 of the Italian Constitution⁵⁶. For this reason, it is useful to remember the most significant corporate welfare measures; although welfare measures are very varied and it is perhaps challenging to attempt to classify them, it is possible to put a minimum amount of order at least within some categories of measures.

These categories are collectively defined as "benefits" and are divided into "fringe benefits" and "flexible benefits": the expression "fringe benefits"⁵⁷ involves those goods or services that totally or partially replace the salary and are functional to the performance of the work⁵⁸. Conversely, the concept of "flexible benefits"⁵⁹ consists of those goods or services aimed at improving the well-being of the worker and his family; as such, they are strangers to retribution.

In this regard, it should be considered in advance that the evolution of society inevitably affects the choice of welfare measures. Above all, a recent example can be seen in the experience of the Covid-19 pandemic, which has brought out new needs on the part of workers to which needs companies have had to adapt by intervening on the choice of welfare measures⁶⁰. From this recent example, it is clear how the concrete development of society, as well as particular widespread events, influence the development of the contents of corporate welfare

⁵⁵ A description of the corporate welfare's characteristics can be *ex multis* found in F. OLIVELLI, *L'inquadrimento sistematico del welfare aziendale*, in "Rivista del Diritto della Sicurezza Sociale", 2020, p. 103; V. FILÌ, *Il ruolo del «welfare» privato nel sistema di sicurezza sociale*, in "Rivista del Diritto della Sicurezza Sociale", 2022, p. 602.

⁵⁶ F. OLIVELLI, *L'inquadrimento*, cit., pp. 104-105. Article 38 of the Italian Constitution states «Every citizen unable to work and without the necessary means of subsistence is entitled to welfare support. Workers have the right to be assured adequate means for their needs and necessities in the case of accidents, illness, disability, old age and involuntary unemployment. Disabled and handicapped persons are entitled to receive education and vocational training. Responsibilities under this article are entrusted to entities and institutions established by or supported by the State. Private-sector assistance may be freely provided».

⁵⁷ The attribution of these benefits typically occurs through individual negotiations: See: F. FORLIVESI, *Welfare contrattuale e retribuzione: interazioni e limiti di una disciplina frammentata*, in "Lavoro e Diritto", 2020, p. 237.

⁵⁸ For example, the mobile phone provided by the company.

⁵⁹ F. FILÌ, *Il ruolo del «welfare»*, cit., p. 605.

⁶⁰ M. MAURI, *Welfare aziendale: cos'è, come funziona, benefit e strategie*, in "Osservatori.net", 2023 (https://blog.osservatori.net/it_it/welfare-aziendale-come-funziona-benefici). In the cited article, the specific needs that emerged during the pandemic are highlighted, in particular: safety, *i.e.* the need to ensure that the worker is not in danger in the workplace; assistance, related to requests for help in the dramatic circumstances of the pandemic; training, specifically referring to the acquisition of the skills necessary to carry out his/her work remotely; work-life balance, evidently related to the need to define the boundary line between work and private life in a work-at-home situation.

measures and end up making almost obsolete some more traditional benefits⁶¹.

The complex of corporate welfare measures has a positive impact on both the company and workers, given that the purpose of such measures is to make workers happier and generate positive effects for the company itself: a happier worker is generally more productive⁶². After the investigation of the main features of the corporate welfare, the other technical issues should be investigated, especially in relation to the best solutions to identify the various measures.

First of all, it should be remembered that in 2016 the Italian “Stability Law”⁶³ introduced the concept of “negotiated welfare”⁶⁴, thus creating improved conditions compared to “unilateral welfare”⁶⁵. The expression “negotiated welfare” comprehends those measures that are identified by collective bargaining and not by the individual employer: to be specific, this latter can grant the measures either on its own behalf or through an agreement (“company regulation”⁶⁶), namely two approaches outside the scope of negotiated welfare that fall into the category of “unilateral welfare”⁶⁷.

Regarding negotiated welfare, it is important to understand the degree of the level of negotiation and what contents the reform refers to, given that it seems artificial to frame company regulations as a “unilateral source” of welfare at any cost. In fact, it is true that company regulations limit themselves to determining the welfare plan and so they do not play the same role as the actual company collective agreement⁶⁸, which goes as far as regulating much more aspects of the employment relationship than simply company welfare measures; however, at the same time, it is also true that company regulations are also contracts and it seems imprecise to frame them as unilateral sources.

Such distinction is not only relevant from a merely descriptive point, but from a practical point of view: the classification as a unilateral source or a negotiated source, in fact, determines the application of two different disciplines,

⁶¹ For an analysis of the concrete development trends of corporate welfare measures we recommend the following reading: OCSEL OSSERVATORIO CONTRATTAZIONE, *VI Rapporto OCSEL “La contrattazione decentrata alla prova dell’imprevedibilità”*, 2021, pp. 70-84. The reading focuses on the trends of the decentralized bargaining.

