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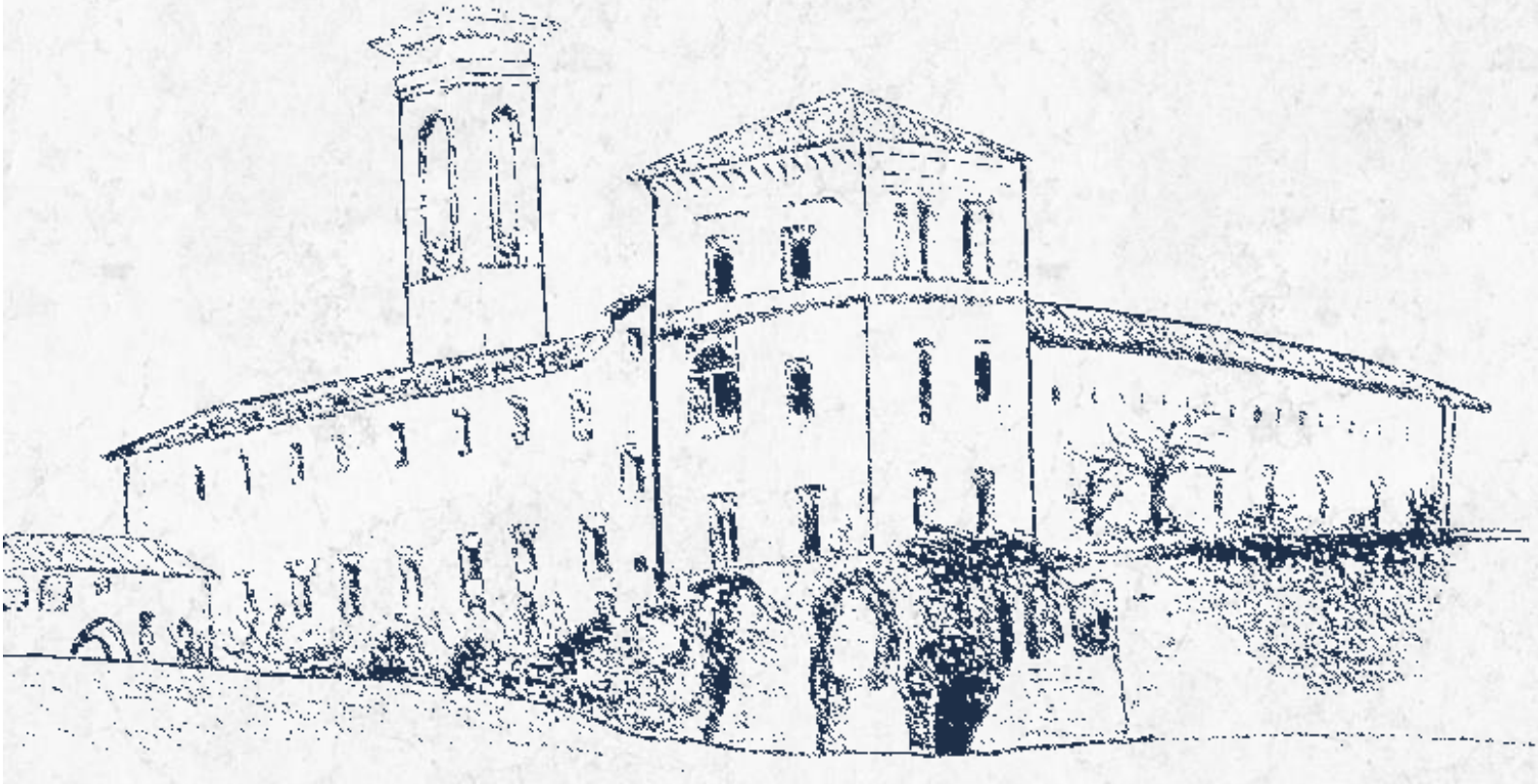

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Active Ageing and Non-occupational Health in Contractual Policies on Working Time in Italy

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Abstract. This article examines the main measures adopted in Italian collective bargaining to adapt working time arrangements to the needs of older workers, workers with chronic illnesses or disabilities, and family caregivers. The most relevant tools include paid leave and authorised absences, shared leave banks, the conversion from full-time to part-time work, flexitime, and agile working, with priority granted to vulnerable categories or those with caregiving responsibilities.
Collective bargaining has progressively expanded the scope of legal protections associated with these measures. However, despite their growing significance, their implementation remains fragmented, highlighting the need for a systemic approach that values workers' capabilities, promotes sustainable work, and fosters more flexible and inclusive forms of work organisation.

Keywords: *Work–life balance; Collective bargaining; Working time; Demographic change.*

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1. Introduction

For several years now, the demographic transformation affecting Italy and its labour market has been at the centre of labour law debate[1]. Statistical data collected by ISTAT show that the average age of employed workers has been steadily increasing[2], to the point that the largest relative share of the workforce now falls within the 50–64 age group[3]. The rise in the number of workers aged over fifty—whose vulnerability, due to certain objective psycho-physical characteristics, is higher than that of younger workers—has also led to an increase in the number of workers suffering from chronic illnesses[4]. At the same time, the general ageing of the population has resulted in a growing number of workers being required to care for non-self-sufficient family members[5].

Faced with this seemingly irreversible demographic trend, labour law scholarship initially tended to focus primarily on reforms of the pension system and on issues related to exit from the labour market, only more recently turning its attention to measures aimed at encouraging and facilitating the continued participation of older or vulnerable workers in employment[6], as well as safeguarding their health and well-being[7].

In this context, it is worth noting that the regulation of working time can play a fundamental role: especially in recent years, working time has become a key area in which both legislators and the social partners have sought to respond to emerging needs for work–life balance and

[1] P. BOZZAO, *Anzianità, lavori e diritti*, Editoriale Scientifica, 2017; V. FILÌ (ed), *Quale sostenibilità per la longevità? Ragionando degli effetti dell'invecchiamento della popolazione sulla società, sul mercato del lavoro e sul welfare*, ADAPT University Press, 2022.

[2] ISTAT, *Rapporto annuale 2023. La situazione del Paese*, 2023, 71-76.

[3] As of October 2024, this amounts to over 8.9 million workers, representing 38.37% of employed persons aged between 15 and 64.

[4] See the estimates of the Italian National Institute of Health (Istituto Superiore di Sanità), according to which more than one quarter of Italians aged between 50 and 64 suffer from at least one chronic illness.

[5] ISTAT, *Condizioni di salute e ricorso ai servizi sanitari in Italia e nell'Unione europea – Indagine EHIS 2019*, 2022, shows that, out of the total population aged over 15, around 8 million people in Italy – predominantly women – provide care at least once a week to individuals (in more than 7 million cases, family members) with needs arising from ageing, chronic illnesses or disabilities.

[6] V. FILÌ, *L'invecchiamento da esclusione ad inclusione*, in *Argomenti di diritto del lavoro*, 2020, n. 2, I, 369-385; P. BOZZAO, *Longevità lavorativa e politiche di welfare: nuove sfide e prospettive*, *Rivista trimestrale di scienza dell'amministrazione*, 2022, n. 1.

