



WORKERS' RIGHT TO HEALTH AS A RIGHT TO WELL-BEING

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Abstract

Work and well-being are closely related since the quality of working conditions and prospects have a direct impact on the individual's level of well-being. Economic development must necessarily consider the well-being dimension, because of its direct connection with productivity and competitiveness. The first commitment to achieving a global well-being strategy was made taken by the World Health Organization, but the same principles can be to be found in the social rights pillar of the European Union. In Italy in any case, the Constitution of 1948 already establishes the pursuit of the full development of the human person and, in it, establishing the right to health, understood as a state of psychophysical well-being. Actually, in the digital society, the worker enabled to work from any place and at any time thanks to technological devices, enjoys a greater autonomy in their working activity. However, the intensive use of new technologies is likely to have ambiguous and even contradictory effects.

Keywords: well-being, health, workplace, performance, quality of life, productivity, competitiveness.

1. The Right to Health and Well-being

In recent years, attention to well-being at work has become an object of great interest for legislators. This concept, however, has not yet found provided a legal definition but has rather borrowed elements acquired concepts deriving from other disciplines (medicine, sociology, the psychology of work, business organization). The issue of well-being at work is often confused or absorbed by that of workplace safety¹. Instead, it is necessary to distinguish between a more restricted field, relating to a complex multi-level regulatory system aimed at making the working environment risk-free, or at least otherwise structured in such a way as to minimise risks - and a field that deals with the wider protection of well-being, such as the workers' right to health.

The first commitment to achieving a global well-being strategy was made taken by the World Health Organisation in 1978 with the Alma Ata Declaration on primary health care. In the Ottawa Charter for Health Promotion, written developed by the First International Conference on Health Promotion in 1986, it was specifically stated that health promotion goes beyond the mere proposal of healthier life models, aspiring to well-being². In this document, it is also stated that the promotion of health must lead to safe, stimulating, satisfactory living and working conditions, as well as to the protection of the environment. It must allow for a systematic assessment of the effects of the environment on people's well-being and guarantee strategies and actions aimed at inducing changes within both the individual and the community. Later Moreover, in June 2012, the UN stated that the search for happiness and well-being is a fundamental goal for humanity. That is why it is recognized in public policy goals, acknowledging. The need is acknowledged for a more inclusive, equitable and balanced approach towards economic growth that promotes sustainable development, the eradication of poverty and the happiness and well-being of all³.

¹ For the different security areas seen from a global and integrated perspective, please refer to Prestipino T., 2005: *La sicurezza sul lavoro oggi: nuove prospettive*, in AA.VV. *Qualità della vita e sicurezza nei luoghi di lavoro. Strategie, ruoli, professionalità e interventi*, Milano, Franco Angeli, pp. 48 ss.

² <https://www.azioniperunavitainisalute.it/files/materiali/formazione/Bologna-mar10/CartaOttawa.pdf>

³ UN General Assembly, Resolution A/RES/66/281: <https://www.un.org/en/ga/66/resolutions.shtml>



These same principles can be found in the social rights pillar of the European Union⁴, expressed by which, under Article 3 of the Treaty on European Union. the latter includes among its aims, the latter includes the promotion of the well-being of its peoples, also including by promoting equal opportunities and access to the labor market, fair working conditions, social protection, and inclusion. Since the new millennium, European Union policies have been characterized by a new approach, based on the close integration and connection of well-being with other community strategies, especially those related to employment. In particular, the aim has been being to reconcile the quantity of employment with its quality: health and, more generally, well-being at work, have been taken as significant indicators of a better quality of work, which the improvement of the company's performance depends on in turn.

It is the firm conviction of the European Union that a positive relationship between work and well-being is a necessary factor for achieving greater economic and social progress since full and good employment is one of the main elements of economic stability and social cohesion in a country. In terms of regulatory techniques, the emphasis has so far been mainly being on non-binding measures (so-called *soft law*). Among the numerous acts, not of a non-binding nature, but which nevertheless have legal effect, it is worth mentioning the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 21 February 2007, entitled 'Improving quality and productivity at work: Community strategy 2007-2012 on health and safety at work', where a global strategy of well-being at work is outlined. This is understood as a broader concept than that of health and safety at work alone, with reference both to legal profiles and to psychological and social profiles⁵. This strategy is based on the belief that ensuring good health at work improves public health in general, as well as the productivity and competitiveness of the companies that do so. On the contrary Furthermore, having health and safety issues at work increases costs for social protection systems. It is economically more advantageous to ensure good working conditions for workers and contribute to their general well-being.