⁶² In M. MAURI, *Welfare aziendale*, cit., some of the positive consequences recorded by companies following the adoption of corporate welfare measures are reported: greater motivation and satisfaction of employees, improvement of the company environment, increase in the attractiveness of the company on the market, reduction in the tendency to absenteeism and cases of work-related stress.

⁶³ See L. 28 dicembre 2015, n. 208, art. 1, co. 190. The 2016 Italian Stability Law reformed articles 51 and 100 of the D.P.R. n. 917 del 22 dicembre 1986, better known as “Testo unico delle imposte sui redditi” (National law of income taxation”).

⁶⁴ The so-called “welfare *contrattato*”, or “welfare *contrattuale*”, for the Italian framework.

⁶⁵ See: D. TARDIVO, *Funzioni della retribuzione, autonomia collettiva e legge*, Padua, PhD Thesis (research.unipd.it), 2019, p. 212.

⁶⁶ The so-called “*regolamento aziendale*” for the Italian framework, which is an agreement signed by an employer and a trade union at its company level aimed at providing a welfare plan.

⁶⁷ D. TARDIVO, *Funzioni della retribuzione*, cit., p. 218 ss.

⁶⁸ The Italian “*contratto collettivo aziendale*”. That is the agreement signed by an employer (or an employers’ association) and a trade union at its company level; so that refers to the product of the collective bargaining at the company level.

one of which is more favourable for companies than the other one⁶⁹. Then, in the absence of a collective company agreement – which, among other things, also deals with the determination of a welfare plan – the choice on how to frame any company regulation, that makes up for this lack, would have consequences of considerable importance. Nonetheless, in this case it is the law itself that attributes the most favourable regime even in the case of company regulation⁷⁰.

Moving on to the various levels of determination of welfare measures, it is important to assess which ones are the most appropriate. Aside from the unilateral welfare measures set up by the individual employer, without any agreement, the negotiated sources, including the company regulation that is conceptually assimilated to the company collective agreement, are the ones to be taken into consideration. In this regard, the reflection should be based on two strands: the first concerning the application potentiality of welfare sources, and the second, instead, regarding the possible contents that can be expected from each source, and therefore – in a certain sense – the objective and function of the sources themselves.

First, the well-known problem of the subjective effectiveness of collective agreements cannot be ignored here⁷¹, especially with regard to those legal frameworks like the Italian legal system that have enforcement issues. Even in this, as in other situations, the opportunity emerges to extend the obligation deriving from the contract to the employer, so that the measures are then ensured for all the workers employed in the company.

The problem of the extension of the effects towards the employer surely arises in all those cases in which there is no civil constraint, *i.e.* when the employer is not enrolled in a signatory association or has not signed the agreement. It is therefore clear that *nulla quaestio* in the following cases: a) when the employer is enrolled in an association that is a signatory to the national-level agreements⁷² that establishes the measures; b) when the employer is enrolled in the association signatory of the company collective agreement or the company regulation that establish the measures; c) when the specific employer is the signatory of the company collective agreement or company regulation that establish the measures.

In this regard, the problem of making the contract applicable to all workers remains, regardless of their possible affiliation to the signatory unions. However, this obstacle can be overcome by considering that the agreement that establishes the welfare measures does nothing but channelling a part of the organizational power of the employer⁷³: in fact, the identification of the welfare measures conforms a part of the employer's obligations, in the sense that it identifies – for

⁶⁹ See footnote n. 67.

⁷⁰ D. TARDIVO, *Funzioni della retribuzione, autonomia collettiva e legge*, cit., p. 212

⁷¹ See *ex multis* A. VALLEBONA, *Istituzioni di diritto del lavoro*, vol. I, Padua, Wolters Kluwer Cedam, 2021, p. 179 ss.

⁷² In Italian, “*contratto collettivo nazionale di lavoro*”, that is the agreement signed by trade unions and employers' associations at a national level; so those agreements are the product of a sectoral/national based bargaining.

⁷³ D. TARDIVO, *Funzioni della retribuzione*, cit., p. 219.

example, if the welfare function is analysed according to a remunerative sense⁷⁴ – how the employer must pay part of the salary.

Again, even if the welfare function were, for example, understood more as a functional instrument for the happiness of the worker-person⁷⁵ – and therefore as an instrument that attributes special benefits that go beyond the classic exchange between work performance and remuneration obligation – the agreement is still always conforming the employer’s power to organize his company in the way that best suits his needs. In this sense, it already emerges that those welfare measures that go beyond the work-remuneration combination are only apparently extraneous to the employment relationship understood precisely as an exchange between the aspirations of the worker and those of the employer. The purpose of these measures is not simply to make the worker happy in and of himself, but to guarantee the company human resources who are happier in their existence and therefore more motivated to work (and remain working) for that company. Therefore, it is generally wrong to ignore that welfare measures are actually aimed at satisfying primarily productivist needs⁷⁶.

