

Una finestra sul mondo del lavoro

The labor law that helps young people, in simple words.

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INTRODUCTION

The purpose of this volume is that of making standards of basic employment law, accessible to everybody, even to non-lawyers. Primarily, it focuses on young people. They are facing a twofold difficulty: because of their limited experience, they have a limited negotiating power with the employer, and thus exposes them to a higher risk of exploitation; and, they also are the group most frequently hired through “flexible” contracts. Flexible contracts have a specific regulation, different from the one of open-ended contracts.

This book is part of the “A window on the world of work” project of University of Milano - Bicocca. The project is promoted by the Students’ Association of Bicocca and the Left Wing List. Within this project, graduate students of the Faculty of Law, practitioners and young lawyers specialized in employment law, have joined their skills to create a platform of labour law training for students by organizing practical thematic conferences and a point of permanent information.

This volume is a tool of dissemination, aimed at bringing the opportunity given by the training project outside the gates of the University.

The first chapters of this text describe the atypical employment contracts (fixed-term employment contract, part-time employment contract, project-based employment contract, agency contract, outsourcing contract and contract as a working member of a cooperative), training contracts (apprenticeship and internship employment contract) and occasional employment contracts (temporary and ancillary labour).

The last chapters are dedicated to two of the major issues young workers often have to deal with: the transition from one job to a

better one (resignation) and protection of maternity leave.
This work does not aim to academically and comprehensively treat these subjects: it is rather moved by the spirit of giving to anyone, non-lawyers as well, the ability to access the raw information to understand the regulation of their employment contract.

Milano, January, 23, 2015.

Riccardo Bonato
Francesca Campini

Further information on
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PREFACE

In 2013, in Lombardy, the unemployment rate of the university graduates aged 25 to 29, namely is the five years after the end of the studies, reaches 13%; at the same time, the unemployment rate of high-school graduates aged 20 to 24 (again, the five years after the end of the studies) is nearly 24%, while it is as high as 55% among people aged 15 to 19 who have not gone beyond primary school. Similar differences, obviously taking into account higher levels of unemployment, are nowadays found nationwide. Even in the past, in Italy, the transition from the education system to the labor market used to be less difficult for young people with a higher education profile. Despite common opinion, in regard to the risk of being unemployed in the process of entry into the labor market, having achieved a higher level of education grants an advantage, which during periods of economic crisis tends to be bigger. However, the cliché that education “does not pay” has its foundation. As a matter of fact, the yield of education, as far as it concerns the risk of unemployment when entering the labor market, is relatively low in Italy, lower than in other European countries.

Furthermore, it is more and more clear that a high level of education not always ensures access to positions with a high level of professional qualification. In the Italy of the Seventies and Eighties of the last century, when the parents of the current university's students were entering the labor market, over half of the graduates found their first job in a managerial or intellectual position. Currently this percentage has more than halved and most recent graduates find a first job opportunity in technical or clerical positions. Even in Lombardy, the Italian most developed region, out of over 25 thousand young graduates who managed to find their first job in 2013, only slightly more than 35% found managerial or in-

tellectual occupations, while nearly half of them found technical or clerical occupations. However, if we consider the quality of the first job, the relative advantage of the newly university graduated compared to the newly high-school graduated remains relatively high, rather it has increased over the last years. Considering this point of view too, a higher level of education rewards young people entering into the labor market, albeit less than in the past. The fact is that, in Italy, the increasing level of education from generation to generation was not matched by a parallel increasing of the labor qualification demand levels by businesses and public sector.

This is not just an Italian phenomenon since in all European countries, among young people who manage to find a job, are becoming increasingly more those who perform an activity for which, until recently, a lower level of education was enough. Although the question is whether the over-education phenomenon is overstated, since the importance of soft skills (ability to work in groups, to cope with situations of sudden crises, etc.), which need more complex abilities of those learned in high-school, has grown. In Italy, however, this growing imbalance is better explained with a low demand of highly qualified labor rather than with over-education. Indeed, with regard to young people aged 25 to 39, a percentage of university graduates of almost 15 percentage points lower than the European average is accompanied of a percentage of employment in intellectual and technical professions of nearly 10 points lower. This combination relegates Italy among the last countries in Europe, together with some eastern European countries.

This de-skilling process of the first employment opportunities for graduates has been accompanied by a fragmentation of the legal status. In the Seventies and early Eighties more than 60% of young people could find a permanent contract of employment as first one. The progressive reduction of this type of employment was stronger for the young university graduates, who were much more affected by the new forms of para-subordinate work. Among young graduates who have found their first job in Lombardy during 2013, not even 16% has been hired as permanent employee and only 16% of them started working as a freelancer or self-employed worker, while all the others were hired with fixed-term employment contracts (almost 48%) or have had ancillary labour (over 20%). Considering that over half of the self-employed and private workers work for a single customer (a percentage that exceeds 85% in regard to para-subordinates), it can be said that the two traditional figures, the

one of the open-ended employee and the one of the self-employed or private worker with a large customer base do not reach 28% of graduates who have found their first job. Finally, considering that over 13% of males and 35% of females work part-time (almost 60% of the males and more than two thirds of the females having not found a full-time job), the standards employment area results even more limited to recent graduates in Lombardy. As for the rest of Italy, the economic crisis has accelerated a long-term trend to the growing instability and fragmentation of employment relationships, especially those of young people.

Therefore, we consider providing all the students of the University of Milano - Bicocca (and, I hope students of other universities as well) with an overview of the various non-standard employment relationships they are, inevitably, going to meet at the end of their study period, as a worthy initiative. My hope, as an old university professor who has devoted his research to labor issues, is that thanks to some of these reports, the newly graduates succeed in finding a job as soon as possible, and that just as soon they succeed in getting out and finding a more stable and secure job situation.

Emilio Reyneri¹

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SUBORDINATE EMPLOYMENT AND SELF-EMPLOYMENT

by RICCARDO BONATO

The distinction between subordinate employment (employees), self-employed workers (the so-called VAT owners) and subcontract workers (eg.: collaborators) affect the rights and obligations of employees towards the employer. For example, rights of a subordinate worker comprehend:

- the application of the National Collective Bargaining Agreement (It.: *Contratto Collettivo Nazionale di Lavoro*, or CCNL) - minimum wages, holidays, leaves, maternity, Christmas bonuses, etc.;
- the application of the rules on unfair dismissal pursuant to former art. 18 of the Italian Workers' Statute (It.: *Statuto dei Lavoratori*), formerly art. 8 l. 604/1966;
- Mandatory Severance Indemnity (It.: *Trattamento di Fine Rapporto*, or TFR);
- the possibility to get access the best tools of income support (eg.: unemployment benefits);
- a different social security and fiscal taxation.

Under Article 2094 of the Italian Civil Code (It.: *Codice Civile*), the employee is the person “*who is obliged to cooperate in the enterprise providing its own intellectual and manual labor, employed by and under the direction of the entrepreneur, through fair returns*”, i.e. the worker is “other-directed and employed”.

Other-directed and employed means that the worker, in carrying out its activities, must meet employer's strict guidelines (the following list is not to be considered complete or exhaustive):

- the employer gives precise instructions on how the work must be performed and sanctions any eventual infringements of the company's conduct/procedure regulations
- the employee may be part of a group of workers who collaborate to reach a result useful to the employer;
- the production tools (eg.: equipment) are owned by the employer;
- the workplace is an environment in use to the employer;
- the employee:
 - » is paid regardless of the outcome of his work or economic activity;
 - » is paid periodically;
 - » undergoes a work schedule;
 - » is obliged to plan holidays and leaves together with the employer.

Act n. 92/2012 (the so called "*Riforma Fornero*") introduced a provision aimed at countering the illegitimate use of VAT to disguise employment relationships. There is a presumption of subordination for the worker who encounters two out of these three elements:

- relationship duration with the same employer of more than 8 months per year for two consecutive years;
- payments by the employer being more than 80% of the total annual fees received by the employee over 2 consecutive years;
- the employee has a fixed place in one of the employer's sites.

This rule, however, does not apply in the following cases:

- if the service performed by those who own VAT is connoted by "high level skills" acquired through significant training courses (eg.: titles awarded at the end of the 2nd education cycle and training), or by technical-practical skills acquired through "relevant experiences" gained in the actual performing of the activities (eg.: apprenticeship diplomas);
- if the VAT owner has a gross income due to self-employment exceeding 1.25 times the smallest taxable income for the payment of social security contributions, under Act 233 of 1990 (□ 18.663 in 2012);
- if the registration to a professional college or class, board, record, role or qualified profession list is required in order to perform the activities.

ATYPICAL EMPLOYMENT CONTRACTS

The atypical employment contracts consist of employment contracts with different characteristics with respect to self-employment, and standard work contracts for full-time employees.

The atypical employment contracts:

FIXED-TERM EMPLOYMENT CONTRACT

by RICCARDO ELIA

LEGAL SOURCES AND LAWFULNESS ON FIXED-TERM EMPLOYMENT CONTRACT

Fixed-term employment contract is governed by the Decree Law. 368/2001, and by its subsequent amendments, the last of which occurred in 2014 with the dl 34/2014 converted into Law 78/2014.

Until the last intervention of the emergency decree, in order to offer the necessary lawfulness of the fixed-term employment contract, the law involved two requisites, a formal one and a substantial one: (a) *written agreement* - failing which the contract is considered null and void - and (b) *the existence of a reason that justifies* the affixing of a term. The term could be of a technical, productive, organizational or substitutive nature.

