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# Health and Work: The Italian Perspective on a Relationship in Need of a Review

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**Abstract:** In the context of the new great transformation, occupational health and work are increasingly overlapping, among others, because of new workplaces, remote work, and new working arrangements. In this context, labour law research has engaged in the challenging task of reviewing the ever-fluid notion of work organisation, pointing to major differences between labour market insiders and outsiders. This paper focuses on a review of the link between occupational and work, which concerns the relationship between individuals and work. It is important to update the current social security model, especially about concepts such as 'occupational risk' or 'work-related risk', which should now consider the dynamics of transitional labour markets, which has been aptly referred to as 'risk society. These new risks and the progress made in medicine poses questions concerning the need for a new social security system that keeps up with post-industrial society.

**Keywords:** *Labour Law; Work; Italy; Occupational Health; Safety.*

## 1. Health and Work: A Long-standing Link

Legal research into the relationship between health and work is now well established, gathering momentum in Italy and elsewhere as a result of the economic and social changes triggered by the First Industrial Revolution. It is safe to argue that the first attempts to ensure employee protection – through legislation or collective solidarity – focused precisely on the health-related issues arising out of unregulated industrialisation and its detrimental effects.

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A part of the literature has labelled this phenomenon 'quiet genocide', with the patchwork legislation put forward to deal with it that was poorly enforced, because 'standing and watching' seemed to be the watchword. These laws were mostly concerned with health and safety in the context of highly dangerous and unhealthy production and work settings, in which the number of deadly accidents and injuries was far higher than that reported by official statistics. One reason for this discrepancy was that these incidents were seen as more resounding – and therefore more socially relevant – than occupational diseases, which took longer to manifest.

Despite the close link between health and work, it was only in 1929 that a compulsory insurance against occupational diseases was envisaged in Italian legislation. This was done through Royal Decree No. 928, which entered into force on 1 January 1934, 35 years after the measures put forward against occupational injuries. The provisions concerning insurance against both occupational diseases and injuries were subsequently brought together in Royal Decree No. 1765 of 17 August 1935.

For a long time, lawmakers in Italy and overseas only encouraged mutual support taking place voluntarily to face the issues above, in line with the liberal ideology of the period. However, as early as the nineteenth century – a few years after the proclamation of the unity of Italy – the Advisory Committee for Work and Social Welfare was established. Initially set up for reasons of public order, the Committee was later tasked with laying down the first legislation governing the insurance against occupational injuries in Italy. The underlying assumption of this law – which is still deeply rooted in today's academic and public debate – was that occupational injuries and diseases were unavoidable events, so putting them down to fatality had long been seen as a way to justify them.

This approach gave rise to the legal problem of identifying more specific criteria to assess the social costs resulting from occupational diseases and injuries. Concurrently, an increasing awareness started to make inroads whereby a new provision was necessary to face an issue that could no longer be dealt with through civil law or legal complaints lodged by workers becoming disabled or victims' families to seek damages. One reason for this state of affairs was that, in many cases, it was impossible to attribute responsibility. While the rule of thumb was to regard the employer contractually responsible, this new legislation – which underwent a long and winding drafting process – also stressed the social

dimension (what today we would call 'a systemic response'[1]) of the link between health and work. In other words, the attempt was to protect 'working people' – or, rather, 'people living off their work' – from occupational risks, irrespective of whether they would take place. What followed is well known, namely the establishment of wide legislation which, according to relevant research, establishes "clear obligations for employers in terms of occupational health based on Public Law and regardless of workers' behaviours"[2]. By way of example, pursuant to Article 2087 of the 1942 Civil Code, workers are not held responsible as long as they comply with the provisions laid down in companies' health and safety regulations[3]. When attempting to harmonise Occupational Health and Safety (OHS) legislation and the rules put in place in the Civil Code, a further clarification was added on the fact that, in the context of the employment relationship, the principle of prevention should be adopted, in line with the Italian Constitution. This implied the obligation to ensure employee safety in the employment contract[4] – an aspect which is given priority over any form of compensation – by adopting "necessary provisions or measures depending on one's work, experience and skills, to prevent or reduce work-related risks and to promote the health of the population and the integrity of the environment"[5]. However, if we consider Italy's production – which mostly consists of small- and medium-sized companies with high rates of illegal gangmastering and unregulated outsourcing particularly affecting migrant workers – this massive and advanced set of rules is not fully implemented in practice[6]. One reason for this is "the drastic decrease in employee participation in OHS issues"[7], perhaps due to the economic crisis and its consequences on remuneration and employment, which were the aspects prioritised by

[1] It seems that social security at the time was in its infancy. On this point, see *Social Insurance and Allied Services*, Report presented to Parliament by Command of His Majesty, London, 1942, esp. pp. 35-43, where it was hoped that a shift would take place from workers' mere compensation schemes to a 'Unified Plan of Social Security'.

[2] See L. BARASSI, *Il diritto del lavoro*, cit., p. 235.

[3] See, L. BARASSI, *Il diritto del lavoro*, p. 234, who argues that "any measures would be ineffective without sound information aimed at raising awareness among workers".

[4] See, P. ALBI, *Adempimento dell'obbligo di sicurezza e tutela della persona. Art. 2087*, Giuffrè, 2008, pp. 125-149.

[5] Art. 2, par. 1, lett. *n*, d.lgs. n. 81/2018. On the principle of prevention and its scope of application, see, S. BUOSO, *Principio di prevenzione e sicurezza sul lavoro*, Giappichelli, 2020.

[6] In relation to trade union and legal achievement at the end of the 1970s, see G. BERLINGUER, *La salute nelle fabbriche*, De Donato, 1969, pp. XXII and XXXI.

[7] See S. RENGA, *Modello sindacale di tutela della salute nei luoghi di lavoro dal dopoguerra agli anni Novanta*, in *LD*, 1994, p. 636.

trade unions. As a result, rhetoric prevailed over the genuine promotion of a culture of security[8].