Therefore, if welfare agreements affect the organizational power of the employer, it is possible that they are framed as “proceduralization agreements” or “management agreements”⁷⁷. Consequently, the problem of the extension of the effects does not arise: the agreements are applicable to the employer and to all the workers of the company as they intervene on a power that already belongs to the employer by law and, when exercised, produces effects towards all workers employed in the company.

According to this reasoning, in terms of the effectiveness of welfare measures there are no particular disparities between the various levels of bargaining. That is because such reasoning is in fact applicable to all those agreements that affect the organizational power of the employer.

Moving now to the second analysis profile, namely the one related to the possible contents of welfare measures, it is clear that the company level is the most suitable in order to identify the concrete needs of the company’s workers, as well as of the company itself. In this regard, the choice of the most suitable measures to adopt may depend on many concrete characteristics: for example, taking into consideration the age of the workers, it can be said that a company whose workers are close to retirement age would not consider scholarships for children⁷⁸ the most appropriate welfare measure to ensure.

⁷⁴ Such as in the case of “fringe benefits”.

⁷⁵ Such as in the case of “flexible benefits”.

⁷⁶ F. BACCHINI, *Welfare aziendale: illusioni (ricostruttive) giuslavoristiche*, in “Argomenti di Diritto del Lavoro”, 2017, p. 653; D. TARDIVO, *Funzioni della retribuzione*, cit., p. 218.

⁷⁷ The Italian “*contratti di procedimentalizzazione*” or “*contratti gestionali*” are basically agreements through which the signatory parts typically decide the methods of exercise of the organizational power of the employer, assured by the law. About these agreements see *ex multis*: F. LISO, *Autonomia collettiva e occupazione*, in AA.VV., *Autonomia collettiva e occupazione – Atti del XII congresso nazionale di diritto del lavoro Milano 23-25 maggio 1997*, Milan, Giuffrè, 1998, p. 64 ss.

⁷⁸ See also: F. OLIVELLI, *L'inquadramento*, cit., p. 118.

The identification of the measures more suited for the concrete needs of workers (not generically understood but specifically identified) is also functional to satisfying the company's aspirations; therefore, the company-level agreement, be it a regulation or collective agreement, represents the most suitable instrument for pursuing the growth interests of individual companies. For their part, national-level agreements will not be able to do anything other than establishing the measures in a more generic sense, because it is evidently possible in such way to include all the possible facets of the different company realities. Thereby, it appears clear that the intent of national-level agreements that establish welfare measures is not to pursue the growth ambitions of individual companies, but rather to generally guarantee a minimum level of welfare for all workers, regardless of the company in which they are employed.

From this point of view, the great difference emerges between the functions of the welfare measures established by a company-level agreement and those determined by a sectoral contract (CCNL): the former are functional to the growth of the company, the latter more distinctly have a function of guarantee of minimum standards for workers⁷⁹. For these reasons, from a functional point of view, it is not therefore possible to determine the best level of negotiation for identifying welfare measures, given that everything depends on the purpose one intends to pursue. In conclusion, it is not possible to lean towards one or the other level of negotiation: from an "effects" point of view, the conclusions are the same, while from a "content" point of view, the functions are different and thereby a comparison is not encouraged. Thus, it is a matter of understanding from time-to-time what objectives are to be achieved.

4. *Well-being inside and outside the workplace: the environmental dimension*

The notion and levels of well-being in the workplace are deeply intertwined with the health and safety standards implemented by the employer⁸⁰. Nonetheless, in spite of the measures established to ensure that workers can correctly carry out their tasks, both the "health and safety" and "well-being" of workers are affected by not only the workplace⁸¹, but also the quality of the environment within and outside the workplace. In this regard, a two-way interrelationship can be observed for the effects generated on well-being, namely the ones arising from the

⁷⁹ D. TARDIVO, *Funzioni della retribuzione*, cit., p. 223, who speaks about an "equalization function" referring to those welfare measures regulated by national-level agreements.

⁸⁰ See: S. BUOSO, *Principio di prevenzione e sicurezza sul lavoro*, Turin, Giappichelli, 2020, p. 16 ss.

⁸¹ In this regard, the International Labour Organisation (ILO) defines "workplace well-being" as a concept related all aspects of working life, namely every issue involving the quality (and safety) of the physical work environment, the worker's feelings toward their work activity and their working environment, and the effects of environment on the work organization, highlighting its complementary role to OSH measures and thus guaranteeing healthy and safety and satisfaction at work.

environment and impacting the workplace and the ones ascribable to the workplace that can influence the environment⁸².

On the one hand, the drastic environment conditions caused by climate changes are affecting the workplace in relation to the way in which workers are able to carry out their tasks and jobs and with regard to the health and safety measures that companies have to provide. The worsening of climate conditions is indeed generating new risks for the health and safety of workers, thus requiring a constant process of adaptation of the workplace. On the other hand, the adoption of sustainable measures for the workplace can positively influence the environment by intervening on the individual and collective dimension of the companies. The adaptation of social, economic, and environmental sustainability measures can in fact improve the quality of the conditions in the workplace and, thusly, the collective well-being⁸³.