Nowadays, however, the use of fixed-term employment contracts have been "liberalized", and the justifying reason is no longer necessary. Basically, today it is always possible to start a fixed-term employment contract lasting no more than thirty-six months (including any possible extension). The maximum limit, in addition to the total aforementioned duration, consists of the number of fixed-term employment contracts signed by employers with more than 5 employees (no more than 20% of the *open-ended employment* contracts). On the contrary, it is not mandatory for employers with less than 5 employees to follow such a proportion.

Being understood the requirement of *written agreement*, failing which the contract is considered null and void.

Under certain assumption, the stipulation of a *fixed-term employment* contract is not subject to the second of the above mentioned conditions of lawfulness.

Some exceptions are related to specific workers or manufacturing sectors (art. 10, D.Lgs. 368/01), including, for example, *fixed-term employment* contracts lasting no more than five years and signed with the managers.

In any case, no fixed-term hiring can be carried out in the following cases (art. 3 D.Lgs. 368/01):

- to replace employees on strike;
- in production units that have carried out, within the previous 6 months, procedures of collective redundancies;
- in production units where a suspension of contractual relations or working hours reduction is present, with wage supplements rights involving workers assigned to the same duties to which the *fixed-term employment* contract relates;
- by companies that have not performed the assessment of work place safety risks.

UNLAWFULNESS OF TERM AND COMPENSATION FOR DAMAGES

The employee may take legal action to assert the invalidity of the term applied to the employment contract. The appeal must be made within 120 days from the termination of the contract and within the next 180 days conciliation or court appeal should be attempted.

The consequence of court assessment on unlawfulness of term is the transformation of the fixed-term employment contract into *an open-ended employment* contract, with immediate effect, and the condemnation of the employer to pay the employee a compensation for damages of an amount (identified by the court) between 2,5 and 12 months salary.

THE EXPIRY OF THE CONTRACT AND THE TERMINATION ANTE TEM- PUS

The fixed-term employment contract will be automatically terminated upon the end date. Termination before that dateline is governed by art. 2119 c.c. According to this rule, the termination *ante tempus* is only allowed for just cause, that is, only when there is a reason that does not allow the continuation, even temporary, of the employment relationship.

In case of unfair dismissal before the end date, the worker will receive damage compensation equal to the amount of wages not received from the date of termination to the due date of the employment.

EXTENSION OF THE INITIAL TERM AND TEMPORARY CONTINUATION OF THE RELATIONSHIP AFTER THE DEADLINE

The extension is approved prior worker's free consent, without prejudice to the maximum limit of duration of three years. Since the last legislative action, the extension does not require any justifying reason.

However, the extensions are still allowed up to a maximum of five times, regardless the number of renewals, provided that they refer to the same working activity corresponding to the original contract.

Should the employment relationship continue after the expiry of the contractual period, the employer is obliged to pay the worker an increase on salary, equal to 20% until the tenth day, and 40% for each extra day.

In any case, once the term of contract has expired, the employment relationship cannot continue up to 20 more days after the end date if the duration of the contract is less than 6 months or up to 30 more days if the contract lasts longer than 6 months. Otherwise, a "penalty" for the employment transformation arises. From that moment the contract must be considered as *an open-ended one*.

FIXED-TERM RE-EMPLOYMENT OF THE EMPLOYEE AND THE MAXIMUM DURATION OF A FIXED-TERM EMPLOYMENT

At the expiry of the contract term, the employer can re-hire the worker through a new *fixed-term* contract. The only condition re-

quired by law is for the employer to observe a certain time interval between the two contracts. More precisely, it is necessary to allow at least 10 days from the date of expiry of a contract lasting up to 6 months, or 20 days from the date of expiry of a contract lasting more than six months. In case those minimum time intervals required by law are not observed, the second fixed-term contract is to be considered *an open-ended one*.

Moreover, when two consecutive fixed-term hiring actions are seamlessly taken, there is a “penalty” for the transformation of the employment relationship into *a open-ended employment* starting from the contract stipulation.

In any case, the law establishes that the maximum term for fixed-term relationship between the same employer and employee for performing work of equal value can not exceed 36 months. If the total duration period is not fulfilled, the employment relationship is to be considered open-ended starting from the expiry date of 36 months.

PRINCIPLE OF *NON-DISCRIMINATION* AND PRIORITY RIGHT

Under the principle of non-discrimination the fixed term worker is entitled to holidays and Christmas bonus/thirteenth salary, employee severance indemnity (“TFR”) and any other compensation provided by the company for the workers with similar *fixed-term employment* contract.

In addition, the law recognizes, for a year, the priority right to permanent employment to all those hired with *a fixed-term* contract that have worked for a period exceeding six months.

The *atypical* employment contracts

PART-TIME EMPLOYMENT CONTRACT.

by LAURA CARBONERA

BASICS.

The open-ended or fixed-term employment contract, is considered *a part-time one* when the working hours, as fixed in each individual contract, are **less than full time working hours**. The latter corresponds to the ordinary working hours fixed by law (art. 3, co. 1, D.Lgs. 66/2003) at 40 hours per week, or to the possible less working hours fixed by collective agreements.

The regulation of the part-time employment contract is provided by multiple sources, in particular D.Lgs. 61/2000, D.Lgs. 276/2003, L. 247/2007 and L. 92/2012 (as well as Circ. Min. Lav. n. 9 of 2004).

The part-time employment contract can be:

- **horizontal**, when the labor hours reduction refers to the ordinary daily working time (the employee works every working day of the week but each day for fewer hours);
- **vertical**, when the job is performed full time but for predetermined periods during the week, month and year (the employee works full-time but only in certain days of the week, or in certain weeks of the month or certain months of the year);
- **mixed**, when *a part-time employment* contract is structured combining the horizontal and vertical modes, (for example, the employee works every working day of the week: on Mon-

days, Tuesdays, and Wednesdays full-time and on Thursdays or Fridays part-time).

The *part time employment scheme* can be applied as part of any employment contract, including *fixed-term*, apprenticeship and outsourcing contract, as expressly provided by the so called Fornero reform (L. 92/2012).

FORM.

The employment contract must be stipulated in a written form, in order to prove the existence of the part-time employment relationship (*ad probationem* form). The lack of written form shall not render void the contract but determines only a limitation of the proofs in a possible judgment: in case it is impossible to provide a proof of a *part-time* employment relationship, upon employee's request, existence of a full-time employment relationship can be declared starting from the date on which the lack is juridically ascertained.

The contract must specify, **in a written form**, the job duration and location with reference to the day, week, month and year; different clauses are allowed only if integrated with elastic or flexible clauses (see below).

SALARY.

When determining the salary, the part-time worker cannot be discriminated merely because hired as (or becoming) a *part-time worker*: the salary cannot be less favorable than that payable to a *similar* full-time worker (with equal contractual status).

The implementation of this principle means that:

- The part-time worker must be paid the same hourly wage as the full-time worker;
- In consideration of the different work performance, the whole retribution as well as its individual items, the week-day salary, the amount of salary due during illness period, maternity period, injury and professional illness, are **re-proportioned**.

REGULATORY TREATMENT.

The prohibition of discrimination operates also in relation to the regulatory treatment.

The implementation of this principle implies that the part-time worker has the same rights as a similar full-time worker with particular regard to:

- Duration of the trial period;
- Duration of the annual leave period;
- Duration of maternity and parental leave;
- Duration of the time of respite;
- Illness and injury;
- Accidents at work and work-related illness;
- Security and safety in the workplace;
- Access to training courses provided by the employer;
- Access to social services provided by the company;
- Criteria for calculating the indirect and deferred fees as provided by collective labor agreements,
- Trade union rights.

In case of vertical part-time contract, the collective bargaining can reformulate the duration of the trial and respite period.

TRANSFORMATION OF EMPLOYMENT RELATIONSHIPS.

a) TRANSFORMATION OF THE EMPLOYMENT RELATIONSHIPS FROM *PART-TIME* TO FULL-TIME.

In case of new *full-time* hiring by the employer, the *part-time* worker has priority right.

Regarding this issue, we must to distinguish two cases:

- workers directly employed with part-time contract. The priority right can be actuated only if it is provided by the individual contract. A breach entitles the worker to compensation for damages.
- full-time workers, **who have transformed their contract into a part-time one**. The priority right is ready to action, since it is provided by the law. Workers have the priority right in the event of planned recruitment of full-ti-

me workers with the same or equivalent duties (art. 12ter, D.Lgs. 61/2000).

b) THE TRANSFORMATION OF THE EMPLOYMENT RELATIONSHIP FROM FULL-TIME TO PART-TIME.

Art. 5, comma 1, D.Lgs. 61/2000 provides that the parties may avail themselves of a **written agreement**, to transform the employment relationship from full-time to *part-time*. It is a consensual transformation of the employment contract into *part-time*.

The employee is entitled to refuse the employer's request of transformation of the contract and such conduct does not constitute just cause of dismissal.

The law does not recognize to the full-time worker the right to have transformed his contract in a part-time one, even in the event of planned *part-time* staff recruitment.

In the latter case, the employer is required to give immediate notice to his formerly full-time employed staff working in similar production units and to take account of any request of full-time workers to have their contract transformed into a *part-time* one. Special rights are recognized at the *full-time* worker suffering from confirmed oncological pathology: in this case the worker is recognized a genuine right to have his contract transformed from *full-time* to part-time and to have his full-time contract restored whenever he desires it (this hypothesis was introduced by D.Lgs. 276/2003).

EVALUATION CRITERIA.

Part-time workers - for the purpose of application of all law and contract rules, including discipline provided for in Title III of the Statute of workers - are computed **in proportion** to the working hours actually performed: therefore it is also taken into account actual work performed in excess of the scheduled time provided in each single contract.

THE EXTRA WORK AND OVERTIME.

The contractual provisions of extra work and overtime allow parties in the relationship to vary working hours within its maximum duration, without prejudice to the constraints of the format and content of the contract.