## 2. State of the Art and Limits of Labour Law Research and the Contribution of Industrial Relations Actors. Legal Rules Protecting Work and the Constitutional Value of Health

In the context of this paper, it is not possible to go through the 100 years of events that led to the legal and institutional framework governing the intertwining between health and work, and through the implementation of specific organisational models. This would also mean considering the ever-changing relationship between people at work, their workplace (the 'risk community', which can also include people not directly operating at the company) and the relevant risk factors. In a similar vein, it is beyond our expertise to provide an impact assessment of constantly-evolving work, which is however important to go beyond a purely illustrative description of OHS legislation, the effectiveness of which is often questioned[9].

For the purposes of this research, it is enough to say that little has changed in relation to the way the link between health and work is conceived of. In other words, while great strides have been made concerning OHS legislation – also thanks to the implementation of EU rules – there are two scenarios in which the relationship between health and work is prioritised when labour law and industrial relations are considered. The first is concerned with health conditions leading to inability to work – be it temporary, permanent or partial – and the relative measures adopted by the parties (e.g., suspension of the employment relationship, prohibition of dismissal, the establishment of a period during which workers cannot be terminated, on-call duty, higher levels of mobility as a ground for termination) also in terms of economic support (e.g., sickness and disability benefits, supplementary income, funds for home care services). The second is about the employer's obligation to ensure healthy workplaces and, should a dangerous incident arise, to

[8] See M. RUSCIANO, *"Retorica", "cultura" ed "effettività" della sicurezza del lavoro*, in P. PASCUCCI (ed.), *Il testo unico sulla sicurezza del lavoro*, Grafica e Stampa Studio Centrone, 2007, pp. 149-153. See also P. PASCUCCI, *Prevenzione, organizzazione e formazione. A proposito di un recente libro sulla sicurezza sul lavoro*, in *DSL*, 2016, pp. 64-65.

[9] On this point, U. ROMAGNOLI, *Il lavoro in Italia*, il Mulino, 1995, p. 184, is still widely referred to, as he referred to OHS legislation as being as "intimidating as a mouse's roar".

assess the possible causal link in order to apply rules for compensation (e.g., failing to comply with security duties, occupational diseases, health damage). As a result of this state of affairs, the protection of health "as a fundamental right of the individual and as a collective interest" (Article 32 of the Italian Constitution) in the context of the employment relationship is understood by labour lawyers as a mere analysis of the legal rules used by lawmakers and industrial relations actors to strike a balance between the interests at play[10] and of relevant case law. This is certainly the case with occupational health featuring high levels of formalism – i.e., this means understanding the causal link between rules and their compliance to assess whether sanctions should apply – which is also used to evaluate if the employer's powers should be limited in terms of work organisation and production processes. Examples of the way this approach is used include: risk prevention, workplace management, risk identification, work equipment, personal protection equipment (PPE), biological and physical agents, the threshold limit values for dangerous substances, and health surveillance. This approach is also applied to the concept of 'disease', which fails to include today's concept of 'health'. Labour lawyers are therefore required to apply the same criteria to assess the dangerous incident, its effect on the employment relationship, the parameters to determine the period during which the worker cannot be dismissed, the procedures making termination unlawful and, more generally, compensation and social security rights. Significantly, legislation states that the notion of 'health' – as applied in labour law and industrial relations – is wider than that of 'disease', for the former indicates 'physical, mental, and social well-being, not consisting merely of the absence of a disease or infirmity'[11]. Consequently, labour lawyers do not deal with all aspects concerning compliance with legislation related to occupational health or protection in the event of a disease. These aspects are attended to by doctors, labour psychologists and organisational experts.

If these are the limits of labour law research and the contribution of industrial relations actors – we must agree with the outstanding work of a scholar of the twentieth century related to the concept of 'disease' in the context of the employment relationship. He argues that "hiding behind technicalities" explains why legal sciences have devoted "limited

[10] With reference to the "suitability" of the techniques used to balance the "interests arising in the context of one's disease", see R. DEL PUNTA, *La sospensione del rapporto di lavoro. Malattia, infortunio, maternità, servizio militare. Artt. 2010-2011*, Giuffrè, 1992, p. 21.

[11] Art. 2, par. 1, lett. *o*, d.lgs. n. 81/2008.

attention" to the link between health and work[12]. It is also not surprising that workers' health and safety is delegated to external consultants whose highly specialised contribution is poorly integrated with the company's culture and its organisational processes (e.g., technology used, people involved, power relations, operational systems and procedures, training). What has been said above should also consider that currently reference is mostly made to salaried workers, so the plethora of OHS rules applying to this form of employment is difficult to implement to an increasing number of workers who are hired by the company on a casual basis.

## 3. Health and Work in the Context of the New Great Transformation: Demography, Technology and the Ecological Transition

In considering the current ecological transition, it is only right – though not completely new – to analyse occupational health against the wider background of environmental health, to link what happens in workplaces and elsewhere and vice versa. This approach is well known to both industrial relations actors and labour lawyers, especially in relation to the environmental risks that have characterised all industrialisation processes and that created tensions between one's right to health and to work.
Adopting an ecological transition perspective seems to confirm the arguments that the new great transformation[13] has eroded the cultural paradigms and principles that were peculiar to industrial society, giving way to "risk society"[14]. In the latter, widespread technology and economic rationality produce many risks for humanity (e.g., pollution, diseases, pandemics, and accidents) blurring the boundaries between natural and technological disasters[15] and, therefore, the ideal dividing line between nature and society[16].
A different approach should be used when discussing the impact of industrialisation processes on the labour market and the decline of manufacturing, with the latter witnessing a significant decrease in terms of

[12] See R. DEL PUNTA, *op. cit.*, pp. 21-22.
[13] This conceptualisation is widespread today and refers to Polanyi's theories (1944) – see F. SEGHEZZI, *La nuova grande trasformazione. Lavoro e persona nella quarta rivoluzione industriale*, ADAPT University Press, 2017.
[14] U. BECK, *La società del rischio. Verso una seconda modernità*, Carocci, 2013.
[15] See M. TIRABOSCHI, *Prevenzione e gestione dei disastri naturali (e ambientali): sistemi di welfare, tutele del lavoro, relazioni industriali*, in *q. Rivista*, 2014, pp. 573-605.
[16] U. BECK, *op. cit.*, p. 105.

people employed in Italy (from 8,228 million in 1970 to 4,682 million in 2020). While reducing the number of jobs and making the boundaries between professional and private life increasingly fuzzy, this process has also given rise to a substantial body of legal research into the new risks to people's health[17]. As a result, it was possible to point out[18] the negative consequences for health and well-being well before the digital transition and the changes brought about by the Fourth Industrial Revolution. These changes were caused by a combination of the following: unstable employment, automation, atypical working hours, endemic unemployment, low salaries and labour market polarisation.