Therefore, workers’ well-being must be investigated not only in relation to its connotation inside and outside the workplace, but also with respect to its ties with the issue of climate changes itself. Such perspective, after all, can properly shed light on the various environmental issues influencing the well-being of the workplace.

4.1. How the (work) environment shapes the well-being of the workplace

The effects of global warming on the environment and the resulting repercussions on society are an established phenomenon, which also has inevitable repercussions on the working dimension. In fact, climate changes and drastic environmental conditions affect not only the manner in which workers carry out their tasks and the employer’s duties in terms of health and safety, but also the well-being of companies themselves⁸⁴. In particular, extremes weather conditions have been exposing some productive sectors more than others to new risk factors and occupational hazards. Such issue can be particularly observed in various working activities belonging to the construction, agriculture, or farming sectors, in which major increases in temperatures can lead to unbearable working conditions and potential repercussions (e.g. extreme heat, thermal overload, thermal stress).

In this regard, the continuous raise in temperatures increase the risks of exposure to heat correlated disorders or illnesses, such as rashes, oedemas,

⁸² See *ex multis*: V. BRINO, *Il raccordo tra lavoro e ambiente nello scenario internazionale*, in “Lavoro e diritto”, 2022, p. 97 ss.; B. CARUSO, R. DEL PUNTA, T. TREU, *Manifesto per un diritto del lavoro sostenibile*, in WP C.S.D.L.E. “Massimo D’Antona”.IT”, 20 May 2020, p. 35 ss.; P. TOMASSETTI, *Diritto del lavoro e ambiente*, Bergamo, ADAPT University Press, 2018, *passim*; A. LEVI, *Tutela del lavoro e tutela dell’ambiente: divergenze e convergenze di due ordinamenti a confronto*, in AA. VV., *Studi in onore di Tiziano Treu. Lavoro, istituzioni, cambiamento sociale*, Naples, Jovene, 2011, p. 1105 ss.

⁸³ Cfr. A. DI STASI, *Diritto del lavoro, principio di precauzione e sostenibilità ambientale: una convergenza necessaria*, in “Variazioni su Temi di Diritto del Lavoro”, 2023, p. 207 ss.

⁸⁴ See: S. BUOSO, *Sicurezza sul lavoro, ambiente e prevenzione: disciplina positiva e dilemmi regolativi*, in “Lavoro e diritto”, 2022, p. 271 ss.

syncope, fainting, cramps, exhaustion or even strokes⁸⁵; after all, it is clear that heat-related issues generate risks factors and OHS hazards, thus requiring *ad hoc* interventions in relation to occupational hazard⁸⁶. Therefore, employers are to be considered obliged to provide adequate instruments and measures to ensure the health and safety of the workers, especially on account of the workplace's conditions changing due to the environment's evolution.

For instance, higher temperatures can result in the adoptions of different approaches to preserve the health and safety and well-being of workers: first, limitations of working activities can be taken into account. The introduction of restrictions during specific hours of the day and in relation to particular areas in which the temperatures become prohibiting and capable of affecting the proper execution of tasks. Other interventions might include increments of retribution as a compensatory solution, the adoption of more suitable specialized protective gears in respect to the standard ones – given that an increase in temperatures might cause reduced concentration or discomfort for workers using the usual protective gears (e.g. inappropriate usage or non-usage) – or the resort to more operational flexibility, such as reduced working hours, permits, leaves, or complementary rests.

Thus, the worsening of climate change's impact demands a constant adaptation of the workplace to ensure the health and safety of worker on the basis of the new risks emerging nowadays. The traditional interpretation has often prompted a balanced solution, namely one based on the adoption of the most scientifically advanced solutions given the economic and technical feasibility of the preventive solutions currently available⁸⁷.

However, given the growing frequency of such changes, this situation calls upon a reflection on the boundaries of employer liability regarding the risks arising from the environment and their direct impact on the workplace. In this perspective, the worsening of climate change is pushing labour law itself to design *ad hoc* interventions to counter the negative consequences. An example of such measures, for instance, can be seen both in the Italian and French cases.

Regarding the Italian framework, the growing occurrence of extreme weather events – such as drastic increase of temperatures or heavy torrential rain – has resulted in the extension of the extraordinary wage guarantee fund's mechanism (so-called "CIGS") for those situations in which working activities cannot be properly and safely carried out due to extreme weather conditions. As established by the Ministerial Decree No. 95442 of 15 April 2016, the introduction of the "weather events" motivation to the traditional tool of the extraordinary income support allowance known as "*cassa integrazione guadagni straordinaria*" allows

⁸⁵ On this regard, see: C. NAROCKI, *Heatwaves as an occupational hazard. The impact of heat and heatwaves on workers' health, safety and wellbeing and on social inequalities*, Brussels, ETUI, 2021, p. 7.