The extra work, corresponding to the difference between part-time hours - agreed between the parties - and the normal daily time schedule, is legitimate in case of horizontal, vertical and mixed part-time (in the latter cases, it is true only if the part-time working hours are less than standard weekly ones).

The regulation of extra work is entrusted to collective bargaining that can determine the maximum number of feasible additional hours, the reasons under which the employer can request it and possible consequences in case of exceeding overtime provided by the contract (increases or compensatory rests).

The consent of the employee to handle the extra work is not required if the collective bargaining provides for and regulates the right of the employer to request additional services. If the collective agreement does not provide this option, the consent of the employee, which may be explicit or conclusive, is needed.

Overtime work is the one performed exceeding weekly working hours limit (40 hours). As far as it concerns part-time contract it is possible only when full time has been achieved and hence only in case of vertical or mixed part-time. In this case, overtime rules (the ones valid for *full-time* workers) apply

FLEXIBILITY TOOLS WITHIN PART-TIME CONTRACTS.

- **Flexible Clauses** (compatible with all types of *part-time* contracts): related to the change in timing of the performance, it affects the time of working;
- **Elastic Clauses** (compatible only with vertical and mixed part-time contracts): related to the increase in the duration of job performance, the employer may extend the working hours or the contract for a further period without the extra hours counting as overtime.

The introduction of flexibility and elasticity clauses is entrusted to

the individual written agreement between the employer and the worker: that agreement can also be contextual to the employment contract's signing.

The worker can avail himself of the assistance of a trade union representative in the company, appointed by himself.

The collective agreements are delegated by the authority to establish the terms and conditions in relation to which the employer may change the timing and duration of work performance (art. 3, co. 8, D.Lgs. 61/2000).

However, even in the absence of provisions of the collective agreement, or regardless of the same, the employer, - prior agreement with the worker - may apply these clauses to a part-time contract. The required notice, in order to let the worker know these terms - without prejudice to a different intention of the parties - is of at least **two working days**, unless otherwise agreed by the parties. The D.Lgs. 276/2003 did not allow the modification of the assent to the flexibility of the worker.

The rigor of this provision has been partially mitigated by law 92/2012 which has intervened in two ways:

- assigning to *collective bargaining* the power and methods that allow the worker to request the removal or the modification of the flexible or elastic clauses;
- introducing to workers who are in the conditions governed by art. 12 bis of said D.Lgs. 61/2000 or those governed by art. 10 of Legge 300/1970 (i.e. those suffering of cancer and students) the right to revoke their consent.

The *atypical* employment contracts:

THE PROJECT-BASED EMPLOYMENT CONTRACT

by IRENE BEGA

The *project-based employment* contract is governed by artt.61-69 d.lgs. 276/2003 (as updated by L. 92/2012 and by D.L. 28 June 2013, n. 76). The following are excluded from the Directive's scope:

- agents and sales representatives;
- anyone engaged in direct selling of goods and services carried out through "outbound" call center ;
- occasional workers;
- anyone engaged in intellectual professions for the pursuit of which the registration in appropriate professional associations is required;
- working relationship as well as coordinated and continuous activities, otherwise made and used for institutional purposes in favor of voluntary organizations and amateur sport clubs affiliated to the national sports disciplines and associated institutions to promote sports recognized by CONI (Italian National Olympic Committee) ;
- members of Board of Directors and internal audit committees as well as participants to boards and commissions;
- those who receive retirement fund.

a) DEFINITION AND REQUIREMENTS

The *project-based employment* contract is a form of self-employment contract very close to paid employment (but different from the latter), defined as *para-subordinated work*, involving on one hand the intention of the employer to recruit staff to be used for coordinated and collaborative activities and on the other hand the will of the employee to perform his activities in a way that differ from those of paid employment.

The so called project-based employment is the only one sub-type of para-subordinated employment admitted by law as a result of changes introduced by L. 92/2012. This means that the existence of a *project* becomes an essential requisite for the validity and legitimacy of the contract.

In order to fit in this type of contract, the art. 61 del d.lgs 276/03 defines the following **requirements**;

- the coordinated and continuous collaborations must be linked to one or more specific projects;
- such specific projects must be determined by the project owner;
- such specific projects must be self managed by the worker;
- the project must be functionally linked to a particular final result and cannot consist of a mere repetition of the corporate purpose of the customer, with regard to coordination with the organization of the project owner and regardless of the time taken to perform the task;
- The project must not lead to the performance of purely executive and repetitive duties, which can be identified by the collective agreements set up by most representative trade unions at national level.

In other words, for an employment contract to be considered project-based, not only the existence of a project is necessary, specified in the contract and independently managed by the worker, but it must also be addressed to achieve a result not related to the corporate purpose. The project must not simply consist in performing repetitive and executive tasks.

b) THE FORM

The project-based employment contract must be executed **in a written form** and shall include the following items:

- the duration of the service provided;
- a description of the project, including its distinguished content and the final result to be achieved;
- the consideration and the criteria for its determination as well as payment terms and the expenses reimbursement regulation;
- forms of co-ordination of the project *worker* provided that under no circumstances can not be such as to jeopardize his/her independence of the work;
- any measure to protect health and safety of the *project worker*.

In addition, the *project-based* contract shall not provide any trial period.

c) SALARY.

The *project worker* is entitled to a remuneration which shall be proportionate to the quality and quantity of the service provided, not less than the minimum established by collective bargaining for project workers of each business segment and, in any case, based on the minimum wage applied in the field comparable to the same tasks performed by paid employees.

d) DUTY OF CONFIDENTIALITY AND LOYALTY

The *project worker* must not engage in activities that compete with the ones of his/her employer/s nor, in any event, spread news and appreciation related to the programs and their organization, nor, in any way, perform acts that might prejudice the activities of the same customers.

e) REASONS TO SUSPEND CONTRACTS: PREGNANCY, DISEASE AND INJURY.

Pregnancy, disease and injury suspend the project worker's employment contract without any right to compensation .

It has to be mentioned that only in the event of pregnancy, an extension of the contract for a period of 180 days is expected.

In case of disease and injury, however, the contract shall terminate on the expiry date (if the duration of the contract has been set forth) and, in any case, the customer (the employer) may, however, end or terminate the contract if the suspension lasts for a period exceeding one sixth of the agreed duration, i.e more than thirty days for fixed-term contracts, if specified.

f) REASONS FOR TERMINATION OF A *PROJECT-BASED* CONTRACT.

The *project-based* contract can be ended or terminated in case of:

- implementation of the project;
- expiration of the term;
- early withdrawal of the contract (compared to the due date provided for in the project-based contract or prior to the implementation of the project itself) for *just cause*;
- early withdrawal of the contract decided by the employer in the case of worker's *professional unfitness* to perform the project;
- early termination of the contract decided by the worker, expected in the case of advanced notice, only if provided for in the employment contract.

g) CONSEQUENCES CAUSED BY ANY BREACH OF *PROJECT-BASED* CONTRACT LAW.

Art. 69 of d.lgs. 276/2003 sanctions those cases where a *project-based* contract does not present the formal requirements established by law or disguises an paid-employment relationship.

In both cases, the law provides the transformation of the contract into an open-ended employment.

In particular, as regards **the violation of the formal requirements** of the project-based contract, that article provides that in case of failure to identify a specific project, the coordinated collaborative contracts are considered as open-term employment contract from the date the relationship has been established. Should a project-based **contract disguise a paid-employment contract**, it must be converted into an employment contract corresponding to the mode of execution of the same.

The *atypical* employment contracts:

THE AGENCY AGREEMENT

by ROBERTO LAMA

The agency agreement - governed by articles 1742 et seq of Codice Civile and the provisions of collective economic agreements signed by trade unions - creates a legal contract in which one party (the agent) undertakes the obligation to permanently promote upon remuneration, the conclusion of contracts in a given area on behalf and in the interest of the other (the principal).

The agency agreement, in terms of labor is due to the self-employment's patterns. The agent, indeed, besides assuming the risk of the futility of its business activity, operates completely independently, thus taking decisions according to his own consideration, (for example, how much time to spend on promotion activity, the choice of the best strategy to follow or the identification of clients whom deserve more attention/efforts). The only limit to the agent's autonomy in performing his obligation, is the observance of the instructions issued by his principal: instructions which, being mostly general guidelines on how to perform the work, are not capable of affecting the aforementioned agent's autonomy. The promotion activity aimed at the conclusion of contracts between the principal and third parties can be held by the agent either on an individual basis or with a company; however, to lawfully carry out business agent's activities it is required to be in possession of the requirements governed by the Law no. 204/1985 and subsequent amendments.

However, it must be noted that the D.Lgs no. 59 of 26.03.2010 (in

force since 12.05.2012), which was implemented in the EU Directive 2006/123 / EC (the so called “services directive”), in order to simplify access and pursuit of the agency activities, has provided, among other things:

- the suppression of the role of the sales agents (enrollment was previously provided by art. 2 of Law no . 204/1985 required as a mandatory condition of eligibility in pursuit of the activities as an agent);
- the obligation to submit the SCIA (Certified Notification of Business Start up) to the Chamber of Commerce, Industry, Handicraft and Agriculture at the beginning of the sales agent’s activity;
- sales agents’ registration with Companies’ Registry.

The activities typically performed by the agent for the fulfillment of his obligations are, simplifying, research in the assigned area of potential contractors, the startup and the management of negotiations, the transmission to the principal of the achieved agreements. Among these, it can not be included the conclusion of the agreement which remains, precisely, an activity of the principal. The agency agreement must be contained in a written document; a duration time may be established (indefinite as well). In the first case, up to the closing date, the parties may end the contract only if any of the cases which do not allow, even on a temporary basis, the continuation of the contract occurs; if the contract has an indefinite period, however, the parties may withdraw it regardless of the reason by giving notice within a specified period governed by law or collective economic agreements.