In June 2008, the European Commission, together with social partners and stakeholders, signed the European Pact for Mental Health and Well-being, which highlights the importance of mental health and well-being as key resources for promoting growth and employment jobs, achieving social cohesion and making significant progress towards sustainable development⁶. In this perspective, the previous Framework Agreement on work-related stress had previously pointed out that changes in work organization, in particular, the more flexible ways of organizing working time and a more individual and result-oriented management of human resources, have a profound impact on health problems at work and, more generally, on well-being at work⁷. The strategy proposed by EU institutions in the Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 20 November 2008 on the health and well-being of young people, also sought to promote a vision of health and risk prevention as fundamental values, which not only safeguard the lives and health of workers but also play an essential role in strengthening the competitiveness and productivity of both companies and the workforce⁸. The concept of 'well-being for all' is thus once again reaffirmed, in the belief that social cohesion is nothing more than the ability of a society to ensure the well-being of all its members while minimizing inequality». Another very important concept, introduced by the Resolution Strategy, is that well-being must be shared by all members of society and cannot be achieved only at the individual level. HenceIn this sense, the importance of the social actors that have had joint responsibility for its achievement is stressed.

⁴ https://ec.europa.eu/commission/sites/beta-political/files/social-summit-european-pillar-social-rights-booklet_it.pdf

⁵ <https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=LEGISSUM%3A110114>

⁶ https://ec.europa.eu/health/sites/health/files/mental_health/docs/mhpact_it.pdf

⁷ In the 2004, EU social partners BUSINESSEUROPE, UAPME and CEEP signed a Framework ~~framework~~ Agreement on work-related stress, which is being implemented through various initiatives by social partners at national and company level (<https://osha.europa.eu/it/legislation/guidelines/framework-agreement-on-work-related-stress>). The investigation into the causal interrelations between work organisation and the protection of health and safety at work, has led the EU and other international institutions to focus on factors of a more strictly psycho-pathological and psychosocial nature, such as harassment and work-related stress. In fact, depression and work-related stress are an increasingly important cause of work incapacity.

⁸ <https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=CELEX%3A42008X1213%2801%29>



In line with the above, health and well-being at work are key elements of the current European 2020 strategy for smart, sustainable and inclusive growth. The strategy assumes that a healthy economy depends on a healthy population. Without this, companies lose productivity and citizens are deprived of potential longevity and quality of life. Better health is, in this respect, a way to address Europe's economic challenges and support the financial sustainability of the European social model. Therefore, health promotion cannot be the responsibility of the health sector alone because, as the *Health in All Policies* (HIAP) approach points out, social goals are best achieved when all actors include health and well-being as key components in their goals⁹.

As far as the narrower scope of health and safety protection at work is concerned, Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the health and safety of employees at work was a key step in ensuring the establishment of minimum requirements across Europe that can ensure better protection for employees in their workplace¹⁰. A significant principle is laid down in Article 6, according to which work must be adapted to people individuals.

The requirements established by the EU at the European level have had a significant impact on the Member States' legislative systems. Moreover, by virtue of the EU principle of consistent interpretation, national judges are required to interpret domestic law in accordance with EU directives¹¹, irrespective of whether the national legislation was adopted before or after the directive was adopted, and may apply to the European Court of Justice for a ruling on the correct interpretation of European Union law, by means of the preliminary ruling procedure under Article 267 TFEU.

In the case of Italy in any case, the country 'seven if our legal system has benefited greatly from Community legislation, but we must not forget that the Italian Constitution of 1948 already establishes, in Article 3, the pursuit of full development of the human person. The Article also establishes In it, establishing the right to health, understood as a state of psycho-physical well-being according to the definition of the WHO, as a fundamental right of the individual and interest of the community. Article 41 of the Constitution, on the other hand, in recognising the freedom of private economic initiative, excludes that it may be carried out «in such a way as to cause damage to security, freedom and human dignity», so that conditioning the needs of the company are subordinate to the rights of the individual.

The fulcrum of the Italian system for the protection of the individual, in the context of the employment relationship, is constituted by Article 2087 of the Italian Civil Code, 1942, which obliges the employer «in the exercise of the company adopt the measures which, according to the particularity of the work, experience and technique, are necessary to protect the physical integrity and moral personality of the employees.