⁸⁶ Cfr. ILO, *Working on a warmer planet The impact of heat stress on labour productivity and decent work*, Geneva, ILO, 2019.

⁸⁷ See: M. GIOVANNONE, *Safety at work, new risks and employer liability: prospects for post-Covid-19 regulation in Italy*, in "Italian Labour Law e-Journal", 2021, p. 123 ss.

the employers to rely on the extraordinary redundancy fund when temperatures become unbearable for workers⁸⁸.

In particular, the recent clarification of INPS (message No. 2729 of 20 July 2023) specified that companies are allowed to use such mechanism if the raise in temperatures, according to the perceived level, exceeds the limit of 35°C⁸⁹. Nonetheless, it is also recognised that such interventions cannot be applied to those situations in which ventilation or cooling systems might be used to reduce temperatures. Thus, to be specific, the main use of the “weather events” motivation is referred to those circumstances not attributable to the employer or to those working activities of more exposed sectors that cannot usually benefit from heat-reduction measures (e.g. agriculture, farming)⁹⁰.

Similar tools indeed demonstrate how the environment – or to be more precise, its extreme changes – is shaping the well-being of workers in relation to their workplace. However, in addition to such preventive intervention, an alternative approach can be observed the presence of an *ex-post* remedial approach when it comes to the effects of the environment on workers. Moving to the French framework, the so-called “*Compte professionnel de prévention*” (C2P) can be observed, namely one of the main components of the *Compte personnel d’activité* (CPA)⁹¹. In particular, the *Compte professionnel de prévention*⁹² has the objective to increase the well-being of workers by providing more social benefits for those who are typically exposed to health risk factors during their working activities; such mechanism is based on the provision of credit points that are granted to the individual and destined to compensate for the dangerousness of possible damage to health⁹³.

By assigning “difficulty points” in proportion to the intensity of the risk factors to which the worker has been exposed, the C2P therefore tries to provide the workers with alternatives that can improve their well-being; these latter include,

⁸⁸ See; M. MENEGOTTO, *Temperature elevate ed ammortizzatori sociali*, in “Bollettino ADAPT”, 24 luglio 2023, p. 1 ss.

⁸⁹ To be specific, «the assessment must not only refer to the thermal gradient [both real and perceived, ed.] but also to the type of activity carried out and the conditions in which the workers work».

⁹⁰ See; M. MENEGOTTO, *Gli ammortizzatori sociali per industria e servizi in caso di emergenze e calamità naturali*, in “Bollettino ADAPT”, 22 maggio 2023, p. 1 ss.

⁹¹ The CPA – initially proposed with the art. 38 of the Loi No. 994/2015 and later implemented with the Loi No. 1088/2016 – can be described as a multifunctional individual account that French citizens can use to manage their personal situation and entitled rights, especially the ones related to social security. See: C. VALENTI, *Il diritto soggettivo alla formazione continua dei lavoratori: un’analisi delle buone pratiche nel panorama internazionale*, in “Labour & Law Issues”, 2021, p. C.73 ss.; C. TOURRES, *Un “conto personale di attività” per il lavoratore del futuro: il caso francese*, in “Bollettino ADAPT”, 25 gennaio 2016, p. 1 ss.

⁹² This one was implemented with the Loi No. 1389/2017, which aimed to reform the “*Compte personnel de prévention de la pénibilité*” (C3P) introduced with the Loi No. 40/2014.

⁹³ See : J. ATTALI-COLAS, T. CHAKOR, *Du Compte Personnel de Prévention de la Pénibilité (C3P) au Compte Professionnel de Prévention (C2P) : une sécurisation des parcours professionnels en trompe-l’œil*, in T. BERTHET, C. VANULS, *Vers une flexicurité à la française. Regards croisés sur les évolutions professionnelles au prisme des réformes du travail et de l’emploi*, Toulouse, Octarès, 2019, p. 255 ss.

for instance, to use the accrued credits⁹⁴ to achieve hourly reductions for the same income, to access earlier to retirement, or to undertake continuous training courses finalised at obtaining less demanding jobs (ordonnance No. 1389/2017). Such individual account is automatically activated – following the company’s declaration – once a worker with at least one month of seniority is exposed to one or more risk factors according to the prescribed thresholds for harshness of work; these latter are determined in relation to health risk factors on the basis of the intensity of three conditions (pressure, extreme temperatures, noise), classified according to a specific level of magnitude (1 or more), and defined according to the minimum duration of the exposure (50-120 nights, 900 hours per year).