Either way, at the time of termination of the agency agreement, shall the conditions laid down by art. 1751 Cod. civ. and by collective economic agreements occur, the principal shall pay the agent an economic indemnity, the amount of which is variable .

The agent takes the risk that the activity he performs turns out to be useless to the principal and, consequently, unproductive for him as well. This means that his right to remuneration (which in the agency agreement is called commission and takes the form of a percentage of the value of the deal promoted) is subject to the conclusion of the contract between the third party and the principal, and that conclusion must be attributed directly to his intervention. It follows that the agent does not mature any right of remuneration in the event that the third and the principal, who came

in contact thanks to his work, decide not to conclude the contract. In this case, however, he must bear all costs incurred in the performance of promotional activities later proved useless (travel, room and board expenses etc.).

It may also happen that the parties provide - through a special stipulation called "del credere fee, (Italian for belief or trust)" - a guarantee clause under which the agent, in case the third contractor fails to perform the obligation assumed with the stipulation of the contract, shall compensate the principal of the damage suffered as a result of the failure of the third contractor. It can be assumed that such compensation has the form of a penalty due, given the negligent conduct of the agent who has recruited contractors then proved to be willful defaulter. Article 1746 cod. civ. excludes that this guarantee can be agreed in general terms, but has to refer to individual transactions identified from time to time. In any case, the fee payable by the agent cannot be higher than the commission for that business and, in any case, the agreement of this clause includes the agent's right to a special remuneration, additional to and distinct from the commission.

Finally, the parties may come to an arrangement in order to limit the promotional activity of the agent in the period following the expiry date of the agency agreement. This is the so called non-competition agreement permitted by the legislator only if it does not last longer than two years. In order to have a legal value, the *non-competition agreement* must cover the same area, customers and kind of goods and services for which the agency agreement was stipulated and a specific indemnity, intended to compensate the agreed future impediment to the conduct of an activity to him profitable, must be awarded to the agent. This allowance shall be consistent with the duration and the nature of the agency agreement and the amount of the indemnity referred to in art. 1751 cod. civ.

The atypical employment contracts:

WORKER CO-OPERATIVES AND MEMBERS OF THE COOPERATIVE.

by LAURA CARBONERA

Producer and worker co-operative are autonomous associations of people who voluntarily cooperate, carrying out an economic activity, for their mutual social, economic, and cultural benefit committed to self-help in the welfare of working people, possibly at more advantageous conditions than those offered by existing market (so-called principal of mutuality), taking benefit of the members' work, who shall be entitled to share the profits of the association.

The regulation of the worker co-operative is entrusted to multiple sources: particular note must be paid to art. 2511ss of c.c. and L. 142/2001, subsequently amended and supplemented by Law 30/2003.

There are various types of co-operative, such as, worker co-operatives, agricultural co-operatives, housing co-operatives, fishery co-operatives, consumer co-operatives, transport co-operative, social co-operatives.

The latter, very common because they can qualify for special benefits, are governed by Law 381/1991 and are intended to pursue the general interest of the community to promote human and social integration of citizens through the management of social, healthcare and educational services (type A), or performing other activities (agricultural, industrial, commercial or services) aimed at providing work for socially disadvantaged people (type B).

THE DISCIPLINE OF THE WORKING MEMBER.

As for the regulation of the working member, the first thing to note is that the same establishes with the cooperative two legal relationships:

- an associative relationship;
- an employment relationship.

These are not two equal relationships: the associative relationship prevails over the employment one that is considered to be merely instrumental to the bond of association (Min. Lav. No. 10/2004).

As far as it concerns the associative relationships, the working members are “co-stars” of the association’s performance. This is what differentiates them from a regular employment relationship in an enterprise that fulfills an economic purpose. Indeed, they have the typical powers and duties arising from the *status* as a co-op member, for example: management power through participation in the establishment of the governing bodies and the definition of the management structure, participation on the business risk and obligation to contribute in the capital formation, obligation to put their professional and personal skills at disposal depending on the type of activity performed.

As far as it concerns the working relationship established with the cooperative, it may have a paid-employment or self-employment nature (including forms of coordinated and continuous, non-occasional relationships) in accordance with the conditions set in the internal regulation of the co-operative, approved at the DTL: a document that must contain the type of relationship established with the working members, recalling the collective agreements applicable to members with the employment contract.

When the employment contract has a subordinated nature, the corresponding rules in the Civil Code and the social legislation should apply. In order to safeguard the special position of the working member, the application of the institutions, typical of subordinate employment, is only partial, therefore:

- all the provisions on health and safety at work and institutions such as severance indemnity and vacation time are applied. The aforementioned internal **regulation** of the co-operative may introduce pejorative exemptions with respect to working conditions due under the legislative framework with the only exception of minimum remuneration requirements;

- the Workers' Statute applies, but the exercise of trade union rights (Title III Stat. Lav.) must occur through the procedures set in the appropriate collective agreements between the national associations of the co-operative movement and the most representative trade unions;
- co-operative are required to pay an overall remuneration proportionate to the quality and quantity of work performed, but not less than the minimum provided - for similar services - by the *national collective bargaining* of respective or similar business segment.

As far as it concerns members who establish an un-subordinated working relationship, accident-prevention regulation (D.L. no. 81/2008) and the Workers' Statute limited to the Articles 1, 8, 14 and 15, as long as such rules are compatible with the specific form of work performance, applies. They are also entitled to compensation not lower than the "average in use" ones.

SALARY.

Working members remuneration consists of a minimum, calculated differently depending on the type of working contract between the parties (social worker with a subordinated employment contract or contract other than subordinated one) and any other additional fee, which can be decided by the Assembly.

TERMINATION OF EMPLOYMENT RELATIONSHIP.

Looking at the provisions that regulate the causes and the consequences of the employment relationship, the principle of primacy of the associative relationship on the employment, with regard to which the entire L. 142/2001 is informed, appears prominently. Especially:

- *in case of withdrawal or exclusion* of a member from the co-operative (approved in accordance with the statutory and the Civil Code Articles 2526 and 2527 c.c. provisions), the employment contracts of both employee and self-employed collaborators shall also be extinguished. In this case, the protection conferred by art. 18 of the Workers Statute (including

the right of reinstatement in case of unfair dismissal) does not apply; however, the court may apply the mandatory stability regime's sanctions (those provided for unfair dismissal in case the provisions of art. 18 S.L. does not apply), namely order the company to pay compensation for the damage arising as a result. The excluded member's unique remedy possible, if the conditions apply, is to obtain the annulment of the resolution for exclusion. The cancellation of the resolution automatically resets the situation prior to the unfair exclusion from the corporate relationship resulting in the reconstruction of the former employment relationship;

- if member's employment relationship is terminated, the associative relationship does not automatically expire. In this case, the guarantees conferred by art. 18 of the Workers' Statute in the event of unfair dismissal, do apply.

THE COURTS HAVING JURISDICTION TO SETTLE DISPUTES.

Disputes relating **only** to employment relationship fall within the jurisdiction of the Labour Court (Art . 409, par. 3 , c.p.c.; Cass. January 18, 2005 n. 850; Trib. Bologna July 7, 2010).

On the other hand, ordinary procedures apply to disputes between members and the co-operative relating to the associative relationship and *mutual services*, i.e. services that the co-operative provides to its members on more advantageous terms than third parties. The provision must be understood in a strict sense and cannot be extended to disputes concerning the substantive welfare rights of the worker (art. 5 , para. 2, L. 142/2001; Ord. Cass. January 18, 2005, n. 850). It is important to note that, if the employee has been fired as a result of a resolution to exclude him from the social structure, the so called *Tribunal of the Entrepreneurs* is responsible. According to the interpretation given by some courts, the *Tribunal of the Entrepreneurs* absorbs the power to hear and decide on the dismissal. This extension of the jurisdiction of the *Tribunal of the Entrepreneurs* results in a substantial increase in costs for the worker-actor and longer trials, thus consisting in a different treatment (a pejorative one) of the working member of the co-operative than other employees. Other Courts, in accordance with the requirement of equal treatment, consider the Labour Court as more competent.

The atypical employment contracts:

OUTSOURCING

By FRANCESCA CAMPINI

DEFINITION

Outsourcing (artt. 20 - 28 d.legs. 276/03) involves that a qualified subject ("**Supplier**", or more commonly "**Agency**") provides employees to another subject ("**User**"). Thus, the outsourced workers carry out their work performance within the User's organization, but are formally employed by the Supplier. Therefore, in outsourcing, an increase of involved subjects in the job relationship occurs because to the classical figures of employer and employee the User figure is added. The three parties involved are bound to each other by means of two different contracts:

- an outsource contract between the User and the Supplier;
- an employment contract between the Supplier and the worker.

Both contracts can be either open-ended or fixed-term.

APPLICATION FIELD

a) INVOLVED SUBJECTS

The Agencies are accountable for the manpower supply. The Agencies have to be certified by the Ministry of Labour, in which a de-

dicated register has been established. In order to be enrolled on this register, the Agencies have to fulfill specific requirements to attest their economical, juridical, and organizational solidity.

The user can be any subject, non-entrepreneur included. For instance, it might be a society, an entrepreneur, an association, or even Public Administration.

According to the task performed, the outsourced workers will be considered within the contractual level envisaged by the target CCNL. They can engage a broad range of different professional qualification levels (management, or more or less specialized jobs).

b) PROHIBITIONS

Subject to administrative sanction, it is forbidden appeal to outsourcing in the following cases:

- For the substitution of employees on strike;
- unless otherwise provided by trade union agreements, in the production units affected by, in the previous six months, collective redundancies (unless this contract was made to provide for the replacement of absent employees, or is concluded for workers in mobility for not exceeding 12 months or that has an initial term non exceeding 3 months) or salary integration treatments;
- For the User's company that have failed in the risk assessment pursuant to Legislative Decree no. 81/08 on safety at work.