[7] M. TIRABOSCHI, *Salute e lavoro: un binomio da ripensare. Questioni giuridiche e profili di relazioni industriali*, in *Diritto delle relazioni industriali*, 2023, n. 2, 252.

adaptability expressed by workers[8]. From this perspective, the personalisation of working time in relation to the individual circumstances of each worker may represent an essential tool for ensuring the inclusion in the labour market not only of older employees, but also of those who are required to care for non-self-sufficient family members, as well as the (increasingly numerous) workers who, with advancing age, suffer from chronic illnesses or disabilities.

From this standpoint, the first legislative interventions should be understood as attempts—albeit within a fragmented and incomplete regulatory framework—to introduce measures affecting working time in favour of certain categories of workers. These include, for example, the possibility of converting full-time employment relationships into part-time arrangements[9], the granting of priority access to remote working[10], and the delegation to collective bargaining of the power to establish mechanisms for the solidarity-based transfer of leave and paid time off[11]. In addition, new experimental instruments have been introduced, such as the "New Skills Fund" (*Fondo Nuove Competenze*), which provides financing for training hours for workers involved in working-time reorganisation plans negotiated at company or territorial level[12].

Even more than the legislature, however, it has been collective bargaining—historically entrusted with the regulation of working time—that has attempted to provide responses to workers' new needs and to broader social change.

An examination of national collective bargaining renewals concluded after the Covid-19 pandemic—an exogenous factor that has undeniably influenced employment relations in terms of working-time regulation and work–life balance needs—reveals numerous interventions aimed at ensuring the inclusion of workers with specific subjective conditions. These interventions have taken the form of work–life balance measures tailored to different situations of vulnerability. In particular, among the 122 collective agreements renewed between 2021 and 2023 by the comparatively most representative trade union organisations, 55 national sectoral agreements introduced at least one measure addressing working time in relation to the subjective circumstances of older workers, workers

[8] R. SANTAGATA DE CASTRO, *Work-life balance, flessibilità dell'orario di lavoro e discriminazioni*, in *Diritti, lavori, mercati*, 2023, n. 1, 50.
[9] Article 8(3) et seq., Legislative Decree no. 81/201.
[10] Article 18(3-*bis*), Law no. 81/2017.
[11] Article 24, Legislative Decree no. 151/2015.
[12] Article 88, Decree-Law no. 34/2020, as converted into Law no. 77/2020.

with disabilities, workers suffering from chronic illnesses, or workers with significant caregiving responsibilities towards non-self-sufficient family members. This is a noteworthy figure, especially considering that it does not include agreements that already contained such measures.

Similarly, second-level bargaining has sought both to implement, at decentralised level, provisions laid down by the legislature or established in national collective agreements, and to introduce new working-time measures aimed at recognising specific forms of protection linked to employees' subjective conditions. This trend reflects the social partners' awareness of the need for targeted interventions in this area[13].

The objective of this study, therefore, is to examine the main solutions identified by company-level collective bargaining to protect workers in specific subjective conditions, observing how the social partners have sought to adapt and personalise working time in response to emerging worker needs.

To this end, the article reviews the provisions of a selected sample of forty company-level collective agreements. These were chosen from among those containing measures that exemplify the main lines of intervention by company-level collective bargaining in the field of working-time adaptability in response to demographic transformations. The agreements were concluded by comparatively most representative trade union organisations and cover different sectors of the economy[14].

On the basis of the selected contractual material, the contribution thus aims to assess the consistency of contractual clauses with statutory provisions, and ultimately to analyse the role of collective bargaining in shaping the protective framework in relation to workers' subjective conditions.

[13] ADAPT, *La contrattazione collettiva in Italia (2023). X Rapporto ADAPT*, ADAPT University Press, 2024, 141.

[14] The forty agreements were selected from among more than 2,000 company-level collective agreements concluded over the past five years and included in the *FareContrattazione.it* database. The agreements cover different sectors of the economy, with a predominance of manufacturing-related agreements: in 14 cases they concern the metalworking sector, in 9 the food industry, in 6 the chemical–pharmaceutical sector, in 2 the eyewear industry, and in one case each the cement and glass sectors. The remaining seven agreements, by contrast, relate in three cases to the banking sector, in two cases to the tertiary, distribution and services sector, and in one case each to the insurance and tourism sectors.

2. Collective Bargaining Interventions on Working Time in Relation to Demographic Transformations: The Role of Participatory Instruments

Before examining the specific interventions introduced by collective bargaining, it is necessary, as a preliminary step in the analysis of the individual measures adopted through decentralised bargaining, to note that a central role in identifying the subjective needs to be protected and in developing protective measures—also with regard to working time and work rhythms—is played by instruments of worker participation at company level.

Indeed, a significant number of company-level agreements have established specific information and consultation obligations between trade union representatives and employers in order to define strategies concerning demographic change and generational turnover, often explicitly taking into account the modulation of working time[15]. In some cases, specific joint bodies have also been established to assess the solutions to be adopted[16].

Within this framework, it is therefore possible to observe that, in response to demographic transformations, the forms of protection developed by collective bargaining to adjust working time and work rhythms in favour of the categories of workers most affected develop along two main directions: on the one hand, measures aimed at securing, through the suspension of work performance, the release of time periods necessary to meet the employee's subjective needs; on the other hand, measures intended to ensure adaptations of work performance so as to guarantee its sustainability.

3. The Suspension of Work

As anticipated, a first category of interventions to consider consists of all those highly heterogeneous measures aimed at suspending work performance in order to protect interests related to the employee's subjective conditions. By providing for such measures, collective bargaining thus ensures that certain aspects pertaining to the personal dimension of the worker take precedence over the employment contract,

[15] Air Liquide (15/04/2021), Barilla (18/07/2023), Stiga (28/03/2022), TMB (19/04/2021) and Vincenzi (21/06/2023).
[16] Carraro Group (20/09/2022), Celanese (13/12/2019) and Bonfiglioli (21/03/2022).

rendering it permeable to the consideration of other legally relevant interests[17].

3. Leave and Time Off

Among the measures aimed at suspending work performance in order to free up portions of the employee's time to meet personal needs, a central role is played by the heterogeneous set of leave and time-off arrangements.

With respect to workers whose subjective conditions are affected by demographic change, the range of solutions developed through collective bargaining is diverse and not easily systematised. Nevertheless, among the needs protected, family care obligations and the possibility of attending medical appointments appear by far the most prevalent, often through measures that go beyond those already provided for by law. Moreover, there is a strong interaction between national-level regulation and company-level clauses, as evidenced by frequent cross-references. For reasons of brevity, this analysis focuses on the food and metalworking sectors, which have recorded a large number of interventions in this area through collective bargaining.

In the food industry, the national collective agreement itself provides for a detailed set of cases in which paid leave may be taken, especially for family care reasons[18]. For example, under Article 40-ter(f), the so-called "intra-generational care leave" may be taken for two non-divisible half-days per year, "to assist elderly parents (aged 75 or over) in cases of hospital admission and/or discharge, and day hospital visits, as well as to attend specialist medical appointments"[19]. The food industry collective agreement also specifies that such leave cannot be used by employees who are already entitled to leave under Law No. 104/1992 for assistance to the same person.