In this perspective, it appears interesting to mention that drastic environment conditions might result in an increase of the workers covered by such mechanism, given that the issues related to climate changes could result in more health risk factors. On account of such issues, the *ex-post* remedial approach associated to the C2P could also acquire a new objective, namely the countering of environmental externalities occurring on the account of the decrease of well-being experienced by workers exposed to health risk factors by providing different forms of compensation. After all, it is becoming clearer that new forms of occupational hazards are arising with the changing of climate, thus requiring new approaches in order to safeguard correctly workers.

4.2. *The impact of sustainable approaches to well-being on the (work) environment*

The drastic scenarios resulting in the complete suspension of working activities (e.g. massive rain precipitations, flooding) or the damage-compensation actions constitute only one side of the link between well-being and environment. Just like the establishment of a productive industry has the capability to influence the environmental and social well-being of the surrounding territory⁹⁵, the employers themselves have the ability to intervene on the workplace’s well-being by contributing to shape the environment around it and thusly improving the conditions of both workers and local realities.

In this regard, for instance, it is possible to consider the measures adopted by the companies aimed at fostering sustainable mobility (e.g. bicycle mobility, electric chargers for cars/scooters, shared company vehicles) as means of welfare.

⁹⁴ The exchange-ratio system assigns one point to three months of exposure to a single risk factor, establishing an overall limit of the individual account of 100 points and estimating an average of 25 years of exposure to professional risks.

⁹⁵ An example of the relationship between work, environment, and the territorial surroundings around the productive realities is represented for the Italian framework by the Ilva case. This topic can be deepened *ex plurimis* in: P. PASCUCI, *La salvaguardia dell’occupazione nel decreto “salva Ilva”. Diritto alla salute vs diritto al lavoro?*, in “I Working Papers di Olympus”, 27/2013, pp. 1-17. More recently on such topic see: S. LAFORGIA, «*Se Taranto è l’Italia: il caso Ilva*», in “Lavoro e diritto”, 2022, p. 29 ss.; A. CONSIGLIO, *Cambiamento climatico, ambiente e impresa sostenibile: un approfondimento sul caso Ilva*, in “Labour & Law Issues”, 2022, p. R.36 ss.

Other interventions could also be related to the implementation of sustainable processes, such as actions to achieve energy cost-saving and, consequently, a sustainable workplace or to increase the use of flexible working solutions (e.g. co-working, remote work, partial remote work).

However, among the possible measures, the interventions to ensure a smooth sectorial transition can be considered as well. In particular, it is possible to observe an increase of collective bargaining actions aimed at the adaptation of the working environments and conditions in the face of the green transition. In this perspective, the Italian and Spanish frameworks can be taken into account: in the first case, for instance, the art. 1, comma 200 of Law No. 234/2021 has regulated the use of the so-called “*accordi di transizione occupazionale*” (employment transition agreements). In particular, the subscription of such agreements between social parts is aimed at avoiding the dismissal of employees due to crisis or reorganization, and it is guaranteed through the implementation of employment transitions financially backed up by an additional use of wage guarantee funds. The stipulation of an agreement is thusly finalised at providing new jobs for the workers more exposed to dismissal on account of the occupational shifts arising from the green transition and can be seen as a proper solution to invest in the well-being of the economy and, as a consequence, on the workers themselves.

Another example of the collective bargaining’s role in this regard can be observed in the “*Mecanismo RED de Flexibilidad y Estabilización del Empleo*”⁹⁶, given that its main objective is linked to the temporary suspension of employment contracts determined by sectoral changes or negative macroeconomic outlook. In particular, the Spanish reform emerging from the Real Decreto-Ley No. 32/2021 introduced the art. 47-*bis* to the *Estatuto de los Trabajadores* and designed a tool to ensure smooth employment transitions as alternative to dismissals: the mechanism intervenes when a sector is affected by permanent changes that generate retraining needs and professional transition processes for workers (1 year of duration max., with the possibility of two 6 months extensions each) by financing the reduction of working hours (10-70%) that are finalized at the acquisition of the skills dictated by the employment transition processes⁹⁷.

In both cases, a period of consultation with the workers’ representation must be drawn up: in the first one, for instance, the preliminary consultation procedure with trade unions about the employment transition agreement must conclude with an agreement, defining the actions aimed at both re-employment and self-employment. Therefore, these measures show how important is the involvement of social parts in the improvement of well-being, given that they can foster sustainable strategies for the collective good.

⁹⁶ On this topic, see: M. MIÑARRO YANINI, *Flexicurity in ambito lavorativo e transizione ecologica giusta: il ricorso agli ERTE e al meccanismo RED nel quadro del Next Generation EU*, in “Diritto delle Relazioni Industriali”, 2022, p. 765 ss.; A. BAYLOS GRAU, *Un primo approccio alla riforma del lavoro spagnola*, in “Giornale di Diritto del Lavoro e di Relazioni Industriali”, 2022, pp. 225-246.

⁹⁷ Cfr. M.F. RAMIREZ, *Anatomía Jurídica del Mecanismo RED de flexibilidad y estabilización del empleo*, in “Iuslabor”, 2022, p. 61 ss.