LIMITS

National collective agreements negotiated by the more representative trade unions set the maximum number of outsourced workers (as a percentage of all workers) that the company can have.

CHARACTERISTICS

a) OUTSOURCING CONTRACT

The outsourcing contract is stipulated between the User and the Supplier. The worker is not involved in this procedure. Through

this contract the User gets the professional service upon agreed payment that includes the outsourced worker's salary and contributions, as well as a fee, to the Supplier, for research, training and bureaucratic management of workers.

The outsourcing contract must meet the following (formal) requirements:

- Written form; failing which the contract shall be considered void;
- Essential contents (including number of outsourced workers; cases and reasons of technical, productive, organizational, or substitutive nature in the case of fixed-term outsourcing; the starting data and the expected duration; the workers tasks and their classification; the workplace, the working time, and the economic and regulatory treatment of work performance; outsourcing Agency's commitment to directly pay the workers' salary and contributions; User's commitment to repay to the Supplier wage and social security charges incurred by them in favor of the employers, etc.)

Shall the Agency and the User agree in not considering the User obliged to hire the worker if there were any defect in the contract, that clause will be null and void (unless it provides the employee the recognition of an adequate allowance).

The outsourcing contract can be fixed-term or open-ended (the so called *staff leasing*). Both types of contract are subject to legal restrictions to guarantee the worker's rights. In particular:

- regarding fixed-term outsourcing contract, as well as fixed-term standard one, there is no longer need to specify the reasons that justify the limited duration. It is possible, though, to sign a fixed-term outsourcing contract without specifying a reason, in order to enhance its use in the economics world.
- while regarding *staff leasing*, the law lists the circumstances (not mandatories, given that other ones can be provided by the collective bargaining) wherein its use is possible. For example, staff leasing is allowed in consulting and assistance services in the IT sector; cleaning services; transport of persons or goods; libraries', parks' and museums' management; marketing activities; call-center management; etc.

CIVILITY PENALTIES RELATED TO DEFECTS OF FORM IN THE OUTSOURCING CONTRACT

The employment contract, if any defect of form is present, must be converted into an open-ended employment contract directly managed by the User, who becomes the employer. In particular, this scenario occurs in the following situations:

- absence of the written form;
- lack of reasons justifying the fixed-term outsourcing contract or out of the cases that justify recourse to the staff leasing
- where forbidden by law;
- absence of authorization from the Ministry of Labour;
- absence of any ministry clearance indication;
- in case of fraudulent outsourcing (i.e, having the explicit purpose of evading imperative legal or collective bargaining norms applied to the employee)

b) EMPLOYMENT CONTRACT AND EMPLOYMENT RELATIONSHIP'S REGULATION

The employment contract is concluded between the employee and the Supplier. The law does not provide a specific framework for this employment contract, therefore the use of any kind of contract (open-ended and fixed-term employment contract, internship, *job on call*, etc.) and schedule (either full time or part time) could be possible.

In details:

- Fixed-term employment contract: is regulated as any fixed-term employment contract. It may be extended with the employee's agreement and in a written form if provided by the collective agreements applied by the Supplier.
- Open-term employment contract: during periods when the employee is not working but he is still available, he is entitled the right to an availability allowance, usually lower than the salary. This allowance, paid out by the Supplier, cannot be less than 350 and is divisible by hourly shares.

The supplier has the power to dismiss, and the dismissal follows the ordinary rules, therefore varying according to the employment relationship's duration (open-ended/fixed-term).

Given that the Supplier is the formal employer, he is in charge of remuneration and contribution, as well as the exercise of the employer's authority. It is, however, a formal title considering that:

- regarding the employee's remuneration, social security and national insurance contributions, the User shall reimburse the Supplier;
- regarding the employer's authority, executive and control authority are up to the User, since the ones in a direct contact with the employee at the workplace must exercise them. However, the Supplier is charged with disciplinary authority: the User is obliged to promptly notify the Provider of facts that could constitute a disciplinary offense.

As far as it concerns the so called *jus variandi* (i.e the power to modify the employee's duties), it is exercised, to the extent permitted by the employment relationship (and therefore, pursuant to art. 2103 cc, the worker can not be assigned to duties far below the ones he was hired for) by the User provided he gives immediate notice to the leasing agency. In case the User does not give immediate notice to the leasing agency, he has to pay the salary differences and the eventual compensation for the damages.

ECONOMIC AND LEGAL TREATMENT

Article. 23 provides that the outsourced worker is entitled to an overall economic (salary) and legal treatment (trade union rights) not less than that of same level Users' workers who perform similar tasks.

Given that the law refers to an "overall" estimate, some differences on particular aspects (i.e. a single wage entry) may arise.

WORK AND TRAINING

Work and training

THE APPRENTICESHIP CONTRACT

By GIULIA NEGRI

The apprenticeship should be seen a main way to promote young people's entry into the labour market.

The internship (or *on-the-job training*), which has been recently introduced, differs in many ways from the apprenticeship contract, primarily because (unlike the latter) it is not considered an employment contract but only a means to enable young people to make their first experiences in the working world.

On the other hand, the apprenticeship contract is a real open-ended employment contract designed to train and employ young people. This is the reason why this type of contract is called **a mixed** one. Apart of remuneration, the employer has the legal obligation to provide the employee with the necessary professional training to acquire the professional specialization which corresponds to the employee's right to learn through a working activity.

It has a number of advantages both for the employer (as it provides him with the opportunity to directly train the professional figures he needs, according to the requirements of the entrepreneurial activity he actually carries out, taking advantage of a facilitating regime in terms of salary and contributions and flexibility of the relationship) and the new employee (whom, in addition to the salary and social security payments related to any employment relationship, is also given a training program that allows him to obtain an official professional qualification)

LEGISLATIVE SOURCES

The regulation of the apprenticeship contract is first provided by the articles 2130 - 2134 of the civil code (although it is referred to as *internship*), subsequently extended by law L. n. 25/1955.

In the following years, several modifications have been introduced, the most significant of which - as it has completely revised the apprenticeship discipline - being contained in the D Lgs. September 10, 2003, n. 276 (the so called Biagi Law), art. 47-53: for the first time ever, three different kind of apprenticeships are introduced; this differ from each other based on the education and the qualification system. This tripartite division has been maintained, as we will see later, even in the following reforms.

However, the rules that now govern the apprenticeship contract are contained in Legislative Decree no. 14 September 2011, n. 167, the so-called "Consolidated Apprenticeship Act", which has simplified and brought together in a single regulatory body (composed of only seven items) the existing legislative stratification on the subject, expressly abrogating all previous rules.

Recently, even the Law no. 92/2012 (the so called "Fornero Law"), the Leg. Decree 76/2013, converted into Law 99/2013 and Law Decree no. 34/2014 converted into Law 78/2014 have intervened on the rules governing the apprenticeship contract.

In addition to the general provisions of the Consolidated Act, apprenticeship supplementary provisions contained in national collective agreements and legislation of the regional level (the latter, in particular, has been entrusted with the regulation of profiles specifically related to the disbursement of educational content) must always be checked.

TYPES OF APPRENTICESHIP

- **Vocational education apprenticeship** (art. 3 of the Consolidated Apprenticeship Act):
 - » *Addressed to*: subjects aged between 15 and 25 years old, in all areas of activity, in order to achieve a qualification or a professional degree or even for the fulfillment of compulsory education;
 - » *Duration*: determined based on the qualification or diplo-

- ma to be achieved, in any case can not last more than 3 years (or 4 in the case of four-year regional diploma).
- **Professional apprenticeship** program (art. 4 of the Consolidated Apprenticeship Act)
 - » *Addressed:* in general subjects aged between 18 and 29 years old (subjects of 17 years old who possess a professional qualification too), in all sectors of activity, in order to achieve a specific professional qualification “for contractual purposes”;
 - » *Duration:* variable depending on the age of the apprentice and professional qualification to be achieved, it is established by the relative inter-confederation and collective agreements, in any case can not exceed a total of three years (except in the case of professional qualifications of the handicrafts sector, for the pursuit of which the apprenticeship can last up to 5 years).
 - **Advanced training and research apprenticeship** (art. 5 of the Consolidated Apprenticeship Act)
 - » *Addressed to:* subjects aged between 18 and 29 years of age (but, as well as in the case of professional apprenticeship, subjects of 17 years old who already possess a professional qualification, too), in all areas of activities in order to achieve an upper secondary education or higher education qualifications and advanced training, including PhDs, or technical specialization, to perform research activities, to make the practicum in order to access to professional orders or to carry-out a professional experience;
 - » *duration:* specific regulation is referred to the Regions, in agreement with other agencies, including the most representative regional associations of employers or employees, universities, etc.
 - » In addition to the apprenticeship types mentioned above, there is also retraining apprenticeship (provided by art. 7, paragraph 4, of the Consolidated Apprenticeship Act) which, while not constituting a full fourth category of apprenticeship, has its own features: it is intended for those who have lost their jobs (workers in mobility), with no age requirement, and is aimed at qualifying or retraining those disadvantaged.