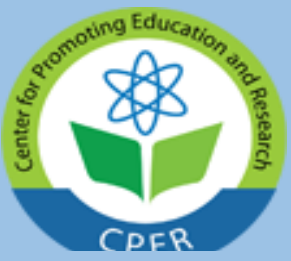
The importance of the good quality workers' good health and quality of life and health, endangered by the performance-focus of the service in environments subject to the domain of the employer, has generated a complex regulatory system, currently incorporated into Legislative Decree no. 81 of 2008: the so-called Consolidated Act, on the protection of health and safety in the workplace, as corrected and supplemented by Legislative Decree no. 106 of 2009. The new definition of worker's health, referred to in Article 2, as a state of complete physical, mental and social well-being, consisting not only of an absence of disease or infirmity is not a mere statement of principle, but an expression of a commitment to overcome a

⁹ <https://www.cdc.gov/policy/hiap/index.html>

¹⁰ Directive 89/391/EEC was followed by the adoption of a long list of individual directives, some of which were reformulated several times in subsequent years.

Among the most important ones include are the following: directive 89/654/EEC (30/11/1989), concerning the minimum health and safety requirements ~~in for~~ the workplace; directive 89/655/EEC (30/11/1989), concerning the minimum health and safety requirements for the use of work equipment by employees at work; directive 89/656/EEC (30/11/1989) on the minimum health and safety requirements for the ~~use by~~ workers' ~~use~~ of personal protective equipment ~~in at~~ the workplace; directive 90/394/EEC (28/06/1990), on the protection of workers from the risks related to exposure to carcinogens at work; directive 92/57/EEC (24/06/1992), on the implementation of minimum health and safety requirements ~~in at~~ temporary or mobile construction sites; directive 92/58/EEC (24/06/1992), on the minimum requirements for the provision of safety and/or health signs at work; directive 98/24/EEC (07/04/1998), on the protection of the health and safety of workers from ~~the~~ risks related to chemical agents ~~present in the workplace~~ ~~use at work~~; directive 2009/104/EEC (16/09/2009), concerning the minimum health and safety requirements for the ~~workers'~~ use of work equipment ~~by workers~~ at work.

¹¹ Court of Justice of the European Union, 10.04.1984, c. 14/83, Sabine von Colson e Elisabeth Kamann v Land Nordrhein-Westfalen: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61983CJ0014>



purely formalistic approach to the protection of health and safety at work¹². The strong push of Legislative Decree no. 81 of 2008 towards prevention is aimed at ensuring specific satisfying protection of the good that is healthy as a good. It is intolerant, due to its very existential nature, it is impervious to a logic of mere reparation after injury, not restorable through the monetary equivalent typical of compensation techniques.

The Italian legislature has pursued the aim of protecting the individual, which also works through models and techniques consisting in the attribution of worker rights and corresponding obligations on the part of the employer, or by establishing providing for limits to on the latter's powers. Moreover, various legislative provisions, especially regionally, have provided economic incentives to promote the adoption of virtuous employer conduct. At other times, the law has established disincentive measures, which tend to discourage company conduct that is harmful contrary to employee well-being and health. At other times, when the need for worker protection has been felt more intensely, the law has set administrative or criminal sanctions for breaching prohibitions or for failing to comply with obligations imposed on the employer and, in some cases, on the employees themselves.

One field in which the legislature has intervened even more incisively is the field of public work¹³. The regulatory framework here consists of various legislative provisions, but also of administrative acts, such as the directive of the Ministry of Public Administration, 24 March 2004, concerning measures aimed at improving organizational well-being in public administrations. This obliges the latter, by adopting appropriate forms of trade union relations, to assess the degree of well-being and act to achieve and maintain the physical and psychological well-being of people, as well as the goals of effectiveness and productivity, through the construction of work environments and relationships that contribute to improving employee quality of life and performance¹⁴.