Company-level bargaining in the food industry has mainly focused on providing enhanced benefits compared with national-level provisions, in particular by improving upon the treatment provided under Article 40-ter(f) of the national collective agreement. These improvements generally do not modify the eligibility criteria, including the incompatibility with Law No. 104/1992 leave, but increase the amount of time off available to

[17] R. DEL PUNTA, *Diritto del lavoro*, Giuffrè, 2023, 654.
[18] NCA for the Food Industry, articles 40-*bis* and 40-*ter*.
[19] NCA for the Food Industry, article 40-*ter*(f).

the employee[20]. A notable example is the Ferrero agreement of 6 October 2023, which, "with the aim of strengthening support tools for the family context", grants four half-days of paid leave per calendar year, incompatible with both Law No. 104/1992 leave and Article 40-ter(f) leave. These may be used for alternative purposes, including "assistance to the spouse and/or parents in cases of documented serious illness" and "assistance to elderly parents (aged 75 or over) in cases of hospital admission and/or discharge, and day hospital visits, as well as to attend specialist medical appointments". Similarly, the Pedon agreement supplements the cases provided by the national collective agreement by granting ten days of unpaid leave for the care of non-self-sufficient parents.

The scenario is partially different in the metalworking industry, where the relevant national collective agreement does not provide specific provisions for leave or time off aimed at suspending work performance in relation to subjective needs, except for those already established by law—namely, Article 4 of Law No. 53/2000 and Article 33 of Law No. 104/1992[21].

It is therefore company-level bargaining that has developed additional forms of leave beyond those established by law, providing supplementary time off, particularly for employees who have exhausted their annual paid leave but bear significant family care responsibilities. This occurs, for example, in Infocamere (agreement of 19 December 2022), where for employees who have used up their available leave and holidays, "the possibility of granting an additional two days of paid leave to workers with particular situations or serious family reasons" is provided (Article 8.3.5), and in Carel (agreement of 8 March 2022), where employees who have exhausted their leave may benefit from eight additional hours of paid leave for various reasons, including "medical–health reasons (for themselves and/or dependent family members)" (Article 15.3). There are also specific measures for the care of elderly or disabled family members.

[20] Starting from the two half-days of leave provided by the NCA, Barilla (18/07/2023) increases the total leave to 16 hours, Ferrarelle (01/08/2023) adds an additional 8 hours, Campari (19/07/2023) and Manifatture Sigaro Toscano (26/07/2023) grant an additional half-day; Peroni (09/05/2023) provides two further half-days (to be taken alternatively to other parental leave-related entitlements) and Pedon (29/03/2024) grants one non-divisible full day.

[21] NCA for the Metalworking and Plant Installation Industry, section IV, title VI, articles 10 and 11, which refer to paid leave under article 33(3) of Law no. 104/1992 for the care of a family member with a high-support disability, paid leave under article 4(1) of Law no. 53/2000 in cases of the death or serious illness of a spouse or relative, and unpaid leave under article 4(2) of Law no. 53/2000 for serious and documented family reasons.

For instance, the Baltur agreement (1 June 2022) allows employees who need to assist a family member with high-support disabilities and have exhausted the unpaid leave provided under Article 4(2) of Law No. 53/2000 to benefit from additional paid leave at 20 per cent of pay for a period ranging from 30 days to six months (Article 13). Similarly, the Fincantieri agreement (27 October 2022) provides eight hours per year "for the assistance of elderly parents (aged 75 or over) in cases of hospital admission and/or discharge from care facilities".

Regarding health protection, several agreements also provide paid leave for medical visits, examinations, or treatments, such as in the Leonardo agreement (21 May 2021), which allows up to 64 hours per year for medical visits, examinations, or treatments concerning the employee or their family members (Title III, Article 9)[22].

Concerning employees approaching retirement, some company agreements in the metalworking industry allow, in derogation from the national collective agreement[23]—which requires unused leave to be paid out within two years—the carry-over of paid leave granted under the national collective agreement in previous years[24]. This enables a modulation of working time during the employee's final period before retirement.

A similar clause, outside the metalworking sector, is included in the Italcementi agreement (25 September 2023), which provides that "employees approaching retirement and within three months thereof may take eight hours of paid leave per week (cumulative but non-monetisable) if they participate […] in a handover and skills-transfer process in favour of the employee(s) who will take over their duties", thus aiming to implement a generational handover model in which the reduction of working time for the retiring employee does not entail a reduction in pay.

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[22] For the prevalence of similar cases, see ADAPT, *La contrattazione collettiva in Italia (2023). X Rapporto ADAPT*, cit., 142-143.

[23] NCA for the Metalworking and Plant Installation Industry, section IV, title III, article 5.

[24] InfoCert (23/01/2019) provides that, "by way of derogation from the provisions of the NCA and the law, for personnel with a retirement horizon of less than five years, it is possible to set aside accrued annual leave and/or paid leave and use it for early exit, or alternatively for a gradual reduction of working hours (soft exit)"; ZF (05/05/2021) allows employees whose retirement is expected within five years to "request the allocation of leave exceeding the non-waivable quota and of paid leave exceeding the company's programmable quota. Exercising this option will allow periods of continuous or intermittent leave to be scheduled during the 12 months preceding retirement, compatibly with the company's technical and organisational requirements".

Overall, it is evident that the provision of leave and time-off arrangements has sought to offer responses to the new personal needs of workers. It should be noted that, even following the pandemic experience, collective bargaining has paid particular attention to measures in favour of hybrid caregivers[25], albeit within a still fragmented framework, while the use of leave to modulate the working time of older employees has generally been limited to the period immediately preceding retirement, allowing for a gradual exit from the labour market. A different situation concerns chronically ill or disabled workers, whose working rhythms and possible periods of non-work due to illness are primarily governed through sick leave provisions, often differentiated according to the employee's specific vulnerability[26].

3.2. The Transfer of Rest Days and Leave

A second measure to consider is the solidarity-based transfer of leave and rest days. In this regard, Article 24 of Legislative Decree No. 151/2015 recognises an essential role for collective agreements, which may, while respecting the rights established by Legislative Decree No. 66/2003, regulate the practical implementation of the transfer of rest days and leave.

Specifically, the legislator has provided that only employees required to care for minor children who, due to particular health conditions, need constant attention may access transferred leave and rest days. However, collective bargaining—both at national and company level—has sought, within a logic of "extended solidarity"[27], to broaden the range of beneficiaries of this measure.

This has occurred, for example, in the food industry, where the national collective agreement provides that employees affected by serious illnesses or required to care for children under 14 with particular health conditions may access the solidarity hours bank[28]. At company level, collective bargaining has further expanded the cases in which this measure may be used. For instance, the Vincenzi agreement allows employees accessing

[25] M. D'ONGHIA, *Lavoro "informale" di cura e protezione sociale*, in *Diritto delle relazioni industriali*, 2024, n. 1, 85.