GENERAL FRAMEWORK IN COMMON

Beyond the peculiar features that characterize each type of apprenticeship mentioned above, there are some general rules that apply to all and which are provided for by art. 2 of the Consolidated Apprenticeship Act

The main ones are the following:

- The **written form** of the contract, apprenticeship agreement, and the training plan (albeit in summary form). The educational plan has to be defined within 30 day from the conclusion of the contract.
- the **minimum duration** of the contract is not less than 6 months, with the exceptions provided for seasonal activities;
- piecework is forbidden
- the possibility to assign the worker to a category **up to two levels lower** than that corresponding to the qualification to be attained with the corresponding salary reduction;
- the presence of a **tutor** or a company's **supervisor**
- the possibility to recognize the professional qualifications and skills acquired for contractual purposes in order to pursue studies;
- the registration of the professional qualification for contractual purposes in citizen's training booklet;
- the possibility to extend the apprenticeship contract in case of illness, work related injury, or any other involuntary suspension of the work of more than thirty days
- the possibility to have service confirmation's procedures, without new or increased financial charges by the *national collective bargaining*;
- **both parties are prohibited to terminate** the contract during the training period without any just cause
- The opportunity for the parties to terminate **the contract prior** notification effective from the end of the training period in accordance with art. 2118 cc, which if not exercised allows the continuation of the relationship as an open-ended employment;
- The application of different mandatory apprentices' welfare and social assistance, including the ASPI
- setting the maximum total number of apprentices that an employer may either directly or indirectly through outsourcing hire

- the obligation, for the company with more than 50 employees, to convert into open-ended employment contract at least 20% of apprenticeship contracts, otherwise other apprentices can not be hired. Apprenticeship contracts terminated for failure to pass the test, resignation and for just cause are not included
- Inability to hire apprentices with fixed-term outsource contract

TRAINING

The training content, the exact definition of which depends on the regions and the collective bargaining, is the distinguishing feature of the apprenticeship contract; Therefore, if the employer does not make his apprentices perform any practical training, the law states that:

- The relationship between the parties involved shall be considered as a normal open-ended employment contract
- the employer must receive the difference between the salary and the contribution paid and those due to the level that he would have reached at the end of the training period (if in fact already achieved by the apprentice, being from the beginning of the relationship in possess of the corresponding skills);
- The contributory benefits are to be returned increased

Work and training

INTERNSHIP - *ON-THE-JOB TRAINING*

By JESSICA BATAIA

The *internship* (or *on-the-job training*) is a training and first entry into the workforce tool aimed at young people who have completed their compulsory education.

Because of its training purpose the internship is not considered an employment relationship despite the fact that working activity is performed.

As a result, nor the requirements governing employment relationship nor those governing self-employment are applied.

The internship can be used only for those work activities that require professional training and not to replace absent workers with a right to retain their position (sickness, maternity, leave), or to cope with peaks of activity or temporary needs in the establishment.

Internship's discipline is entrusted to the Regions, on the basis of information provided by the guidelines laid down by the State-Regions Conference, in implementation of the l. n. 92/2012 (the so called Fornero reform). In the absence of specific regional, the rules of art. 18, l. n. 196/1997, as well as to D.M. n.142/1998 remain applicable.

The internship involves three parties: the trainee, the promoter, and the host.

- The *trainees*: young people who have completed compulsory education (recent graduates) but also jobless/unemployed, disabled and disadvantaged persons.

- The *promoter*: the subject - public or private - that connects the aspiring trainee with the employer - the host (eg. services and employment agencies, universities, schools); the promoters guarantee the authenticity of the internship, thus, they have to be authorized by the national and regional law
- The *host*: the employer - public or private - that allows the actual conduct of the internship. In order to activate an internship the host must meet strict numerical requirements, be in compliance with the regulations governing health and safety at the workplace, not have imposed dismissals (except those for just cause and for justified subjective reasons) in the 12 months prior the training, nor have ongoing extraordinary wage supplementation fund procedures concerning activities equivalent to those of the internship in the same unit.

It is noted that the employer-host can not sign more than one internship contract with the same trainee.

The relationship between the parties is ruled by an *agreement*. The *agreement* is stipulated between the promoter and the host but it has to be known and signed by the trainee as well. The basic elements of the internship are written in the agreement:

- Stage duration, that differs based on the subjects and the region;
- The two *tutors* of the apprentice (one made available from the promoter and the other one from the host);
- The expense where the minimum is indicated by the regional rules applicable, subject to the fact that the Guidelines have considered a gross amount of Euro 300.00 per month as a fair compensation;
- the rights and obligations of the parties involved: in particular, compulsory insurance requirements paid by the promoter (INAIL and civil liability against third parties).

The training program (based on the models defined by the Regions) which describes the object and the methods of the internship must be attached to the agreement

It should be remembered that regarding curricular training, ie those performed under a defined path of study, there are specific provisions at both national and regional level.

Work and training

STUDY PERMITS - TRAINING LEAVE

by JESSICA BATAIA

In compliance with art. 34 Cost., which protects the right to study, different permissions, leaves, and benefits for study reason or education are recognized to the workers.

The regulations governing study permits and training leave are outlined by art. 10 l. n. 300/1970, art. 13 l. n. 845/1978 and Articles. 5 and 6 l. n. 53/2000.

However, the provisions provided by law must be integrated with the provisions contained in the collective agreements of the sector. It is necessary, therefore, to check the terms of the collective agreement applicable to a specific employment relationship.

PERMITS FOR STUDY PURPOSE

Permits for study purpose are intended for employed students, enrolled and attending regular courses of study in schools of primary, secondary and vocational qualification, state, equalized or legally recognized or otherwise qualified to issue legal qualifications.

In particular, the definition of hours paid (usually 150 hours in three years), the number of workers that can simultaneously enjoy the permissions in the same company, the terms and limits of use of the same permission are entrusted to the collective bargaining of a specific fields. Collective agreements may also provide additio-

nal paid and unpaid work permits for study purpose. In this regard, the following table shows the key elements of the scheme provided by some of the major sectoral collective agreements.

CCNL	Courses	Time off for exams	Number of employee	Working hours
Chemist	150 paid hours per capita / three years	- Examination leave with pay - Additional permits differentiated between universities and upper/professional schools	- 3% of total shift workers	- 150 hours x 1/10 employees
Metalworker	150 paid hours per capita / three years	- Examination leave with pay + 2 days prior to the exam (university students) - 120 unpaid hours / year	- 2% of total employees	- 7 hours x 3 x number of employees
Tertiary	150 paid hours per capita / three years	- 40 paid hours / year	- 2% of employees in the production unit - Companies of 30-49 employees: 1 employee	- 150 hours x 1/10 employees
Tourism	150 paid hours per capita / three years	- Examination leave with pay	- 2% of employees in the production unit	- 150 hours x 1/10 employees
Road transport and logistics	200 paid hours per capita / three years	- Examination leave with pay - 30 paid hours / year	- 5% of employees in the production unit	

In order to obtain permits for study purpose, the worker must submit a written application according to the procedures and timing specified in the sectoral collective agreement, and if requested by the employer, certify his enrollment and attendance of courses. Under Art. 10, Law no. 300/1970, the workers are entitled to a range of benefits and in particular:

- To work in shifts that facilitate the attendance of courses and exam preparation;
- To be exempted from overtime during the weekly rest days;
- To make use of paid leave to attend the exams: the granting of such permits is independent of both the time slot and the outcome of the exams.

TRAINING LEAVE

Employees with at least 5 years of service with the same employer (private or public), can take advantage of training leave, ie periods of suspension of employment aimed to conclude compulsory education, take an upper secondary educational qualification, diploma or university degree, or even participate in training activities other than those conducted or funded by the employer (art. 5, law no. 53/2000).

The leave request must be submitted to the employer with notice of at least 30 days and can be used for a maximum period of 11 months (continuous or fractionated), throughout working lives. During this period the employee shall retain his working position but is not entitled to remuneration nor his length of service is extended.

Even in this case, the collective agreements establish the procedures and timing for submitting the application, the assumptions of deferral or refusal by the employer to the exercise of this option, the mode of use of the leave and the maximum percentages of workers who can use them.

Further education leave, unlike training leave, as provided by art. 6, Law no. 53/2000, are intended for workers who wish to - by personal choice or business decision - follow vocational training courses.

CONTINGENT WORK

Contingent work

INTERMITTENT EMPLOYMENT CONTRACTS (ON-CALL EMPLOYMENT)

By RICCARDO BONATO

The job flexibility reaches its maximum with this particular contract: on-call employees are on standby until called to work.

The on-call employment contract is divided in three types:

- **The employee is required to work when called upon.** The on-call job contract must stipulate the monthly allowance to be paid to the worker during the period of his or her stand-by availability to the employer. The amount is to be fixed by collective agreements but may not be less than a level established and periodically updated by the Ministry of Labour and Social Policies, after consultation with the employers' associations and trade unions. If the employee unreasonably refuses to answer a call, the contract can be terminated and (besides having to refund any perceived allowance) shall surely make restitution to the extent determined by the individual employment contract.
- **The employee can decide whether to come to work**

when called upon. It is characterized by the fact of the on-call employee is not obliged to answer the call and no allowance is payable for periods of inactivity.

- **on-call employment contract for limited periods of the year.** The worker gives his availability in particular periods of the year (e.g. week-end, Christmas holidays, Easter holidays, or summer holidays) no allowance is payable for periods of inactivity. In case of unjustified failure to respond to the call of the worker, the contract is expected to be terminated without paying any compensation.

In all cases, according to the art. 34 Legislative Decree no. 276/2003, the intermittent employment contract can be concluded in two cases:

- Related to work tasks with a non-continuous or intermittent character to be determined by collective bargaining at national or local level, in specific periods of the week, month, or year (third category described);
- For employees aged under 25 years old or over 45.

PROHIBITIONS

On-call worker cannot be used to replace workers on strike or if, during the previous 6 months, the company has initiated a collective redundancy procedure.