The first legislative reference to organizational well-being is outlined in Article 14 of Legislative Decree no. 150/2009, which provides for «the carrying out of surveys among on employees to determine the level of organizational well-being and the degree of spreading of out the evaluation system». Article 2 of Law no. 191 of 23 December 2009 (2010 Finance Act), inserted by Article 3 of Decree-Law no. 95 of 6 July 2012, converted with amendments into Law no. 135 of 7 August 2012, required the company authorities to bind 15% of the savings achieved by optimizing office space through the implementation of projects that improve the quality of the working environment and boost organizational well-being». Articles 7 and 57 of Legislative Decree no. 165 of 30 March 2001, as amended by Article 21 of Law no. 183 of 4 November 2010, entitled «Measures to ensure equal opportunities, the well-being of workers those who work and the absence of discrimination in public administrations», are the most important regulations in this area. Article 7, entitled «Management of human resources», states that «Public administrations shall guarantee (...) a working environment based on organizational well-being and shall undertake to detect, combat and eliminate all forms of moral or psychological duress within their organization. In this way, organizational well-being has been added to the catalogue of values that the Administration is required to guarantee in the management of so-called human capital. Article 57, on the other hand, regulates the «Single Committee for the Guarantee of Equal Opportunities, for the enhancement of the well-being of workers those who work and against discrimination», which has replaced the committees for equal opportunities and the joint committees on the phenomenon of mobbing, unifying them powers in a single committee.

Article 20 of Legislative Decree no. 33 of 14 March 2013 prescribes that Public Administrations shall fulfill their obligations to publish data relating not only to the evaluation of staff performance and to the distribution of bonuses to personnel, but also data relating to organizational levels of well-being. Article 13 of Presidential Decree no. 62 of 16 April

¹² ~~▲To be read, as~~ already mentioned, ~~this should be read~~ in relation to the definition of health ~~provided defined~~ by the WHO and that of well-being contained in the Ottawa Charter, as well as in the European Strategy 2007-2012 and ~~in~~ the European Agreement on Work-Related Stress.

¹³ ~~▲As early as 2003,~~ the Chairman of the Board - Department of Public Administration - had promoted a research, edited by Avallone F., Bonaretti M., *op. cit.*

¹⁴ The directive sets out, in a detailed and precise manner, the reasons for adopting measures aimed at improving organisational well-being, the guidelines to be followed and also the instruments to be adopted. For a historical overview of studies on organisational well-being and related psycho-sociological models and paradigms, please refer to Avallone F., Bonaretti M., *op.cit.*; Bonaretti M., Testa P., *op.cit.*



2013, with which the Regulation containing the Code of Conduct for Public Employees was issued, by Article 54 of Legislative Decree no. 165/2001, expressly states provides that:

The manager shall be responsible for, compatibly with the available resources, the organizational well-being in the establishment to which they are he is assigned, favoring cordial and respectful relations between collaborators, taking initiatives aimed at circulating information, training and updating personnel, including and valorizing enhancing differences in gender, age, and personal conditions.

The commitment towards the creation of a climate of organizational well-being is, therefore, an obligation of conduct that the public manager must pursue and the breach of which constitutes conduct contrary to the duties of the office, giving rise to forms of disciplinary responsibility (Article 16 of Presidential Decree no. 62 of 2013).

In this context, new ways of managing human resources have been developed, which intervene on factors other than the usual economic incentive, favouring performance improvement in performance through an enhancement of employee skills, an increase in their autonomy and responsibility, their greater more incisive participation in decision-making processes, or by granting them access to new professional and training opportunities¹⁵.

2. Well-being in the digital age

A significant change in people's quality of life and work has been brought about by new technologies. Digital innovation has generated the so-called Fourth Industrial Revolution, which has enabled the improvement of productivity in terms of speed and quality of products and services, changing not only the way people work but also the way of life¹⁶. The worker enabled to work from any place and at any time thanks to technological devices, enjoys a greater autonomy in their working activity. In this way, there are greater opportunities to organize personal schedules and integrate work with family and personal needs. At the same time, productivity growth is promoted, thanks to the absence of rigid space-time constraints and the elimination of the commute reduction in time spent getting from home to work. This also reduces stress, allowing workers to improve their performance. However, as a report by ILO and Euro found notes, T/ICTM workers work longer than those who always work in the office at company premises, especially in the evenings and on weekends. The potential health risks associated with the use of IT tools and the risk of increased overlapping interference between work and personal life should not be overlooked¹⁷.