This research perspective – which is widespread in Anglo-Saxon countries but little known in Italy – has also considered the links between the lower relevance of trade unions and collective bargaining and people's health, pointing to major differences between labour market insiders and outsiders[19]. This aspect further confirms the relationship between good working conditions and workers' well-being, which goes beyond trade unions' identification of risk factors and prevention in workplaces, paving the way for novel forms of integration between occupational and public health.

Defining psychosocial risks as an emerging phenomenon[20] might be an overstatement, particularly if one considers the considerable research characterising the first stages of the Industrial Revolution. Those studies were intended to point out that working conditions were detrimental to people's health but also alienating because new production processes turned individuals into 'inert cogs', similar to machines[21].

However, the new attention brought to this issue points to an increasing awareness of people's health in the workplace, of which traditional

[17] See M. TIRABOSCHI, *Nuovi modelli della organizzazione del lavoro e nuovi rischi*, cit.

[18] See P. ICHINO, *The Changing Structure and Contents of the Employer's Legal Responsibility for Health and Safety at Work in Post-Industrial Systems*, in *IJCLLIR*, 2006, esp. pp. 609-610.

[19] An analysis covering 33 countries from 1981 to 2018 is provided in L. SOCHAS, A. REEVES, *Does Collective Bargaining Reduce Health Inequalities between Labour Market Insiders and Outsiders?*, in *Socio-Economic Review*, 2022, pp. 1-36.

[20] This is the approach taken by EU institutions and the relevant literature. See L. LEROUGE (ed.), *Risques psychosociaux au travail. Etude comparée Espagne, France, Grèce, Italie, Portugal*, L'Harmattan, 2009, e L. LEROUGE, *Les risques psychosociaux en droit: retour sur un terme controversé*, in *DS*, 2014, pp. 152-164. See the literature review provided in V. SUHARD, M.O. SAFON, *Santé et travail. Bibliographie thématiquee*, Centre de documentation de l'Irdes, 2020, pp. 5-65.

[21] See the literature review referred to in *Una lezione dal passato per inquadrare il tema dei rischi psicosociali*, in M. TIRABOSCHI (ed.), *op. cit.*, vol. I, pp. 197-236.

'injuries' are only one side of the coin. Work-related, health problems are tricky because of the time needed to manifest, the establishment of the causal nexus between work and the possible disease, especially in the case of atypical working schemes. These working arrangements fail to take into account the modern legal interpretation of the notion of 'health', which goes beyond occupational diseases.

Consideration shall also be given to those situations leading up to increasing discomfort and vulnerability, which can be found in the labour market. Directly or indirectly, they result from people's work and in many cases represent the tip of the iceberg as their origins are still under-researched[22]. Significantly, advances in occupational medicine have focused on strenuous jobs and 'differential mortality', namely the link between one's life expectancy and the type of work, also taking into account employment status and contractual arrangements. Consequently, the major legal implications for OHS should be considered against the backdrop of the digital revolution, platform work, nanotechnology, collaborative robotics, artificial intelligence, and remote working[23].

While contributing to substantial research on this topic[24], making use of a technical approach risks being of little use[25] if no consideration is given to the evolution of the notions of 'health' and 'work' underpinning the new great transformation of work.

In the context of this evolution, occupational health and public health are increasingly overlapping, among others because of new workplaces, remote work, and new working schemes.

In considering current technological changes, labour law research has engaged in the challenging task of reviewing the ever-fluid notion[26] of 'work organisation'. Drawing on the insights of Montuschi[27], work

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22 The arguments put forward in S. GRAMMENOS, *Illness, Disability and Social Inclusion*, Eurofound, 2003, p. 1 are still relevant.

23 See F. CARNEVALE, *La salute e la sicurezza dei lavoratori in Italia. Continuità e trasformazioni dalla Prima Rivoluzione industriale a quella digitale*, cit., pp. 117-130, and L. LEROUGE (ed.), *La numérisation du travail: enjeux juridiques et sociaux en santé au travail*, L'Harmattan, 2021.

24 See the literature review provided in L. CASANO, F. SEGHEZZI (eds.), *Le trasformazioni del lavoro: un percorso di lettura*, in M. TIRABOSCHI (ed.), *op. cit.*, vol. II.

25 One example of this is the pointless distinction between a model based on prevention and the other based on precaution when discussing technological risks, the long-term impact of which are still unknown.

26 See P. PASCUCCI, *Il Testo Unico sulla salute e sicurezza sul lavoro: spunti di riflessione (a fronte dei cambiamenti in atto) e proposte di modifica*, in M. TIRABOSCHI (ed.), *op. cit.*, vol. I, pp. 499-518.

27 Cfr. L. MONTUSCHI, *Diritto alla salute e organizzazione del lavoro*, cit.

organisation is now understood as the foundation for an effective prevention model against health and safety risks. Yet some other aspects need to be considered that are seriously impacting the labour market, for instance, those produced by demographic changes. They contribute to altering the perception of technological development and its effects on work and its risk factors (also in organisational terms) to the point that the traditional system of protection and the link between health and work as understood by labour law scholars and industrial relations actors is now being questioned.