Recently, a new normative modification has been introduced in order to limit the use of this particular contract. In particular, D.L. 76/2013 (the so called Work Package), with the inclusion of paragraph 2a art. 34 Legislative Decree no. 276/2003, has determined that the use of intermittent employment contract shall be permitted for each worker with the same employer, for a maximum of 400 working days over three years. Upon successful completion of this period, the law provides for the contract to be converted into an open-ended employment one.

EMPLOYER'S DUTIES

The employer must give notice to the Territorial Labour Office,

both of the intermittent contract stipulated and the individual performance of the employee. Such notification must be made before the beginning of the work and can be done via SMS, fax, or email. The employee will be paid in proportion to the amount of hours worked and tasks performed, with a minimum hourly wage equal to that established by collective agreements for workers of the same level.

PERIODS OF INACTIVITY BETWEEN TWO CALLS

Article. 38, paragraph 3, of Legislative Decree 276/2003, establishes a curious “principle of non-discrimination” for intermittent workers, therefore, during the periods of standby, they do not hold any of the rights granted to subordinated employees. This means that illness, maternity and injuries are not recognized during those periods.

Contingent work

ANCILLARY LABOUR

By GIULIA LEONI

Ancillary occasional labour is defined as an employment relationship with the same customer not exceeding thirty days from the beginning of the year, whose total remuneration does not exceed 5,000 euro (Legislative Decree no. 276/03, art . 61).

For a better understanding of the characteristics of the occasional employment contract, it is necessary to emphasize what differentiates it from the project-based employment contract:

- Lack of coordination with the activities of the client;
- Lack of integration in the company organization;
- Occasional nature of the activity;
- Complete autonomy of the worker regarding the time and mode of the performance.

It is not necessary nor to register for VAT or enrollment in a professional register: it is enough for the employee to issue an invoice for

occasional performance.

Regarding the contributory standpoint, *subscribing* in Inps separate management fund is mandatory only for taxable income exceeding 5,000 euro: the occasional collaborators, therefore, are exempt from paying contributions.

The Legislative Decree 276/2003 has also introduced the occasional accessory work, thus defining all activities of an occasional nature which do not lead, with reference to the totality of the buyers, in amounts exceeding 5,000 euro in a year, referring to activities performed occasionally and in an auxiliary position with respect to the main situation.

If the customer is an entrepreneur or self-employed, the remuneration received can not exceed 2,000 euro.

The rules laid down in 2003, however, has undergone significant changes over the years. The objective and subjective requirements limiting its scope have now been removed; in fact the actual legislation is applicable to all productive areas, all clients, and all workers.

The only parameter to be considered is the respect of the economic limit.

The one who offers occasional accessory work must notify the competent Employment Service or accredited Labour Agencies.

On the other hand, the individual or the organization that is planning to hire workers with this type of contract, will purchase from authorized retailers (usually INPS) the so-called "vouchers", which he will give to the employee as remuneration.

The worker will get paid giving these voucher to the authorized offices and will receive back, for every voucher presented 7.50 euros, ie 10.00 euros minus 25% tax that includes: INPS Separate Management contributions (13%), INAIL contributions (7%) and the administration fee (5%).

COMMON PROBLEMS

Contingent work

MATERNITY LEAVE PROTECTION

By ROBERTO LAMA

Pregnancy of an employee is an event that justifies the application of a series of protections, specifically provided for by the legislature in implementing the provisions of art. 37 paragraph 1 of the Constitution which states: "The Working women have the same rights and, for equal work, the same wages as working men. Working conditions must allow women to fulfill their essential role in the family and ensure the mother and the child a special appropriate protection.

The spirit and purpose underlying the provision of these protection instruments is twofold: it includes the need to safeguard the

worker's and unborn child's health, being this a potentially dangerous event, as well as the need to avoid that the maternity leave causes the end of the business relationship due to the productivity drop.

What emerges from an analysis of Legislative Decree no. 151/2001 (Consolidation Act on maternity leave) is that the working mother has a different level of protection whose greater or lesser intensity is related to the type of working relationship. It can be noted that maternity protection regulatory institutions are mainly provided with reference to the female employee with an open-ended employment contract.

In any case, the maternity leave protections provided in the Consolidation Act are the following:

- paid time off for antenatal care
- protection against unfair dismissal;
- protection against unfair treatment or discrimination.

First of all, the pregnant worker, from the conception up to the 7th months, cannot perform dangerous, exhausting, and/or unhealthy working activities (all. *A e B. of the Consolidation Act*) nor work the night shift (from 24 pm to 6 am). In the event that the woman normally performs this kind of activities, the employer is obligated to change her duties, notwithstanding art. 2103 cc, may be even lower than the original ones, without prejudice to the right of the worker to maintain the salary previously perceived. If duties equivalent to or less than those originally performed are not possible, the inspection service of the Ministry of Labour may suspend the employee on full pay for the entire period of gestation (art. 17 of the CA).

A period of mandatory maternity leave (*art. 16 T.U*) lasting 5 months is provided by law. During this period the working activity of the working mother is forbidden and punishable by art. 18 of the CA. The maternity leave period covers: the two months before the expected date of confinement; the period between the expected date of confinement and the actual date; the three months following the confinement. An arrangement known as "flexible maternity leave" has recently been introduced: this allows the worker to put off her maternity leave until one month before the expected date of confinement and then continue it up to four months after the birth of her child.

Shall the woman present risk of serious outcomes and / or suffers from forms of disease, certified by the competent health care facili-

ties, capable of worsening the pregnancy (eg. toxoplasmosis, rubella, hepatitis, etc.) the maternity leave can be anticipated.

During the period of maternity leave the worker is entitled to a maternity allowance from the INPS at 80% of the contractual wage rate on which national insurance contributions have been paid.

In case of death, serious illness of the mother or neglect, as well as in the case of sole custody of the child to the father, the latter has the right to take time off from work throughout the duration of maternity leave (art. 28 TU).

In pursuit of equally child care share between parents, the Law no. 92/2012 has introduced a period of compulsory leave for the father: within five months after the child's birth, the working father is obligated to take a day off from work that must coincide with a mother's day off. A period of optional leave of two days can be enjoyed even continuously, in substitution, and previously agreed with the mother.

During pregnancy a woman is entitled to get leave paid to perform antenatal cares (art. 14 of the Consolidation Act), provided that such checks are to be carried out during working hours. Until the first year of a child's life the worker is eligible for two daily rest periods for breastfeeding lasting one hour each, combined into one rest period of two hours. These leaves are fully paid (art. 39 of the Consolidation Act). Rest periods are half-hour when the worker benefits from the nursery or (similar), established by the employer in the production unit or in the immediate vicinity of it. During the daily rests the worker has the right to leave the workplace.

In case of illness of the child aged less than three years, the parents are entitled to unpaid leave for a period equal to the duration of the illness of the child (art. 47 of the CA). For children aged between 3 and 8 years, each parent can refrain from working, alternately, for a period not exceeding five working days per year.

During the first eight years of life of each child, each parent can enjoy, even fractionally, a period of leave (Parental leave) lasting up to six months (art. 32 of the CA). Altogether, the parental leave can not last more than 10 months. Parental leave entitles the perception of an indemnity equal to 30% of the contractual wage.

The discipline described above applies to employee (at home, part-time, domestic). Planned periods of compulsory leave and early leave, if necessary, apply even to those who have subscribed INPS separate management. Regarding project-based employees, in case of pregnancy, the unpaid suspension of the employment relation-

ship as well as an extension of 180 days apply. Regarding self-employed, the protections provided by the specific professional associations (art. 70 of the CA) apply; a period of compulsory leave lasting five months is in any case expected.

With regard to dismissal, it is expressly forbidden for the employer to dismiss the worker for the period between the date of conception of the child and the completion of one year of age of the child. Where the dismissal is imposed in violation of this prohibition, it is void and, consequently, devoid of any effect. Dismissal due to absence during maternity leave or child's illness is also forbidden. Dismissal can only occur on grounds that have nothing to do with maternity, such as:

- negligence of the worker constituting just cause for dismissal;
- expiry of the term of the contract;
- company's cessation, or one of its independent branch at which the employee worked
- negative outcome of the test.

Art. 56 of the Consolidation Act establishes that, after maternity leave, employees are entitled to return to the same job in which they were employed before taking leave or in any other one located in the same town and remain there until the child is one year old. She has also the right to benefit from any improvement in working conditions introduced during the absence of collective bargaining or by law. This right to return to the same job must apply even in the case of enjoyment of leave periods other than the mandatory one.

Additionally, in order to tackle the so-called problem of blank resignations, the resignations and mutual termination agreements of parents with children under the age of three must always be validated and confirmed by such mothers or fathers through a special procedure. Failure to do so renders the resignation/mutual termination agreement ineffective.

Eventually, discriminations based on pregnancy when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, such as leave and health insurance, and any other term or condition of employment are forbidden

Common problems

RESIGNATION

by FRANCESCA CAMPINI

The term “resignation” indicates the termination of the employment relationship by the worker. With the resignation, the worker expresses his will (normally, for the simple convenience to leave the workplace), and he can resign at any time, provided he gives reasonable notice, special cases (just cause, working parents, in the case of marriage with incentives) excluded.

From a regulatory standpoint, the resignation are contemplated in the art. 2118 of the Civil Code as one of the causes that may stop the employment relationship: the most conspicuous discipline is contained in. 92/12 (the so-called Fornero Reform) that, for the first

time, subordinates it to compliance with a specific procedure. This arrangement is, according to the legislature, intended to ensure that the withdrawing employee is genuinely willing to do so and is not pushed in this direction by the employer.

1. REQUIREMENTS

Voluntariness is the basic feature of resignation. In cases where the will of the worker has been in any way affected by an external event, resignation is invalid.