[26] E. DAGNINO, *La tutela del lavoratore malato cronico tra diritto vivente e (mancate) risposte di sistema*, in *Diritto delle relazioni industriali*, 2023, n. 2, 336-356.

[27] D. GOTTARDI, *I diritti civili nella contrattazione collettiva: un dialogo che continua*, in *Lavoro e diritto*, 2023, n. 4, 804.

[28] NCA for the Food Industry, article 46-*bis*.

the solidarity hours bank to take leave to care for themselves or to assist minor children, a spouse, a civil union partner, or a cohabiting partner. Similarly, the Barilla agreement (18 July 2023) extends access to the company-level solidarity hours fund to employees affected by acute or chronic illnesses listed in Article 2(1)(d) of Ministerial Decree No. 278/2000, or who have a family member affected by the same conditions.

In the metalworking industry, the national collective agreement also provides a broader group of beneficiaries for the transfer of rest days and leave than that envisaged by law, as the measure can be applied not only to employees caring for minor children in need of constant attention, but also to women victims of gender-based violence and to cases of serious necessity[29]. In this context, some company-level agreements have simply reproduced the national provisions[30], while others have further expanded the range of employees eligible for the solidarity hours bank, giving particular consideration to workers suffering from acute or chronic illnesses[31], or to employees who have exhausted their sick leave or need to care for family members requiring medical assistance[32].

Similarly, in the banking sector, the range of beneficiaries of the measure has been expanded beyond the statutory framework, as the national collective agreement allows access for employees "who, for various reasons, require more intensive support and assistance at certain times in their lives"[33]. It is therefore company-level bargaining that determines in concrete terms who may use leave and rest days donated by colleagues. For example, eligible beneficiaries of the solidarity hours bank include employees entitled to leave under Article 33 of Law No. 104/1992, for themselves or for their family members[34], employees who need to care for elderly family members over 75 years of age or who are non-self-sufficient[35], and employees who have a remaining sick-leave period of less than 30 days[36].

In all cases, the use of donated leave and rest days constitutes a genuine last resort, since an employee may access the solidarity hours bank only

[29] NCA for the Metalworking and Plant Installation Industry, section IV, title III, article 11.
[30] Isval (22/12/2021).
[31] Fincantieri (27/10/2022).
[32] Leonardo (21/05/2021).
[33] NCA for Credit, Financial, and Instrumental Companies, article 61.
[34] Intesa Sanpaolo (21/02/2023), Deutsche Bank (8/06/2023) and Banca di Ancona and Falconara Marittima agreement (2019).
[35] Intesa Sanpaolo (21/02/2023).
[36] Banca di Ancona and Falconara Marittima agreement (2019).

after having exhausted all their own holidays, leave, and other forms of time off.

4. Modulation of Working Hours and the Conversion of Full-Time to Part-Time Employment

Among the measures aimed at addressing the needs of workers in connection with demographic change, one of the earliest concerns the possibility of converting a full-time employment contract into a part-time one. This possibility is currently regulated by Legislative Decree No. 81/2015, which, in Article 8(3), recognises the right of employees affected by oncological diseases or by serious progressive chronic-degenerative conditions to convert their employment contract from full-time to part-time. A different—and weaker[37]—form of protection is the priority in conversion provided in the following paragraph of the same article when the same conditions affect the employee's spouse (including civil union partners or cohabiting partners), children, or parents, or when the employee is caring for a cohabiting person who, under the terminology adopted by Article 4 of Legislative Decree No. 62/2024, has a high-support care requirement.

In this regard, it has been noted that the provision has a rather limited scope, as it not only does not grant a right to convert the employment contract to all workers with fragile health, but also does not extend to all employees with chronic illnesses, providing protection only to those whose chronic condition, on the basis of a necessarily prognostic assessment, is characterised by progressive deterioration[38]. In cases where a family member of the employee is affected by oncological or progressive chronic-degenerative conditions, or requires high-support care, it has been observed that the employee does not hold a genuine subjective right[39], since priority in conversion amounts only to a preferential expectation.

It has therefore been collective bargaining that has broadened the scope of the legislative provision, aiming to recognise both the conversion of the

[37] E. DAGNINO, *Sull'attuazione della Direttiva UE 2019/1158: il nodo del "lavoro flessibile"*, in *Il lavoro nella giurisprudenza*, 2023, n. 2, 147-148.

[38] S. VARVA, *Malattie croniche e lavoro tra normativa e prassi*, in *Rivista italiana di diritto del lavoro*, 2018, n. 1, I, 131-132.

[39] S. BRUZZONE, F. ROMANO, *Patologie oncologiche, patologie cronico-degenerative e diritto al part-time*, in M. TIRABOSCHI (ed), *Le nuove regole del lavoro dopo il Jobs Act. Commento sistematico dei decreti legislativi nn. 22, 23, 80, 81, 148, 149, 150 e 151 del 2015 e delle norme di rilievo lavoristico della legge 28 dicembre 2015, n. 208 (Legge di stabilità per il 2016)*, Giuffrè, 2016, 618.

employment contract and the modulation of working hours in relation to at least three different categories of workers affected by subjective conditions linked to demographic ageing.

A first category of employees for whom the social partners have sought to facilitate conversion to part-time comprises workers approaching exit from the labour market[40]. In this regard, collective bargaining has aimed to implement gradual exit schemes, with the objective of addressing the progressive increase in the retirement age while safeguarding the health and safety of employees by enabling them to work at sustainable rhythms.

In this sense, the clause provided in the Carel agreement is illustrative. This agreement, offering a more favourable framework than the applicable national collective agreement—which is itself already more advantageous than the statutory framework—provides that, with regard to the conversion of full-time contracts to part-time, "in addition to the methods and cases provided by the current CCNL, […] and within a maximum limit of 7% of full-time employees, […] employees with a projected retirement within the next 24 months" may request conversion. Here, the social partners have not only set a higher percentage of eligible employees than the 4% established by the metalworking industry national collective agreement, but also linked access to the measure to proximity to retirement. A slightly different solution is adopted in Verallia (agreement of 30 November 2022), where, in the absence of a specific provision in the national collective agreement[41]—which merely refers to Article 8(3) of Legislative Decree No. 81/2015—the company agreement provides that, "with specific reference to senior employees aged 60 or older, the feasibility of experimenting with work organisations providing horizontal and/or vertical part-time arrangements will be assessed". In this case, although the intervention pursues the same objective of protecting older workers, eligibility is based on age rather than retirement date, applying to all employees over 60. It should be noted, however, that the absence of a predetermined threshold for accommodating requests may affect the practical effectiveness of this provision.

Still with regard to older workers, certain collective agreements have introduced so-called "generational handover" measures[42]. A fairly

[40] In this regard, it should be noted that the similar measure of the so-called "facilitated part-time", introduced by article 1(284), Law no. 208/2015, has not achieved particular success (see V. FILÌ, *L'invecchiamento da esclusione ad inclusione*, cit., 378).

[41] NCA for the Glass and Lamps Industry, article 59.