The intensive use of new technologies is therefore likely to have ambiguous and even contradictory effects¹⁸. This is why 'smart working', or 'Lavoro agile', has been introduced into the Italian legal system. This is not a new type of contract but a way of executing the subordinate employment relationship characterized by the absence of hourly or spatial constraints. It is an organization of the work activity by phases, cycles, and goals, established by way of an agreement between the employee and the employer. The discipline of smart working, contained in Law no. 81/2017 (also known as the Agile Labour Act), stresses the voluntary nature of the parties to the individual agreement and the use of equipment allowing for remote work, such as via laptops, tablets, and smartphones. 'Agile' workers are, in any case, guaranteed equal treatment, both economically and by regulation, for their colleagues who ordinarily perform their work, despite their activity being characterized by significant organizational flexibility.

¹⁵ AA.VV., 2006: *Misurare per decidere. La misurazione della performance per migliorare le politiche pubbliche e i servizi*, Soveria Mannelli, Rubbettino Editore.

¹⁶ [The Industry 4.0 policy](#) is based on the *smart factory* concept, which consists of three elements: *smart production*, *smart services*, *smart energy*. For [the work transformations of work](#), please refer to Cipriani A., Gramolati A., Mari G., 2018: *Il lavoro 4.0. La Quarta Rivoluzione industriale e le trasformazioni delle attività lavorative*, Firenze, Firenze University Press.

¹⁷ <https://www.eurofound.europa.eu/it/publications/report/2017/working-anytime-anywhere-the-effects-on-the-world-of-work>. In this respect, it can be seen that the relationship between work and private life has changed in different historical contexts. In the Latin world the *otium* (time devoted to creative [fullness](#) and self-improvement) and the *negotium* (time of heavy labour and monetary enrichment) were two antithetical realities. In the era of the first industrial revolution, the worker became functional to production, [somewhat](#) like a cog. In that context, work, which occupied 16 hours a day, was in reality, the only activity of the day. It was only as a result of subsequent legislative and contractual regulations that it was possible to limit the standard working time of employees to 40 hours per week, with a maximum of 8 hours overtime, in order to allow them to have some free time for their family, errands and hobbies.

¹⁸ Flecker J., 2016: *Space, Place and Global Digital Work*, London, Palgrave mac Millan, pp. 9 ss.



Unfortunately, however, very often 'work flexibility' means adapting workers to the needs and conveniences of the company, resulting in increasing pressure on the worker and initiatives that tend to intensify the management of the labor factor, without free from there being legislative provisions or collective regulations¹⁹.

3. Conclusion

Work and well-being are closely related since the quality of working conditions and prospects have a direct impact on the individual's quality of life and level of well-being: work is not only a means of sustenance and gain but also a means of extrinsic personality²⁰. This relationship between work and well-being has a two-way effect: working well and peacefully affects the quality of personal life and the perception of well-being²¹; instead, as the quality of work deteriorates, malaise increases and difficulties arise²².

Experts in relational dynamics in the context of production have identified several «dimensions of organizational well-being»: from setting up a healthy, comfortable and welcoming working environment, to recognizing and enhancing employees' skills and contributions. This aims at stimulating the potential of so-called human capital, useful for the smooth functioning of any organization. More generally, organizational well-being is the result of a correct way of dealing with work, which involves that sees greater collaboration between the different levels of responsibility. Furthermore, organizational well-being comes with it is the commitment to eliminate and reduce situations of stress and conflict (evident or implicit), with positive consequences on individual resources, the organization and the quality of the services provided.

The elements that contribute to the attainment of well-being are both individual and organizational. Consequently, it is essential that not only individual employees, but also all organizations, commit to preventing inconveniences and conflict, acting on several fronts to eliminate, or at least reduce, such issues. In particular, as noted by the scientific literature, the strong relationship between the quality of leadership quality and improvement of employee well-being is evident²³. Thus Hence, human resource management is a key element within organizations²⁴.

Moreover, and above all, it is often the idea that in order to increase competitiveness (and to increase employment and develop the economy at a macroeconomic level, to increase employment and develop the economy), work must be a variable that can easily be 'adapted', in both quantitative and qualitative terms, in order to decrease production costs²⁵. It is no coincidence that many company restructurings, organizational models and working practices have been made in pursuit of have now given rise to this strategic goal.

As has been pointed out in this paper, however, today, as in the past, economic development must necessarily consider the well-being dimension, precisely because of its direct connection with productivity and competitiveness.