For instance, demographic changes include the increasing participation of women in the labour market – which in Italy is still lower than in other European countries – and the massive presence of immigrants in the workforce, which call for a review of the prevention system. Further aspects to consider are the fact that people are staying longer at work and that the workforce is averagely older than in the past – here, employee grading systems do not help workers to change work and tasks as time passes by – leading to higher public expenditure on welfare systems.

The ageing of the population has been long investigated by labour law research. Yet the focus has been on the protection supplied to senior workers against possible forms of discrimination and the economic incentives allocated to prevent them from being pushed out of the labour market, which is not always related to skill obsolescence due to growing technological development. Only rarely is the question dealt with taking into account the specific problems concerning senior workers' safety and the risk of occupational diseases. Nevertheless, this approach is based on the traditional notion of 'time', 'length of service' and 'work' understood as salaried employment. The underlying assumption is that the problem for senior workers is the relationship between work and the reduced capacity to work, but this might depend also on qualitative factors and not only on the time needed to perform work (e.g., type of job, employment status, health status, personal motivations, working climate, company policies related to mature workers), as well as on the difficulty of engaging in occupational transitions in today's labour market. Senior workers are therefore seen as a vulnerable category. The alternative to their early exit from the labour market as a way to reduce costs is often the widespread recourse to part-time working schemes or policies of 'generational handover'.

Investigating OHS from a legal perspective is necessary if one looks at demographic trends, i.e., the impact of low natality rates on the labour market and the welfare system, which calls for measures promoting active ageing and the employability of senior and retired workers.

What is still missing is a cultural perspective – which should develop in line with the evolution of life expectancy and societal changes – which challenges the assumption that senior workers are no longer able to work, promoting the idea that ageing is not a disease.

Today's Italian labour market has changed in terms of structure and composition. According to the National Institute of Statistics (ISTAT), the number of workers in the 50–64-year-old age group has doubled in the last twenty years – from 4,358,000 in 2002 to 6,008,000 in 2012, reaching 8,327,000 in 2022. This means that approximately one out of three workers (36%) are older than 50 years old, with all the problems that this entails in relation to what has been said so far.

For example, one issue that needs attention is chronic diseases, which do not necessarily cause disability or the inability to work. According to the Ministry of Health, 26% of people in the 50–64-year-old age group are affected by a chronic disease (6% of them have more than one). As of 2019, out of a total population of more than 13,000,000 people, 3,400,000 people in the 50–64-year-old age group and 2,300,000 people in the 18–49-year-old age group suffer from a chronic disease.

Mental illnesses also need more consideration. According to the World Health Organisation (WHO) 970,000,000 people (13% of the population) suffer from mental issues, which affect their social and working lives in different respects[28]. Yet these statistics fail to capture the entire picture. Malaise, discomfort, and depression are increasingly widespread among people without taking the form of certified illnesses that need medical treatment. Significantly, recent studies in occupational medicine and work organisation go beyond the notion of 'diversity management'[29], placing more emphasis on neurodiversity in order to strike a balance between productivity and inclusion[30].

Consequently, the focus cannot be only on certified illnesses, occupational health, economic incentives and retraining targeting senior workers. The important issue to consider is how to proactively manage an increasingly diverse workforce in relation to their psycho-physical status, or in the event of a non-disabling condition that may affect workers' employability,

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[28] *World Mental Health Report: Transforming Mental Health for All*, World Health Organization, 2022, p. 40, and the taxonomy therein.

[29] Cfr. M. BOMBELLI, A. LAZAZZARA, *Superare il Diversity Management. Come alcune terapie rischiano di peggiorare le malattie organizzative*, in *Sociologia del Lavoro*, 2014, pp. 169-188.

[30] Cfr. B. BLACKBURN, *Managing Neurodiversity in Workplaces*, in *Occupational Medicine*, 2023, pp. 57-58.

productivity, motivation, participation and fulfilment of a company's goals if no measures are taken.
Arguably, it is at this stage that labour law scholars can provide their most significant contribution, for instance, to ensure that the constitutional principle of equality is applied examining each situation on a case-by-case basis.
This approach would also consider workers' relationships with their work environment and would be more in line with the notion of 'health' provided by the WHO in 1948, which includes physical, mental and social well-being. Demographic changes should not only entail 'active ageing' policies. Rather, they should prompt a review of the link between health and working conditions, promoting workers' employability which cannot be ensured by technical solutions[31] and one-size-fits-all policies.

## 4. Health and Work Today

Labour law scholars are not tasked with dealing with complex medical issues and healthcare policy questions that call for a review of the link between health and work and led many to refer to the notion of 'Total Worker Health'. This concept involves initiatives aimed at bringing together occupational health and employee well-being, which is generally understood, and refers to the awareness that work can benefit health in terms of active ageing, which for many has now become a necessity.[32]
Nevertheless, the arguments put forward thus far should prompt us to go beyond the significant evolution – in terms of legal interpretation and case law – of outdated rules which were intended for economies and societies which no longer exist or are slowly disappearing.
This is true if one also considers the recent trends in anthropology, psychology and occupational medicine, which tell us that the legal problems to be faced are not only those resulting from the already-known tensions between public or company policies concerning Total Worker Health and their harmonisation with workers' private lives.

[31] Cfr. I. SALMON, J.-Y. JUBAN, E. ABORD DE CHATILLON, *Il est temps pour la gestion des âges de prendre sa retraite: une revue de littérature*, in *Recherche en Sciences de Gestion-Management Sciences-Ciencias de Gestión*, 2022, pp. 127-150.
[32] See I. TABTI-SALMON, *De la "gestion des âges" à la "gestion de l'employabilité et des parcours par la santé au travail": le cas français: une analyse renouvelée des pratiques de gestion des ressources humaines*, Université Grenoble Alpes, 2019, who points out how in Western societies the issue of the ageing of the workforce is still seen mostly from a purely economic perspective, i.e., in terms of costs and risks for the social model.