[42] M. MARTONE, *Il diritto del lavoro alla prova del ricambio generazionale*, in *Argomenti di diritto del lavoro*, 2017, n. 1, I, 22.

structured framework is implemented in some companies in the chemical sector, where, on the basis of the national collective agreement, the "Progetto Ponte" is developed. This involves the creation, at company level, of a "generational solidarity pact […] based on the company's willingness to invest in new hires of young workers in exchange for the willingness of older employees to convert their contracts from full-time to part-time in view of retirement"[43]. On this basis, the Mallinckrodt agreement (28 February 2019) provides that employees expected to retire within the next 12 months may have their contracts converted to part-time—while maintaining full-time pension contributions—concurrently with the hiring of an apprentice. Similarly, in the Luxottica agreement (30 November 2023), even in the absence of a specific national provision[44], it is stipulated that for every employee eligible for retirement within the next 36 months whose contract is converted to part-time, the company guarantees the maintenance of full-time contributions and the hiring of a new full-time employee.

A second category of employees covered by provisions on contract conversion and working-time modulation comprises workers affected by specific chronic conditions not included in Article 8(3) of Legislative Decree No. 81/2015. The limitation of the right to convert the contract solely to employees with progressively worsening chronic illnesses has been considered overly restrictive, since a chronic condition—even without progressive deterioration over time—may nonetheless prevent the performance of work at the normal pace[45]. In this regard, the social partners have sought to provide forms of protection, usually limited to priority in conversion, independent of the requirements laid down in Legislative Decree No. 81/2015, and therefore applicable to all sick employees, including those with non-progressive chronic conditions.

Particular activity in this area has been observed among companies in the food industry, even though the framework established at national level largely mirrors the statutory provisions, aside from strengthening priority for contract conversion for employees with specific caregiving responsibilities, with companies committing to consider up to 8% of requests[46]. Of particular interest are certain company agreements that grant priority, within the same 8% limit, to employees "with serious and

[43] NCA for the Chemical-Pharmaceutical Industry, article 59(D).

[44] In the most recent renewal of the NCA for the Eyewear Industry the social parties committed to evaluating the promotion of generational handover initiatives.

[45] S. VARVA, *Malattie croniche e lavoro tra normativa e prassi*, cit., 132.

[46] NCA for the Food Industry, article 20.

documented health reasons"[47]. Similarly, even in the absence of a specific provision in the relevant national collective agreement, the Chiesi Farmaceutici agreement (20 February 2024) provides that the company undertakes to consider requests from employees with "reduced working capacity due to a precarious state of health".

Finally, a third category of employees for whom collective bargaining has established special measures regarding the modulation of working hours comprises those required to care for non-self-sufficient family members. In this case, collective bargaining has primarily sought to improve upon the conditions set out in Article 8(4) of Legislative Decree No. 81/2015, providing, instead of mere priority, an actual right to contract conversion.

A particularly noteworthy provision, still within the chemical sector, is found in the L'Oréal agreement (11 November 2021), which provides for a horizontal part-time schedule of 30 hours per week and six hours per day when the employee must care for elderly family members over 75 years of age or non-self-sufficient relatives. In this case, the employee is granted the right to convert their contract to horizontal part-time for a maximum duration of three years. Of particular interest is also the fact that conversion may be granted, where the family member is over 75, even in the absence of specific medical conditions. A similar approach is set out in the Carlson Wagonlit Italia agreement (30 May 2019), where, in the absence of a specific provision on contract conversion in the sectoral national collective agreement[48], it is stated that "in the case of serious illnesses affecting a family member, for which continuous care is required, the Company is willing to temporarily convert, for a maximum period of six months, the employment contract from full-time to part-time". Here too, the employee may benefit from temporary contract conversion, subject solely to the requirement of continuous care for the family member.

In conclusion, the widespread inclusion of clauses providing for working-time modulation and contract conversion to accommodate employees' individual needs has made these measures one of the main tools used by the social partners to address issues arising from demographic change. However, it has been noted that, for multiple reasons—ranging from social and cultural factors to economic considerations—the conversion of full-time contracts to part-time is rarely applied in practice[49], and, where

[47] Coca Cola (07/07/2023); Ferrero (06/10/2023).

[48] NCA for the Tourism Sector.

[49] M. TIRABOSCHI, *Salute e lavoro: un binomio da ripensare. Questioni giuridiche e profili di relazioni industriali*, cit., 259-261.

the measure is intended for caregivers, there is the additional concern that it may reinforce gender imbalances, confining women to the "part-time trap" without encouraging men to adjust their working hours to meet caregiving responsibilities[50].

5. The Adjustment of Work Performance to Ensure its Sustainability

The measure of converting full-time contracts to part-time forms part of a broader set of provisions aimed at adapting work performance to the employee's needs in order to ensure its sustainability.

The possibility of accessing flexible working arrangements based on the employee's individual circumstances has also received particular attention at EU level, where Directive (EU) 2019/1158, in Article 9, imposes on Member States the obligation to introduce measures ensuring the right to request (or, more precisely, to obtain)[51] flexible working arrangements[52] for parents with children up to a certain age and—of particular relevance for this contribution—for carers, understood as those who provide personal care or support to relatives or household members requiring significant assistance due to serious health conditions. In particular, the flexible working arrangements envisaged may involve temporal flexibility, spatial flexibility, and the previously discussed reduction of working hours through the conversion of full-time contracts to part-time.

In any case, although the Directive applies only to a subset of the categories considered in this study, it is worth noting that collective bargaining has regulated similar flexible working arrangements, with particular attention to temporal flexibility tools such as flexitime and

[50] C. ALESSI, *Lavoro e conciliazione nella legislazione recente*, in *Diritto delle relazioni industriali*, 2018, n. 3, 814; I. SENATORI, *La «nuova» conciliazione vita-lavoro e la contrattazione collettiva: una sfida che si ripete*, in *Rivista giuridica del lavoro e della previdenza sociale*, 2022, n. 4, I, 605; M. MILITELLO, *Tempi di lavoro e conciliazione. L'orario di lavoro scelto come strumento di parità*, in *Diritto di conciliazione. Prospettive e limiti della trasposizione della direttiva 2019/1158/UE*, in *Quaderni di diritti, lavori, mercati*, 2023, n. 14, 47-49; V. FILÌ, *«Mind the gap!» La professionalità per l'occupabilità in una prospettiva di genere*, in M. BROLLO, C. ZOLI, P. LAMBERTUCCI, M. BIASI (eds), *Dal lavoro povero al lavoro dignitoso. Politiche, strumenti, proposte*, Adapt University Press, Bergamo, 2024, 427 and 432.

[51] C. ALESSI, *La flessibilità del lavoro per la conciliazione nella direttiva 2019/1158/UE e nel d.lgs. 30 giugno 2022 n. 105*, in *Diritto di conciliazione. Prospettive e limiti della trasposizione della direttiva 2019/1158/UE*, cit., 91.

[52] E. DAGNINO, *Sull'attuazione della Direttiva UE 2019/1158: il nodo del "lavoro flessibile"*, cit., 140-150; R. SANTAGATA DE CASTRO, *Work-life balance, flessibilità dell'orario di lavoro e discriminazioni*, cit., 74-81; C. ALESSI, *La flessibilità del lavoro per la conciliazione nella direttiva 2019/1158/UE e nel d.lgs. 30 giugno 2022 n. 105*, cit., 92.

remote working, in order to respond to needs arising from demographic change.