¹⁹ Gallino L., 2001: *Il costo umano della flessibilità*, Roma-Bari, Laterza; Sennet R., 2000: *L'uomo flessibile. Le conseguenze del nuovo capitalismo sulla vita personale*, Milano, Feltrinelli, pp. 46-60 ss.; Beck U., 2000: *Il lavoro nell'epoca della fine del lavoro*, Torino, Einaudi; Lodigiani R., Martinelli M., 2002: *Dentro e oltre i post-fordismi. Impresa e lavoro in mutamento tra analisi teorica e ricerca empirica*, Milano, Vita e Pensiero; Perini M., 2013: *Lavorare con l'ansia. Costi emotivi nelle moderne organizzazioni*, Milano, Franco Angeli, pp. 39-53; Salento A., Masino G., 2013: *La fabbrica della crisi: finanziarizzazione delle imprese e declino del lavoro*, Bari, Carocci Editore; Castel R., 1995: *Les métamorphoses de la question sociale: une chronique du salariat*, Paris, Gallimard, trad. it. C. Castellano, Pizzo C. Simone A., 2007: *Le metamorfosi della questione sociale. Una cronaca del salariato*, Avellino, Sellino Editore; Streeck W., 2000: *Il modello sociale europeo: dalla redistribuzione alla solidarietà competitiva*, «Stato e mercato», 58, pp. 3 ss.

²⁰ Trib. Napoli 15 February 2011, n. 4708, «Rivista Italiana di diritto del lavoro», 2011, II, p. 1172.

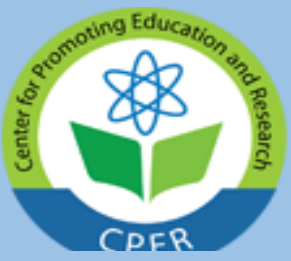
²¹ 'Good work' is what enables workers to achieve well-being and a range of personal goals: Green F., 2006: *Demanding Work. The Paradox of Job Quality in the Affluent Economy*, Princeton, Princeton University Press. [On this topic](#), Pantano S., Della Calce B., 2010: *La cultura del lavoro tra benessere e malessere organizzativo*, Roma, Cisl [on this topic](#); Montuschi L., 1986: *Diritto alla salute e organizzazione del lavoro*, Milano, Franco Angeli; Favretto G., 2009: *Work harassment: benessere e malessere al lavoro tra stress, mobbing e pratiche organizzative*, Milano, Franco Angeli; Monea A., 2008: *PA, la sicurezza sul lavoro riparte dall'organizzazione*, «Il Sole 24 ore» n. 7-8.

²² To measure Fair and sustainable well-being (BES according to its Italian acronym), Istat (the Italian National Institute of Statistics) took [started from the the](#) multi-dimensionality of well-being [as its starting point](#) and, by analysing a wide set of indicators, described all the aspects that contribute to [a person's citizen](#) quality of life: [https://www.istat.it/it/benessere-e-sostenibilita/C3%A0/la-misurazione-del-benessere-\(bes\)/gli-indicatori-del-bes](https://www.istat.it/it/benessere-e-sostenibilita/C3%A0/la-misurazione-del-benessere-(bes)/gli-indicatori-del-bes).

²³ Avallone F., Bonaretti M., 2003: *Benessere organizzativo. Per migliorare la qualità del lavoro nelle amministrazioni pubbliche*, Soveria Mannelli, Rubbettino Editore.

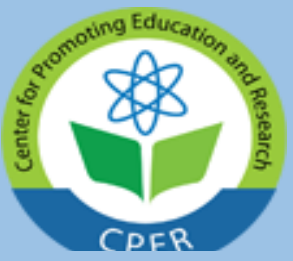
²⁴ Valeyre A., Lorenz E., Cartron D., Csizmadia P., Gollac M., Illéssy M., Makò C., 2009: *Working conditions in the European Union: Work organisation*, Dublin, European Foundation for the Improvement of Working and Living conditions.

²⁵ Dore R., 2005: *Il lavoro nel mondo che cambia*, Bologna, Il Mulino, p. 48; Crouch C., 2012: *Il declino delle relazioni industriali nell'odierno capitalismo*, «Stato e mercato», 31, pp. 55-75; Lewis S., Anderson D., Lyonette C., Payne N., Wood S., 2017: *Work-life Balance in Times of Recession, Austerity and Beyond*, New York, Routledge.



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