Managing these issues through legal rulings or by amending existing legislation to adapt to novel health and safety issues – e.g., an older and more vulnerable workforce – is not enough and poses sustainability issues for people at work. This is the case if we apply the conclusions reached through interdisciplinary analyses to the labour law sphere, namely that "workers are all different from one another"[33] and that all people are highly vulnerable[34], so targeted responses are needed.

As a result, policies related to work-life balance and those concerning equal opportunities need a review, prioritising a work-health-life balance[35] to concretely adapt work to individuals and not vice versa, as rightly referred to in protection legislation[36].

A case in point is oncological diseases, which are increasingly widespread among the population. In Italy, let t, par. 1 of Article 46 of Legislative Decree No. 276/2003 and Article 12-bis that was added to Act no. 61/2000 established that workers diagnosed with a tumour and a limited ability to work (also because of life-saving therapies) had the right to convert their full-time job into a part-time one[37]. Although this provision was introduced in many collective agreements, the associations of people with oncological conditions report that only a limited number of them (some 7%) made use of this working arrangement.

Reasons for this state of affairs include the rigidity of this tool, which does not provide flexible working hours or different places of work; social and cultural issues (the stigma of being a worker with oncological conditions and their willingness to be active); the reduced remuneration resulting from working part-time, which is not enough to cover the additional costs needed for treatment.

A further example, which is particularly significant in social terms and for the impact it has on many employment relationships, is chronic diseases, which also include mental illnesses. This is a health condition that also affects people who are still at work. While the legal solutions provided are

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33 C. MARDON, S. VOLKOFF, *Emploi des "seniors" et conditions de travail: une étude statistique comparative entre pays d'Europe*, in *Perspectives Interdisciplinaires sur le Travail et la Santé*, 2011, p. 16.

34 Cfr. F. CEMBRANI, *La vulnerabilità ed il mito (ripensato) dell'autonomia razionale*, in *Rivista Italiana di Medicina Legale*, 2022, p. 940.

35 This is demonstrated by wellness-at-work practices in Anglo-Saxon countries. See M. TIRABOSCHI, *Le nuove frontiere dei sistemi di welfare: occupabilità, lavoro e tutele delle persone con malattie croniche*, in *q. Rivista*, 2015, pp. 713-717.

36 Cfr. Art. 6, par. 2, let. *d*, Council Directive 89/391/EEC of 12 June 1989.

37 For further information, see M. TIRABOSCHI, *Le nuove frontiere dei sistemi di welfare: occupabilità, lavoro e tutele delle persone con malattie croniche*, cit., pp. 710-713.

effective in the context of individual employment relationships, they present some shortcomings when the relationship between health and work is looked at more comprehensively. These solutions include, among others, part-time work, leave of absence, an extension of the period during which sick workers cannot be dismissed, reasonable accommodations, priority when asking for flexible working schemes, and protection against discriminatory practices.

### *4.1. Shifting from a 'Time-based' Labour Market to Transitional Labour Markets: The Ever-poor Responses of Legal and Industrial Relations Systems*

It should be stressed that we do not want to argue that norms and decisions cannot be used to solve some practical cases – especially in the event of dismissal. Yet the limited amount of case law on this topic shows that adjustments made to current legislation to accommodate this category of workers are often challenged in courthouses, with sick workers who are then required to bear an extra burden.

It seems clear that the solutions put forward fail to provide a systemic response focusing on protection and assistance but also on the review of concepts such as 'presence at work', 'work', and 'proper fulfilment of one's duties'[38] that need to take into account individual conditions. These much-awaited changes, which are required due to the new developments in the world of work, struggle to come to fruition[39]. This step change would be based on the evolution of the concepts of 'health' and 'work'[40], that in the transitional markets include different occupational and personal statuses that merge to include many lifecycles and professional

[38] Striking a balance between productivity and work fairness and sustainability is one of the arguments that I made in M. TIRABOSCHI, *Le nuove frontiere dei sistemi di welfare: occupabilità, lavoro e tutele delle persone con malattie croniche*, cit., pp. 681-726.

[39] A comparative analysis which – save for Northern European countries – shows similarities with the Italian case, see M. AKGÜÇ (ed.), *Continuing at Work. Long-term Illness, Return to Work Schemes and the Role of Industrial Relations*, ETUI, 2021. A recommendation to sectoral-level collective bargaining to lay down measures that also consider the ageing workforce and its health problems is provided in *Emploi des seniors: agir sur tous les leviers*, Institut Montaigne, 2022, pp. 45-47.

[40] A medical perspective is provided in F. OGUNDIPE, *What is work?*, in *Occupational Medicine*, 2023, p. 114, who argues that: «gone are the days when most workers were grateful to have any job and were largely beholden to their employers as they depended heavily on them for sustenance and livelihood. An almost undetectable shift has taken place where workers now view work as an entitlement, and where the locus of control has radically shifted from the employer to the employed».

transitions. This view tries to move on from the approach typical of the twentieth century, during which a neat separation was in place between private and professional life and between productive and reproductive work[41], so individuals were regarded merely as workers and not as individuals at work. Workers were therefore paid according to their efficiency and productivity. This was made possible thanks to certain changes involving temporary work derogating from common law, which in industrial society could be handled by suspending the employment relationship.

If the individual is placed centre-stage, what is needed is a life-cycle perspective, whereby rewarding mechanisms should no longer concern remuneration based on the hours worked but should bring together three dimensions: meaningful and decent work; a standard of living that can satisfy material needs; the freedom to engage in labour market transitions[42].

The underlying idea of this new regulation of work is to protect workers' professional development by combining OHS and career mobility, considering a social perspective that makes labour market more supportive than in the past.

This is a radically different perspective from the current one, which challenges the assumptions that adjustments can still be made concerning costs and quantity rather than job content and quality[43]. Evidently, this perspective requires establishing a system of control of labour markets based on participation and a proactive view of work-related risks – also from workers' representatives – which sometimes are affected by cultural, political and organisational issues.