5.1. Flexitime

With regard to the possibility of adapting work performance to the employee's individual circumstances, a first measure to be considered is the introduction of flexible start and end time bands (flexitime), which allow employees to determine, within time slots established by collective agreements, the beginning and end of the working day, while respecting daily, weekly, or multi-weekly working hours.
Typically, company-level bargaining grants the right to flexible start or end times to all workers, although there are cases in which flexitime is linked to specific subjective conditions of the employee. This perspective informs, for example, the provisions of the Blue Health Center agreement of 7 July 2023, which, exercising the delegation conferred by the relevant national collective agreement with regard to working-time flexibility[53], provides—alongside various flexibility schemes available to all employees—the possibility of agreeing on a personalised working schedule tailored to individual needs, while respecting weekly working hours, for employees "in a condition of disabling illness or disability, or […] employees with a spouse who is not legally separated or a cohabiting partner […] or parents and/or children, even if not stably cohabiting with the employee, who require support and assistance because they are affected by serious/invalidating illnesses and/or are not self-sufficient, even temporarily".
The recognition of flexitime for employees, particularly those in specific subjective situations, also emerges in company-level bargaining within the manufacturing sector. In this respect, national collective agreements in the sector often delegate to decentralised bargaining the regulation of matters relating to the organisation of working time[54]. Within this framework, agreements may grant "workers returning to service following convalescence after illness, injury, non-work-related injury, maternity leave, or extraordinary leave to assist family members with disabilities […] the possibility of using flexible start and end times"[55], or may provide,

[53] NCA for insurance companies, article 84(d).
[54] NCA for the Metalworking and Plant Installation Industry, section IV, title III, article 1; NCA for the Eyewear Industry, article 6; NCA for the Chemical-Pharmaceutical Industry, article 47.
[55] Spindox (29/03/2023).

upon request and subject to compliance with daily working hours, for flexible start and end times, granting priority to employees required to provide "assistance to family members"[56]. Also noteworthy is the provision contained in the L'Oréal agreement, which, upon request and in a manner mirroring the provisions on part-time work, grants an "extension of start-time flexibility" to employees who provide "assistance to elderly family members over the age of 75 or who are not self-sufficient".

These provisions are therefore highly heterogeneous, both with regard to the categories of workers who may benefit from flexitime and the degree of autonomy granted to employees in organising their working time and determining the start and end of the working day. This autonomy may range from limited flexibility of a few minutes compared to standard hours to the possibility of designing fully personalised schedules based on individual needs. This has a twofold effect: from the worker's perspective, it expands the space for self-determination within the workplace; from the perspective of work organisation, even if with limited direct impact on the overall productive structure, it contributes to the construction of a flexible organisational model capable of adapting to the demographic changes affecting the population[57].

5.2. Priority in Access to Agile Working

A second measure adopted by collective bargaining to adapt work performance to the employee's needs concerns the recognition of specific rights of priority in accessing work performed in agile mode. Agile working is, in fact, regarded by collective agreements themselves as a key instrument for ensuring inclusion—also through a different organisation of working time—of the many workers who, due to their specific conditions, require personalised forms of protection.

Moreover, Article 18 of Law No. 81/2017 provides for the possibility of granting "priority to requests for the performance of work in agile mode" in connection with certain subjective needs of the worker, and specifically where the request is submitted by workers with children up to 12 years of age or with disabilities, by workers with disabilities requiring a high level of support, or by workers who are carers within the meaning of Article

[56] Marcolin (12/10/2022).

[57] F. BUTERA, *Progettare e sviluppare una new way of working*, in *Lavori Diritti Europa*, 2022, n. 1, 4.

1(255) of Law No. 205/2017[58]. This provision is complemented by Article 33(6-bis) of Law No. 104/1992, which establishes the same right of priority in access to agile working for workers who make use of the leave provided for in paragraphs 2 and 3 of the same Article 33. These provisions, however, do not encompass all categories of workers for whom agile working could effectively respond to work–life balance needs[59].

It has therefore been collective bargaining—especially at company level—that has expanded the scope of this protection by identifying additional categories of beneficiaries entitled to priority access to agile working, in line with Article 10 of the National Protocol on Agile Working in the Private Sector signed on 7 December 2021, through which the social partners undertook "to facilitate access to agile working for workers in conditions of vulnerability and disability, also with a view to using this working arrangement as a reasonable accommodation measure".

Specific solutions in this area have been adopted, for example, in the chemical-pharmaceutical industry, where the relevant national collective agreement has entirely delegated the regulation of agile working to decentralised bargaining[60]. In this context, company-level agreements have provided facilitated access to agile working for vulnerable workers, understood as those for whom "there is a limitation on the performance of work at company premises or on reaching them"[61], granting not only priority rights but also other more favourable conditions, such as those relating to the maximum number of days of agile working permitted[62].

A similar situation can be observed in the metalworking sector, where there is significant dynamism at company level. Here, in order to "facilitate the reconciliation of work with other responsibilities or personal needs (e.g. […] the management of personal and family commitments, including those related to situations of disability)"[63], company agreements have granted priority in the allocation of agile working to various categories of workers, including vulnerable employees

[58] Article 18(3-*bis*), Law no. (1/2017.

[59] M. BROLLO, *Lavoro agile: prima gli anziani?*, in V. FILÌ (ed), *Quale sostenibilità per la longevità?*, cit., 70; P. BOZZAO, *Longevità lavorativa e politiche di welfare: nuove sfide e prospettive*, cit., 24-25.

[60] NCA for the Chemical-Pharmaceutical Industry, articles 47 and 60.

[61] Linde (25/07/2022).

[62] Air Liquide (15/04/2021); Linde (25/07/2022).

[63] Leonardo (21/05/2021).

and those facing difficulties in caring for non-self-sufficient elderly family members[64].

The situation in the tertiary sector appears similar, with the national collective agreement merely incorporating the 7 December 2021 Protocol without providing a specific regulatory framework[65], and company-level bargaining instead establishing rights linked to workers' personal needs. This is the case, for example, in the Ifoa agreement of 15 February 2023, where certain categories of workers—including workers with disabilities and workers with elderly parents who are totally non-self-sufficient—are granted priority with regard to any extension beyond the maximum number of days during which work may be performed in agile mode. It should also be noted that, in some cases, collective agreements provide for recourse to telework in relation to the worker's specific subjective needs. This occurs, for example, in the HP Italy agreement of 1 March 2019, under which, in the presence of serious and documented family situations—including loss of personal autonomy or family care and assistance obligations—the worker may perform their duties in telework for a period not exceeding six months, extendable for a further six months. Without addressing here the conceptual differences between agile working and telework[66], it is likely that, through this provision, the company-level social partners intended—by means of a more intensive form of protection—to emphasise the possibility for workers with serious care responsibilities to perform their work entirely remotely[67].