In this perspective, interventions aimed at promoting the values of social, economic, and environmental sustainability at the company level can be taken into consideration as well. An interesting example can be observed in the Common Agricultural Policy (CAP) of the European Union⁹⁸, given that the policy framework governing agriculture introduced a new system for the channel of direct payments to farmers based not only on the respect of environmental criteria, but also on the adherence to labour laws, workers' protections standard, and fair remuneration practices⁹⁹. In general, the CAP aims to enhance social sustainability in agriculture by pursuing specific key objectives: 1) ensuring fair working conditions for agricultural workers; 2) promoting social rights and gender equality in the agricultural sector; 3) improving access to social protection and healthcare for farmers and rural communities; 4) fostering inclusivity and opportunities for young farmers and new entrants; 5) supporting measures for sustainable rural development and vibrant rural communities.

In particular, in order to pursue such goals, the implementation of a conditionality clause-scheme for the direct subsidies to farmers has been set in place; in addition to the environmental clause – which contains objectives related to mitigation of and adaptation to climate change, water, protection and quality of soil, protection and quality of biodiversity and landscape, food safety, plant protection products, and animal welfare – the latest CAP for the 2023-2027 has introduced a conditionality mechanism for the social dimension as well¹⁰⁰. The social conditionality clause links the direct payments for farmers to the respect of three European directives: Directive (EU) 2019/1152 (arts. 3, 4, 5, 6, 8, 10, 13) on transparent and predictable working conditions, Directive 89/391/CEE (arts. 5, 6, 7, 8, 9, 10, 11, 12) on health and safety of workers, and Directive 2009/104/CE (arts. 3, 4, 5, 6, 7, 8, 9) on safe use and handling of working tools from workers¹⁰¹.

Such framework indeed contributes to promote the values of social, economic, and environmental sustainability at the company level for companies working in the agricultural sector and farmers, thus enhancing well-being and improving the quality of life for agricultural workers and the local territorial realities. After all, well-being of workers is also strictly related to the strengthening of social rights, including fair working conditions, equal opportunities, and access to essential services¹⁰².

⁹⁸ See: I. CANFORA, V. LECCESE, *La sostenibilità sociale nella nuova PAC*, in “Rivista di diritto agrario”, 2022, p. 131 ss.; A. JANNARELLI, *Agricoltura sostenibile e nuova PAC: problemi e prospettive*, in “Rivista di diritto agrario”, 2020, p. 23 ss.

⁹⁹ Cfr. C. FALERI, *Transizione ecologica e sostenibilità sociale per un'Agricoltura 4.0*, in “Lavoro e diritto”, 2022, p. 452 ss.

¹⁰⁰ On this regard, see: I. CANFORA, V. LECCESE, *La condizionalità sociale nella nuova PAC (nel quadro dello sviluppo sostenibile dell'agricoltura)*, in “WP C.S.D.L.E. “Massimo D'Antona”.IT”, 2022, p. 17.

¹⁰¹ The failure to comply with such standards will result in Member States imposing administrative sanctions to companies, namely a reduction or the total exclusion of CAP subsidies for those farmers in violation of the given EU labour standards.

¹⁰² Cfr. A. MARCIANÒ, *Agricoltura e dinamiche sindacali nel diritto del lavoro della transizione ecologica*, in “Diritto delle Relazioni Industriali”, 2022, pp. 713-716.

5. Conclusions

An analysis of the different connotations of well-being allows to observe how such concept has been continuously evolving not only in accordance with the socio-economic changes, but also in relation to the different perspectives that define the notion itself. The goal here must be to create a flexible notion of well-being, capable not only of adapting in the long term to cultural evolution, but also in the short term to the subjective peculiarities of each of us¹⁰³. After all, it is not possible to consider well-being as a static and standardized concept; on the contrary, it is necessary to begin using and interpreting the various tools already at our disposal (in addition to creating new ones) to enable each worker to create their own ideal workplace.

For these reasons, understanding such changing notion is crucial in order to properly define a model for health and safety in the workplace that integrates the well-being of workers, thus prompting the regulatory framework beyond the sole matter of health and safety and considering more elements connected to both subjective and objective values¹⁰⁴. However, the extension of the notion of well-being inevitably entails new duties and obligations for employers, thus requiring an attentive reflection upon the limits and the scope of such definition. After all, this issue has already been observed in the recent modifications of the art. 41 of the Italian Constitution, which has bound the entrepreneurial freedom of the employer by introducing the “environmental” issue to new limits. In particular, the new formulation states that *«it cannot be carried out in conflict with social utility or in such a manner as may harm health, the environment, safety, liberty and human dignity»*, and it specifies the role of law to determine appropriate programmes and checks in order to have public and private economic enterprise activities directed at and coordinated for social and environmental purposes.