A systemic analysis conducted on a significant number of collective agreements concluded in Italy from 2002 onwards[44] underlines the poor solutions put forward by the Italian system of industrial relations. In our country, the link between health and work is dealt with mostly from an

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41 See M. TIRABOSCHI, *Persona e lavoro tra tutele e mercato. Per una nuova ontologia del lavoro nel discorso giuslavoristico*, ADAPT University Press, 2019.

42 G. DELAUTRE, D. GARDINER, S. VERICK, *Moving towards a life course perspective to labour market transitions: approaches and challenges*, Background Paper Series of the Joint EU-ILO Project Building Partnerships on the Future of Work, 2021; *Building Partnerships on the Future of Work*, European Commission, ILO, 2021.

43 Cfr. B. GAZIER, F. BRUGGEMAN (ed.), *Restructuring work and employment in Europe. Managing change in an era of globalisation*, Edward Elgar, 2008.

44 Cfr. the chapter on the link between non-occupational health and work in collective bargaining contained in *Welfare for People. Sesto rapporto ADAPT sul welfare occupazionale e aziendale in Italia,* ADAPT University Press, 2023.

OHS perspective, focusing on employee health and those legal adjustments which can be effective in the context of individual employment relationships, which however fail to provide a bigger picture.
It is worth recalling that in some cases, private and public initiatives have combined to deal with the link between health and work more systemically. Examples include employee welfare agreed upon in collective bargaining and complementary healthcare, the latter being a distinctive trait of Italy's most effective collective agreements. Healthcare funds provide additional services to those already supplied by national healthcare[45].
In his pioneering study conducted in the mid-seventies to establish the correlation between the new provisions contained in the Workers' Statute and the increase in sick leave reported by statistics, Ichino concluded that "so-called 'absenteeism' has been regarded as a new and more subtle tool to generate conflict: in other words, workers are seen as less willing to sacrifice their own interests to prioritise business needs"[46].
In all likelihood, this argument concerned a different social and demographic context than that of today. At the time, Italy was a vibrant country looking at the future with hope after the war while experiencing the first economic boom of the sixties and benefitting from the 1968 movements. Yet some emerging trends could be seen – which were common to most Western countries and became more marked following the pandemic – whereby people focused more on their personal needs, an aspect that entailed some tensions between people and work.
While the 1970 Workers' Statute extended the notion of 'freedom to get sick'[47] helping workers to benefit from it in both legal and economic terms, today the link between work and health can also be reviewed because of more advanced social and cultural conditions. As said, the traditional legal and healthcare framework only considers health from a technical point of view, i.e., whether a disease or an occupational disease exists.
Things seem to be changing today also in light of the recent reform of Article 41 of the Italian Constitution, which now includes poor health among the limitations to entrepreneurship, reviewing the link between

[45] On the main trends of complementary healthcare in the context of collective bargaining, see the analysis conducted on 58 national collective agreements laid down in *Welfare for People. Quinto rapporto ADAPT sul welfare occupazionale e aziendale in Italia*, ADAPT University Press, 2022, pp. 156-195.
[46] P. ICHINO, *Malattia, assenteismo e giustificato motivo di licenziamento*, in *RGL*, 1976, I, p. 259.
[47] P. ICHINO, *Malattia, assenteismo e giustificato motivo di licenziamento*, p. 267.

ethical and social relationships (Title II of the Constitution) and strictly economic relationships (Title III of the Constitution).

To conclude our reasoning, which considered the origins of the current system of social security, it can be argued that it is necessary to examine the link between health and work from a more general perspective and not only take into account individual employment relationships. This means investigating demographic changes along with the new developments in the labour market, taking into consideration occupational transitions and lifecycles so that employability should also involve an ongoing evaluation of people's health. By updating the legal rules governing social security, it will be possible to strike a balance between employers' and workers' needs, also in consideration of new economic costs and the changing relationship between people and work.

It is the evolution of the notion of 'health' and 'work' which calls for a new economic and social order that must be different from that in place in industrial society. This is the approach taken by Italian legislation, which aims to protect people not only in their capacity as workers but as individuals, thus consideringtheir health, education, family life and social needs[48].

In this respect, the doubts about a possible increase in the labour costs for the employer can be banished in the long run by implementing measures promoting public health and active ageing to deal with issues that today undermine the sustainability of healthcare and welfare systems and national competitiveness, due to the massive resources needed to support them. These resources could be allocated to companies for the promotion of new organisational models – e.g., reasonable accommodations – of course taking into account priorities and responsibilities. Also, in consideration of the flexible rules laid down in Article 2087 of the Italian Civil Code, a new mindset is making inroads in modern work settings which are particularly challenging for workers in terms of involvement and productivity, whereby "the only legal limitations to promote the worker's efficiency concerns their health protection"[49].

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[48] See M. PERSIANI, *Valutazioni politiche e soluzioni legislative del problema giuridico della malattia nelle sue connessioni con il lavoro*, cit., p. 45. His arguments were later on taken up by P. ICHINO, *Malattia, assenteismo e giustificato motivo di licenziamento*, cit., p. 273.

[49] P. ICHINO, *La responsabilità contrattuale del datore di lavoro in materia di mobbing e straining*. In relation to the differences in individual productivity resulting from recent technological innovations, he argues that "in white-collar work, it is mainly mental health which is at risk. And the highest level of occupational stress, which leads to health-related risks, differs from one worker to another".

Arguably, bringing together occupational health and public health and encouraging a more comprehensive application of the prevention principle by adapting work to individuals – irrespective of the seriousness of their disability – calls for a review of a major aspect, namely the assumption that employers' decisions cannot be challenged. This is perhaps the cause of what French sociologist define 'the divorce between life and work'[50] which is also the reason why many workers seek more autonomy at work.

Employee participation in organisational changes reduces their disaffection with work, while top-down decisions without consultation give rise to dissatisfaction, also in terms of engagement, loyalty and productivity[51]. In turn, the latter increases the likelihood of resignations and absenteeism[52].