In conclusion, it may be observed that, in the experience of company-level collective bargaining, priority rights in access to agile working are primarily recognised in cases involving carers and workers with disabilities, a category which, in light of established case law on sick-leave thresholds, can reasonably be understood to include workers with chronic illnesses as well[68]. By contrast, among second-level agreements there are

[64] IMA (04/12/2021).

[65] NCA for the Tertiary Sector, Distribution and Services, appendix no. 9.

[66] M. TIRABOSCHI, *Il lavoro agile tra legge e contrattazione collettiva: la tortuosa via italiana verso la modernizzazione del diritto del lavoro*, in *Diritto delle relazioni industriali*, 2017, n. 4, 944-946.

[67] C. ALESSI, *Lavoro e conciliazione nella legislazione recente*, cit., 819.

[68] Supreme Court, 31 march 2023, no. 9095, in *Giurisprudenza Italiana*, 2023, no. 10, with a note by V. FILÌ, *Superamento del comporto di malattia e rischio di discriminazione indiretta per disabilità*, 2145-2150, and in *Rivista italiana di diritto del lavoro*, 2023, no. 2, II, with a note by A. DONINI, *L'applicazione indistinta del comporto è discriminatoria se la malattia è riconducibile a disabilità*, 254-261.

no instances in which priority access to agile working is granted to older workers in the absence of specific pathological conditions[69].

6. Conclusions

The analysis carried out has made it possible to identify the main interventions implemented by collective bargaining with regard to working time in response to the needs of older workers, workers with chronic illnesses or disabilities, and workers with significant family care responsibilities. These are undoubtedly important measures, but they suffer from the limitation of not being systemic and, in many cases, from shortcomings in terms of their actual enforceability.

From this perspective, renewed impetus to collective provisions on the modulation of working time in relation to the worker's subjective needs could derive from an assessment of the extent to which the measures in question are consistent with the EU legal framework. In particular, Article 9 of Directive (EU) 2019/1158, already referred to above, recognises in favour of parents and carers the right to request flexible working arrangements[70], which—by ensuring that the worker's personal needs may prevail over work organisation[71]—would entail an obligation on the employer either to adapt the organisation to the worker's needs or to provide reasons for refusing or postponing access to flexible working arrangements[72]. Alongside this provision, Article 5 of Directive 2000/78/EC has long established an obligation to provide reasonable accommodation in order to ensure compliance with the principle of equal treatment of persons with disabilities. In this regard, it should be emphasised that, by virtue of the bio-psycho-social notion of disability—already adopted in EU and domestic case law and now incorporated into

[69] From this perspective, the provision recently introduced by article 5(2) of Legislative Decree no. 29/2024 does not, for the time being, appear to have met with particular success. That provision places an obligation on employers to adopt all initiatives aimed at facilitating older persons – defined as those over 65 years of age – in performing their work, even partially, in agile mode. In this regard, however, interesting insights had already emerged prior to the legislative decree: see F. MALZANI, *Il lavoro agile tra opportunità e nuovi rischi per il lavoratore*, in *Diritti, lavori, mercati*, 2018, no. 1, 34-35.

[70] This right would be directly enforceable.: see C. ALESSI, *La flessibilità del lavoro per la conciliazione nella direttiva 2019/1158/UE e nel d.lgs. 30 giugno 2022 n. 105*, cit., 93-94.

[71] M. MILITELLO, *Tempi di lavoro e conciliazione. L'orario di lavoro scelto come strumento di parità*, cit., 61 and 65.

[72] C. ALESSI, *La flessibilità del lavoro per la conciliazione nella direttiva 2019/1158/UE e nel d.lgs. 30 giugno 2022 n. 105*, cit., 91-92.

the national legal system through the rewriting of Article 3 of Law No. 104/1992 by Legislative Decree No. 62/2024—the protection afforded by reasonable accommodation, defined as "necessary, appropriate and suitable measures and adjustments that do not impose a disproportionate or undue burden on the obligated party" [73], may concern all workers who present "a limitation […] which […] may hinder full and effective participation […] in professional life on an equal basis with other workers […] where that limitation is long-term"[74], as is the case, for example, with chronic illness.

Beyond the similarities and differences between the two normative frameworks[75]—and, above all, the rules through which the Italian legislature has transposed them into domestic law[76]—it is nevertheless clear that, also in the case of the obligation to provide reasonable accommodation, implemented in the Italian legal system through Article 3(3-bis) of Legislative Decree No. 216/2003[77], there arises, similarly to what occurs with access to flexible working arrangements, a right on the part of the worker to have their work performance adapted to their subjective conditions, while a breach of the general obligation to provide reasonable accommodation by the employer constitutes discriminatory conduct.

In this sense, it has been observed, for example, that access to agile working may constitute a reasonable accommodation[78], but the same could equally be said of other measures such as flexitime or other forms of flexible work aimed at adapting work performance to the employee's needs in order to ensure its sustainability.

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[73] Article 5-*bis*, Law no. 104/1992. See F. CUCCHISI, *L'inclusione lavorativa delle persone con malattie croniche e trapiantate: il crocevia degli accomodamenti ragionevoli*, in *L'impatto delle dinamiche demografiche sul mercato del lavoro*, Adapt University Press, 2025, 42-73.

[74] Court of Justice of the European Union 11 april 2013, joined causes C-335/11 e C-337/11, *HK Danmark*.

[75] R. SANTAGATA DE CASTRO, *Work-life balance, flessibilità dell'orario di lavoro e discriminazioni*, cit., 66-71.

[76] See above, note no. 52.

[77] D. GAROFALO, *La tutela del lavoratore disabile nel prisma degli accomoda-menti ragionevoli*, in *Argomenti di diritto del lavoro*, 2019, n. 6, I, 1228-1232.

[78] M. BROLLO, *Le dimensioni spazio-temporali dei lavori: il rapporto individuale di lavoro*, in *Le dimensioni spazio temporali dei lavori. Atti Giornate di studio AIDLaSS. Campobasso, 25-26 maggio 2023*, La Tribuna, 2024, 49; V. FILÌ, *Longevità vs sostenibilità. Prove di resistenza*, in V. FILÌ (ed), *Quale sostenibilità per la longevità?*, cit., p. XVII. In any case, it is also the National Protocol on Agile Work in the Private Sector, signed on 7 December 2021, which, in article 10, provides that access to agile work is to be considered as a form of reasonable accommodation.

With regard to the worker's subjective conditions, it has therefore been noted that the obligation to provide reasonable accommodation would assume "systemic importance in assessing the legitimacy of the exercise of managerial powers in their broader dimension, relating to the organisation as a whole rather than to the individual employment relationship"[79], since, through this obligation, the employer is required to redesign work organisation so as to allow the effective participation of all protected workers in professional life on an equal footing with other employees.

Despite the potentially disruptive effect that the application of the obligation to provide reasonable accommodation may have on organisational structures, it should nevertheless be emphasised that this solution too may appear, like many of those introduced so far both by the legislature and by the social partners, as "conservative or defensive in nature"[80].