Surely, the everchanging notion of well-being requires *ad hoc* interventions in order to be properly addressed, and company-level collective agreements seems to be among the most suitable instruments to accomplish such adaptation¹⁰⁵. Nonetheless, such passage requires to adopt two approaches to the safeguarding of well-being that are not necessarily mutually exclusive). On the one hand, the protection of well-being as a consequence of the employer’s organisational and/or business decisions that generates, directly or indirectly, effects on the workers or

¹⁰³ Refer: to J. BORODKINA, *Osmislennost žizni kak faktor subjektivnogo blagopolučija (Meaningfulness of Life as a Factor of Subjective Well-being)*, in “Molodoj ucenij”, 2009, pp. 90-93; B. FROLENOKA, O. DUKULE, *Personnel adaptation in the workplace, the quality of working life and subjective well-being*, in “Information Technologies, Management and Society”, 2017, pp. 7-12.

¹⁰⁴ This means that the scope of the notion will also change in accordance with the specific labour contexts and workplace, thus becoming a deeply fluctuating concept.

¹⁰⁵ The importance of elevating the well-being discussion to a union level can be seen in the part-time agreement between European Trade Union Confederation (ETUC) and the Union of Industrial and Employers’ Confederations of Europe (UNICE), which provides that “social partners are best placed to find solutions that correspond to the needs of both employers and workers and must therefore be given a special role in the implementation and application of this Agreement”.

the workplaces. This perspective revolves around the understanding of the impact of company's decisions on the workers and the adoption of the necessary measures in order to preserve their well-being. On the other hand, the preventive safeguarding of workers' well-being through collective decisions, namely the definition of the current meaning of well-being and taking specific actions to ensure it. Such approach requires, for instance, collective agreements to define agreed limitations on the entrepreneurial freedom of the employer that are justified by the need to protect the health of workers and, in a broader sense, the well-being of workers.

In conclusion, the two aforementioned approaches both deal with the issue of protecting well-being by dealing with its safeguarding in different moments. After all, the adoption of a joint approach might be able not only to preventively put in place actions addressed at fostering well-being and limiting actions that might go against it, but also to intervene every time a decision on the productive and/or organizational level of the company generates drawbacks and consequences for the workers and, in particular, for their individual and collective well-being. Despite the challenges posed by the definition of effective regulatory interventions in this regard, the safeguarding of worker's well-being, inside and outside the workplace and in the employment contract, is a necessary step to go beyond the sole protection of workers' health and safety intended simply as lack of sickness¹⁰⁶.

Abstract

La nozione di "benessere" in relazione alla sfera lavorativa rappresenta un concetto multiforme e variegato, nonché profondamente intrecciato con le misure connesse alla salute e alla sicurezza. A tal proposito, è fondamentale individuare i diversi aspetti che presentano un impatto sul benessere dei lavoratori, dato che possono essere riscontrati non solo in relazione al contratto di lavoro e alle attività lavorative, ma anche per quanto riguarda la dimensione interna ed esterna al luogo di lavoro. Tra questi, infatti, è possibile osservare sia l'adozione di soluzioni di welfare per aumentare la soddisfazione dei lavoratori nella loro collettività, sia l'utilizzo di contratti di lavoro flessibili e temporanei per garantire un orario di lavoro più gestibile per il singolo individuo. Tuttavia, l'analisi deve coinvolgere anche gli altri fattori esterni che contribuiscono a modellare il benessere sul posto di lavoro, come l'ambiente che circonda l'azienda stessa. Per questi motivi, è necessario adottare un approccio olistico alla nozione di "benessere", facendo in modo che le misure adottate dal datore di lavoro siano improntate sia sulla salvaguardia dei protocolli di salute e sicurezza, sia sul miglioramento delle condizioni generali dei lavoratori.

The notion of "well-being" in relation to the work dimension represents a multifaceted concept, which is deeply intertwined to health and safety measures. In this regard, it is crucial to identify the different aspects that have an impact on the well-being of workers, given that they can be observed not only in relation to the employment contract and the working activities, but also regarding the dimension inside and outside the workplace. Among these ones, in fact, it is possible to identify both the adoption of welfare solutions to increase the satisfaction of the collective of workers and the use of flexible and temporary employment contracts to ensure a more manageable working schedule for the single individual. However, the analysis must involve the other external factors that contributes to shapes the well-being of the workplace as well, like the environment surrounding the company itself. For these reasons, it is necessary to adopt a holistic approach to the notion of "well-being", thus ensuring that the measures adopted by the employer

¹⁰⁶ For instance, concept of health protection in the definition of the WHO Constitution, as interpreted by the CJUE. Refer to E. ALES, *Occupational Health and Safety*, cit.

are focused both on the safeguard of health and safety protocols and on the improvement of the workers' overall conditions.

Parole chiave

Salute e sicurezza, Benessere, Luogo di lavoro, Attività lavorative, Contratti di lavoro flessibili, Ambiente

Keywords

Health and safety, Well-being, Workplace, Working activities, Flexible employment contracts, Environment