## 5. Concluding Remarks and Some Insights for Future Research into Industrial Relations and Social Security Law: The Need to Take an Overall View

The challenges outlined above which will be faced by industrial relations and welfare systems call for further analysis to review the link between health and work, which in the end concerns the relationship between individuals and work. As rightly stated by Polanyi, "Labour is only another name for a human activity which goes with life itself, which in its turn is not produced for sale but for entirely different reasons, nor can that activity be detached from the rest of life, be stored or mobilized"[53].

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[50] Cfr. F. DUPUY, *Le travail et la vie: les raisons d'un divorce*, in *www.lagrandeconversation.com*, 1 May 2023.

[51] M. BEATRIZ, *op. cit.*, p. 5. See also B. AUST *ET AL.*, *How Effective are Organizational-Level Interventions in Improving the Psychosocial Work Environment, Health, and Retention of Workers? A Systematic Overview of Systematic Reviews*, in *Scandinavian Journal of Work Environ Health*, 2023, pp. 1-15. The analysis of 957 primary studies and 52 systematic reviews reveal that the work environment and workers' health can be significantly improved with measures concerning organisation.

[52] Cfr. T. COUTROT, C. PEREZ, *Quand le travail perd son sens. L'influence du sens du travail sur la mobilité professionnelle, la prise de parole et l'absentéisme pour maladie: Une analyse longitudinale avec l'enquête Conditions de travail 2013-2016*, DARES, Document d'Études, 2021, n. 249.

[53] K. POLANYI, *The Great Transformation. The Political and Economic Origins of Our Time*, Beacon Press, 2001, p. 72. See also E. RENAULT, *Le travail et ses Problémes. Biologie, sociologie et politique chez John Dewey*, Vrin, 2022, p. 203, and H. MARCUSE, *On the Philosophical Foundation of the Concept of Labor in Economics*, in *Telos*, 1973, pp. 9-37 and 22. The author highlights how economic theory has affected the idea of labour in society (and therefore also in law) to the point that a reconsideration of a philosophical nature of the concept

It remains to be seen whether collective bargaining can provide a 'protection tool' ensuring better management of chronic diseases in the context of the employment relationship, to be negotiated with aspects concerning labour flexibility and productivity. Nevertheless, it might be possible to develop a new way to perform work in light of the changes taking place in society and production settings. Work should therefore be assessed, also in the context of collective bargaining, in subjective terms, considering labour sustainability in a given context.

While reviewing the link between health and work by taking on an overall view, it is important to update the current social security model, especially about concepts such as 'occupational risk' or 'work-related risk', which should now consider the dynamics of transitional labour markets, which has been aptly referred to as 'risk society'.

If the advent of manufacturing and large-sized companies marked the "birth of labour law"[54] which intended to protect workers from "an uncertain future" due to a possible lack of work[55], it is also true that the risks for "working people", or rather, for "people living off their work"[56] have changed considerably. The risks regarded by today's lawmakers as legally relevant, that is, those for which legal protection can be granted, are few and far between when compared to those that might affect people of working age, and sometimes fall outside the responsibilities of the parties to the employment relationship.

These new risks and the progress made in medicine – especially in consideration of the new link between health and work – pose questions concerning the need for a new social security system that keeps up with post-industrial society. The need for innovation can be exemplified in the current distinction between work-related accidents and occupational

of labour is needed that goes beyond economics, since "all economic theories fail to recognize the full factual content of labour".

[54] F. SANTORO-PASSARELLI, *Spirito del diritto del lavoro*, cit., p. 1071.

[55] F. SANTORO-PASSARELLI, *Spirito del diritto del lavoro*, cit., pp. 1074-1075, who argues that this discipline "makes use of a refined technique" made up of public-law and private-law rules, aimed at governing "a system of checks and balances". On the notion of 'social security remuneration', see M. PERSIANI, *Il sistema giuridico della previdenza sociale*, Cedam, 2010, p. 210.

[56] See *Protecting All: Risk Sharing for a Diverse and Diversifying World of Work*, World Bank, 2019, particularly the table concerning the «principal drivers of disruption in the world of work and their impact on the standard employment relationship» (p. 40).

diseases, which is illustrative of an old-fashioned approach to the issue[57]. As always, the economic and social sustainability of systems that protect people from new risks should be given priority, because this concerns individuals and communities alike, as well as the production fabric. The problem arises as to who should bear the 'cost' of this protection[58], in a society in which the needs of 'industrious citizens' should replace those of 'industrial citizens'[59], thus regarding individuals not only as dehumanised entities.

Consequently, the teachings of Santoro-Passarelli regarding the risks and needs in the context of social security in Italy still bear relevance today[60]. Equally relevant is the cultural perspective of those labour law scholars arguing that those principles laid down in the Italian Constitution – which have not yet translated into effective protection – produced a change in the function of the social security system. This state of affairs calls for the need to "face the issues resulting from the clash between new reasons inspiring current social security and the old model based on traditional concepts"[61]. Drawing on those who already paved the way for the modernisation of the Italian system of social security[62], it can be stressed that the Italian Constitution refers to social security protection as a form of 'solidarity involving all citizens', therefore moving on from a merely economic approach.

Consequently, it is a more innovative view of the principles laid down in Articles 1,2,3,32 and 41 of the Italian Constitution that prompts us to go

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57 See D. RODRIGUEZ, *Sulla necessità di superare le nozioni disgiunte di infortunio sul lavoro e di malattia professionale. Verso una concezione unitaria di malattia da lavoro*, in *RIMP*, 2015, pp. 449-462.

58 Reference is made to G. CALABRESI, *The Costs of Accidents*, Yale University Press, 1970, who considers costs and responsibilities but also social justice. See pp. 24-26 and pp. 301-308.

59 On the application of the concept of "industriousness" in the modernisation of selective-access social security system that is still labour-driven, see P. BOZZAO, *La tutela previdenziale del lavoro discontinuo. Problemi e prospettive del sistema di protezione sociale*, Giappichelli, 2005, pp. 230-247. Here the proposal by Romagnoli was put forward (*Il diritto del secolo. E poi?*, in *DML*, 1999, pp. 239-240) whereby labour law should be "the law of industrious citizens rather that of industrial citizens".