The ongoing demographic changes would in fact call for a more comprehensive intervention on working time, one that aspires to have a structural impact on the labour market through a rethinking of the techniques used to measure work performance, taking into account the changing composition of subjectivities present in labour markets and production contexts.

Such an intervention, which would therefore entail calling into question the centrality of the hour of work in measuring work performance[81] in order to reassess the contribution of the working person and their capabilities[82], would make it possible, in light of the worker's subjective needs, to free work performance from rigid temporal determination.

The outlined paradigm shift would also have significant implications for the organisational dimension of work, since it would make it possible to design "a less hierarchical and more network-based organisation of work, enabling people to work by objectives, possibly also ensuring greater flexibility in working hours in order to adapt to the different needs

[79] R. VOZA, *Eguaglianza e discriminazioni nel diritto del lavoro. Un profilo teorico*, in *Diritto antidiscriminatorio e trasformazioni del lavoro. XXI Congresso nazionale AIDLaSS Messina 23-25 maggio 2024*, La Tribuna, 2025, 100.

[80] M. TIRABOSCHI, *Salute e lavoro: un binomio da ripensare. Questioni giuridiche e profili di relazioni industriali*, cit., 260-261.

[81] M. TIRABOSCHI, *Salute e lavoro: un binomio da ripensare. Questioni giuridiche e profili di relazioni industriali*, cit., 263.

[82] R. DEL PUNTA, *Is the Capability Approach Theory an Adequate Normative Theory for Labour Law?*, in B. LANGILLE (ed), *The Capability Approach to Labour Law*, Oxford University Press, Oxford, 2019, 94-99.

determined by more advanced age" [83], as well as by the need to protect workers' health through a preventive rather than exclusively curative approach[84], with particular attention to the individual worker's subjective conditions.

Taking up the challenge of governing this transformation of the labour market—by determining criteria alternative to working time for measuring work performance, starting from the specific results expected from the employee[85]—could therefore fall to collective bargaining, which, through coordination among its different levels, could develop more incisive solutions for adapting work performance to the needs of individual workers.

In conclusion, the challenge of constructing "a human-centred system of law"[86], in a context characterised by major transformations reshaping the labour market and profoundly altering the relationship between the working person and their work, cannot but have an impact on working time. From this perspective, the recognition of new spaces of freedom and autonomy for workers in light of their subjective conditions should be viewed favourably, thereby giving concrete form to the aspiration for "a work activity that is less commodified and less driven by the imperatives of the clock, less blind and heteronomous: in a word, less alienated" [87].

[83] V. FILÌ, *Longevità vs sostenibilità. Prove di resistenza*, cit., p. XIV.
[84] M. PERSIANI, *A cinquanta anni dal Testo Unico degli infortuni sul lavoro: profili costituzionali*, in *Argomenti di diritto del lavoro*, 2016, n. 2, I, 233.
[85] M. BROLLO, *Le dimensioni spazio-temporali dei lavori: il rapporto individuale di lavoro*, cit., 83.
[86] U. ROMAGNOLI, *Un diritto a misura d'uomo*, in *Rivista critica del diritto privato*, 1989, n. 3, 285.
[87] R. DE LUCA TAMAJO, *Il tempo nel rapporto di lavoro*, in *Giornale di diritto del lavoro e delle relazioni industriali*, 1986, n. 31, 473.

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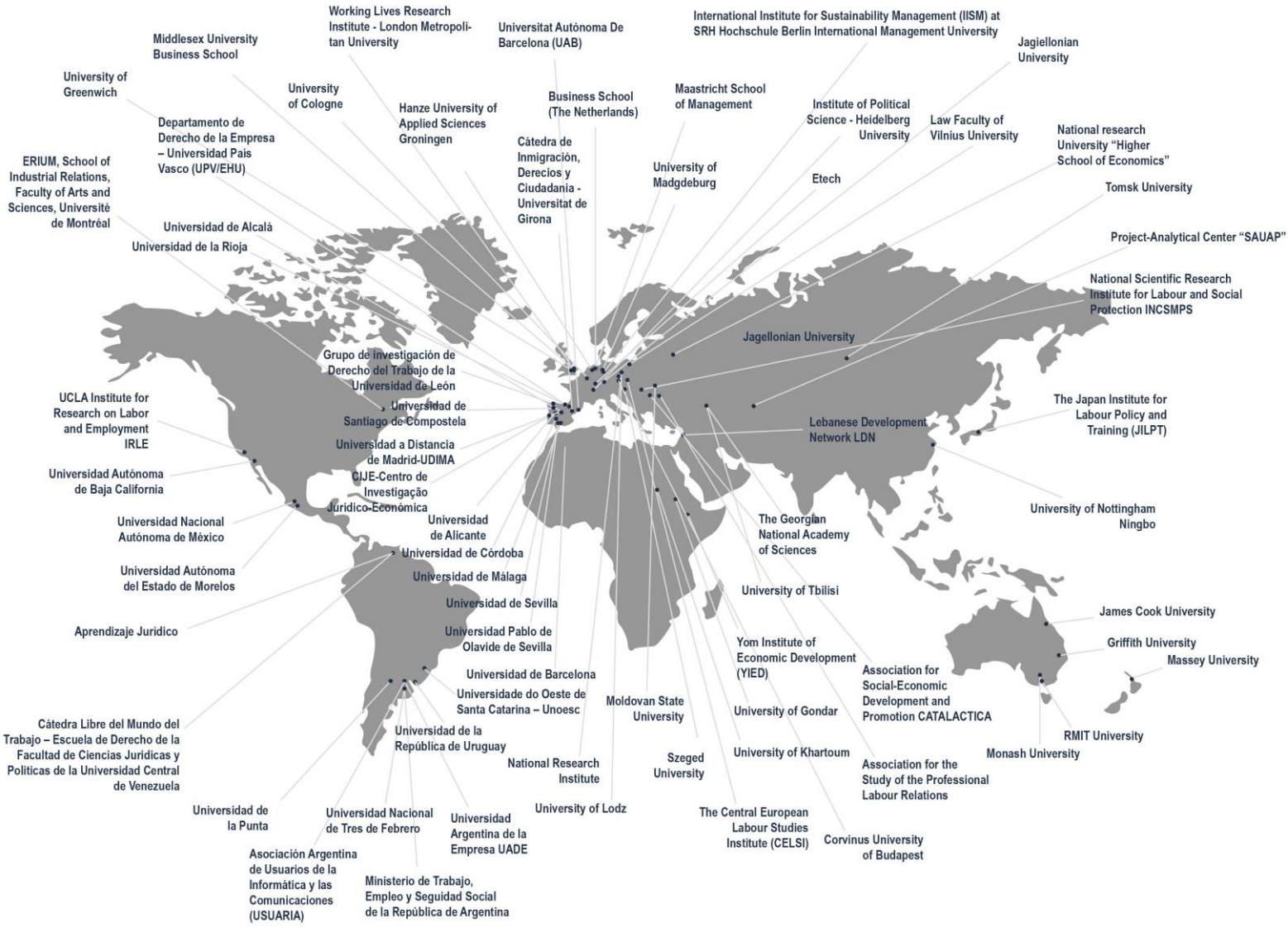

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