60 F. SANTORO-PASSARELLI, *Rischio e bisogno nella previdenza sociale*, in *Rivista Italiana di Previdenza Sociale*, 1948, pp. 177-196, and the criticisms levelled by D. GAROFALO, *Rileggendo Rischio e bisogno nella previdenza sociale di F. Santoro Passarelli*, cit.

61 M. PERSIANI, *Valutazioni politiche e soluzioni legislative del problema giuridico della malattia nelle sue connessioni con il lavoro*, cit., p. 56.

62 M. PERSIANI, *A cinquanta anni dal Testo Unico degli infortuni sul lavoro: profili costituzionali*, cit. p. 579.

beyond the legal perspective – which still takes an old-fashioned approach to notions such as 'disease' and 'occupational health' – and to take an overall view when looking at the link between health and work, without considering individual employment relationship only.

In an ever-changing world of work, where the line between occupational health and public health is increasingly blurred[63], this view appears to be the only way to move on from an old-fashioned approach, which dates back to the Industrial Revolution and can still be found in public debate and labour law research. This approach focuses on occupational safety, somehow disregarding health[64], understood in terms of prevention and not only in terms of treatment[65]. This seems to be a modern way to understand work which, in line with the constitutional principles, considers demographic changes and the ageing of the population while protecting the health of all citizens. This is not just about individual rights, but it is concerned with common interests in a society that still claims to be based on work and therefore needs to deal with issues that are different from those in place in the industrial period.

[63] Some arguments for the French case, which also apply more generally, have been made in COUR DES COMPTES, *Les politiques publiques de prévention en santé au travail dans les entreprises*, December 2022, p. 12 (and pp. 47 and 54). It is stated that: «Broadening the perspective would mean, for example, not taking a narrow view of the cost of the risk, i.e., those dealing with occupational accidents and disease, taking into account the financial consequences of a deteriorated working situation ».

[64] I have attempted to investigate this issue starting from trade union campaigns on OHS. See M. TIRABOSCHI, *Nuovi modelli della organizzazione del lavoro e nuovi rischi*, cit.

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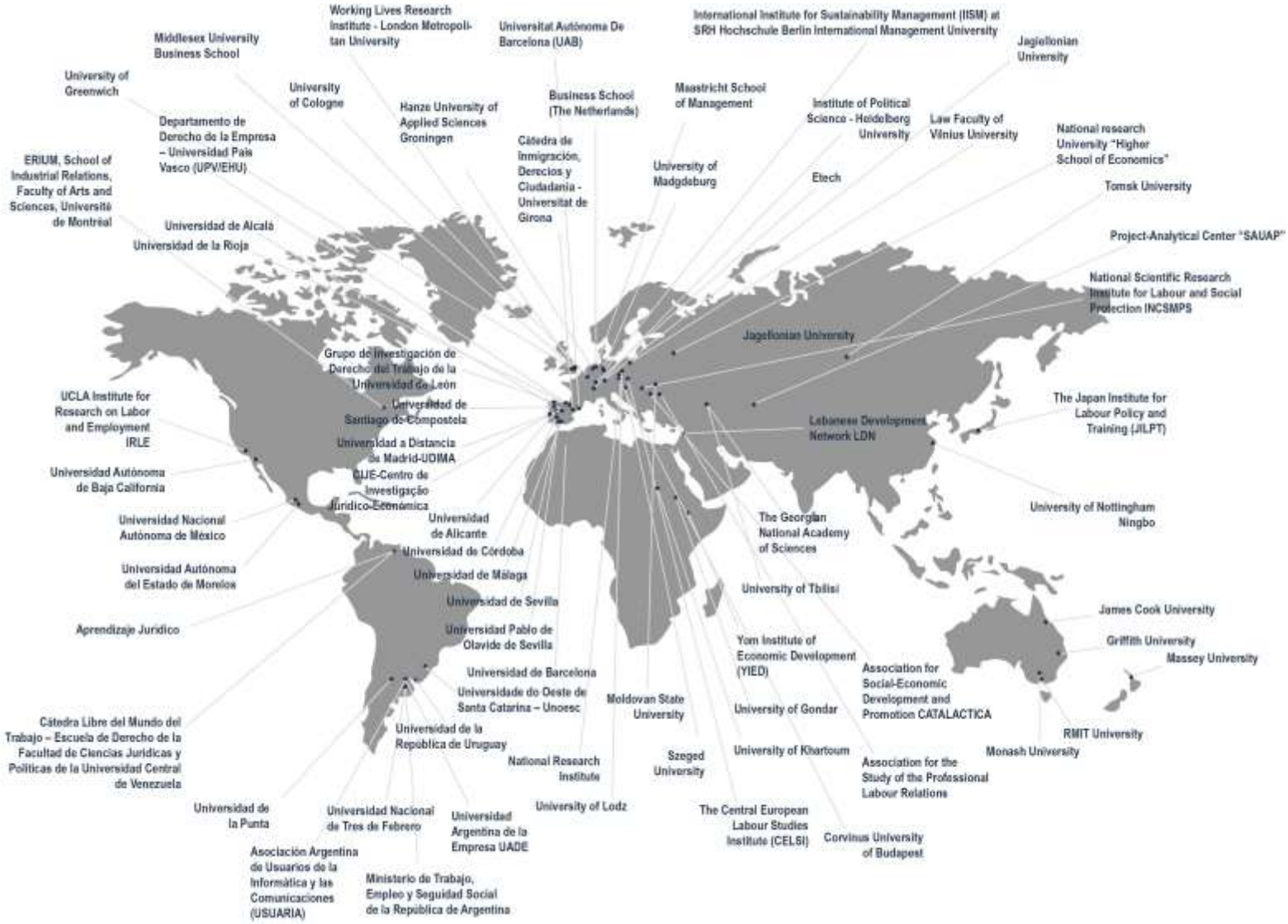

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