Should therefore be considered flawed and invalid, resignation determined if:

- the employer has followed a course of conduct deliberately aimed at coercing the employee to resign
- worker's mistake falling on a rule of law (for example: the resignation of an employee who believes he has a fixed-term contract, while actually having an open-ended contract)
- the inability of understanding and willing (eg. worker affected by bipolarity).
- it is also possible that the employer and the employee agree for the employee to resign in exchange for an economic incentive (the "voluntary redundancy").

2. COMMUNICATION

There is no obligation to resign in a particular form: resignation can therefore be submitted orally, in a written form or made implicitly.

More specifically, the written form is prescribed by collective agreements and sometimes expressly referred in individual contracts. In most cases, resignation is submitted with a letter signed and addressed to the employer or to the Human Resources Department, provided with date, company's address or the one of any natural person whom it is addressed, the indication of the notice period and the last day of work. It is not mandatory to include personal motivations regarding resignation.

Resignation "made implicitly", is referred to all those behaviors of the employee such as to explicitly and unequivocally externalize

its intention to withdraw (eg. No unjustified refusal of transfer).

3. THE RISK OF THE SO CALLED “BLANK RESIGNATION”

The legislature, in order to discourage a widespread past practice (the employer used to extort the worker to sign an undated resignation letter, being in this way able to terminate the employment relationship without incurring the risks of a reckless dismissal), has introduced a special validation procedure (see below) the respect of which affects the effectiveness of the resignation (to formalize the will of the employee who intends to resign).

In addition, *a blank letter of resignation is null and void* and cannot be used by the employer to end an employment relationship. An administrative fine is imposed to the employer who uses it.

4. VALIDATION PROCEDURE

The Fornero reform, in order to certify the authenticity of the will of the worker to withdraw, has introduced a new validation procedure of resignation making the simple communication of the resignation not adequate enough.

After submitting his resignation to the employer, the employee who wishes to terminate the relationship should;

- Validate it at the Territorial Labour Office or at the Employment Centre with territorial jurisdiction, or at other locations identified by collective agreements;
- *Alternatively*, sign a statement in the footnote of the resignation communication receipt.

Failing the validation, the employer must send to the worker (within 30 days from the resignation) a written invitation to provide for it. If the employer fails to do so or if the employee does not accept the invitation and does not validate the resignation within 7 days, or if he withdraws the resignation (see below) the same is intended ineffective.

5. RESIGNATION EFFECTS

If the employee follows the validation procedure, the employment relationship ends (from the day of presentation not from the validation day). It is not necessary for the employer to accept the resignation.

During the validation period, the resignation is valid but temporarily ineffective.

Within seven days following the invitation of the employer to validate the resignation, the employee may withdraw them. The consequences of the withdrawal are as follows:

- The day following the revocation notice, the employment contract has a normal course again;
- If there was no work performance from withdrawal to revocation, the worker doesn't build up any remuneration;
- The revocation shall cease any effect of any agreement related to the withdrawal and the employee is required to return all amounts received under these agreements.

The invalid resignation is cancelled by the judge who orders the worker reintegration and any eventual compensation for the damage.

6. THE ADVANCE NOTICE

To prevent that the sudden resignation of the worker affects the conduct of the employer, it is necessary that these take action in respect of a period of notice determined by the collective agreement or individual contracts. During this period, the parties keep all the rights and duties arising from the employment relationship (e.g. the worker can be fired for *just cause*).

The employee may, however, withdraw before the expiry of the notice period. In that case the employer withholds from the employee severance indemnities a compensation at an amount equal to that an employee would have earned as salary or wages if they worked through the whole notice period (**payment in lieu of notice**). Once the employee chooses this option, he can not change his mind. On the other, the employer as well can refuse the prior notice by paying the indemnity in lieu of notice.

In the following cases, the employee is not required to comply with any term of notice:

- resignation for *just cause*
- working mother/father resignation
- at-will employment (e.g. during a trial period).

7. RESIGNATION FOR JUST CAUSE

According to the classical definition, *just cause refers to*: a breach of duty by the employer (i.e. a breach of the employment agreement or the duty of fair and reasonable treatment) such that the employee feels he or she cannot continue the employment relationship, not even on a temporary basis.

As an example, the judges has recognized the *just cause* in the following:

- repeated delays or failure in the payment of wages;
- Failure to pay the contributions
- Abusive behavior of the employer
- Illicit behavior
- Sexual harassment
- Mobbing

Being the just cause a behavior particularly serious and not tolerated, communication of resignation should be immediate. The delay in the employee resign is justified only in exceptional cases and only for a short period of time.

The resignation for just cause gives to the employee the right to receive compensation in lieu of notice, but not compensation for the pecuniary damage induced by termination of the relationship. If, however, he suffered a non-pecuniary damage by virtue of the failure which led to the just cause of resignation, the worker can certainly claim damages.

Sample resignation letter for just cause

(Place and date)

Subject: resignation for just cause

I, the undersigned (name of employee) with this letter, pursuant to art. 2119 of the civil code, would like to formally announce my resignation from [company name], starting today. My last day will be [two weeks

from today].

The reasons that lead me to withdraw, ie (summary indication of the reasons), not allowing the continuation, even on a temporary basis, of the relationship are indeed a just cause for resignation.

Therefore, together with employee severance indemnities I kindly ask for the indemnity in lieu of notice to be granted.

*With best regards,
(Signature of the worker)*

LAW N. 183 OF DECEMBER 10, 2014 ("JOBS ACT II")

by SIMONE VARVA

INTRODUCTION

Through law No 183 of December 10, 2014, vigorously supported by the President of the Italian Council of Ministers, Matteo Renzi, the Italian Cabinet intervenes once again on employment rules with the aim of creating a better, more fair labor market, following the *flexicurity* model (i.e. combining flexibility of employment with job security).

For the purposes of this paper, it will be sufficient to address the most important issues faced by young people. Given the enabling act nature of the aforementioned legislation, we will also refer to the first two legislative decrees; these legislative decrees, as we write, are still in draft, awaiting for the mandatory (but non-binding) opinions of the parliamentary committees in charge, before the actual entry into force which will take place on the day following its publication in the official bulletin. It would appear at present that any amendments that may affect these legislative decrees will not assume an importance such as to entail the comprehensive approach, however it will be necessary to ensure that the final version does not contain measures other than those currently contemplated.

From a schematic point of view, the enabling act, followed by a series of legislative decrees which will put into effect and imple-

ment its principles and criteria, contemplates a series of significant measures of interest to young workers.

OPEN-ENDED CONTRACT OF EMPLOYMENT WITH “RISING PROTECTIONS”

A first innovation concerns the amendment to the regime of sanctions in case of unfair dismissal. Companies must pay a severance package, rather than reinstatement, a worker in case of “wrongful dismissal” (which is decided by a labor court). The size of the severance will be based on the worker’s years of employment with the company. It does away with the previous rule, in which fired workers who sue their former employers under Art. 18 have often been able to get the courts to have them get reinstated. The right of a new open-ended employee to be reinstated in the event of unfair dismissal will be limited to cases of unfair dismissal on discriminatory or disciplinary grounds. Reinstatement will no longer be available where the dismissal was based on business (economic) reasons.

Minimum severance package in case of unfair dismissal within companies employing more than fifteen employees in the same production unit, or more than sixty employees in total, is four months and is paid to workers up to two years of tenure; it is expected to increase of two months for each additional year of employment, up to a maximum of twenty-four months. This sanction is instead halved in case of vitiated dismissal under a formal or procedural point of view.

As far as it concerns production companies of smaller size, minimum severance package in case of unfair dismissal is halved compared to the aforementioned sanction regime and in any case not exceeding a maximum of six months.

EXTENDED MATERNITY BENEFITS TO FEMALE WORKERS AND NEW FORMS OF WORK - LIFE BALANCE

Law 183/2014 objectives include two important issues. The first one concerns new form of work - life balance; the second one, is focused on the introduction of new forms of parental protection. In particular, the act includes a number of new “measures to protect

maternity leave and to promote work - life balance policies for the majority of workers.”

The law provides extended maternity benefits to all female workers (also to those with a freelance work), introducing a tax credit to help mothers return to work, and promoting union agreements which encourage flexible working and working from home. The legislator is then called to introduce tax incentives to promote the work of women “with minor or disabled children and those who find themselves below a certain threshold of overall individual income” and promoting union agreements which encourage flexible working and working from home. Concerning parental leave, the legislator is finally called upon to assess the current arrangements for the protection and support of motherhood and fatherhood “in order to be able to evaluate the audit to ensure greater flexibility regarding mandatory parental leave and, promoting work - life balance policies, also taking into account the organizational features within the companies.”

It should be noted that this legislative decree is quite broad in terms of political and discretionary content: it is therefore not possible to predict in which terms it will be implemented; however, the indication of the two contextual issues suggests that the encouragement and promotion of parenting should be mainly based on the expectation of better chances of flexible working to all female workers (or, more broadly, to workers burden of parental care); as for the work - life balance, principles or guiding criteria are not to be found.

THE NEW UNEMPLOYMENT BENEFITS (NASPI)

The draft decree introduces a new form of unemployment benefits in case involuntary loss of employment. The new unemployment benefit - whose Italian acronym is NASPI - will be available to anyone who paid into the national pension fund for at least 13 weeks sometime in the past four years, and who can prove they were employed at least 18 days in the current year. At the same time, it eliminates the “mini-ASPI”.

In order to take advantage of the new benefits, the unemployment system requires workers to look for work and to be able and available to work, should a job turn up.

The duration of the subsidy is directly proportional to the contri-

bution period: every two weeks of contribution a week of unemployment is matured. In any case, a maximum limit is provided, currently, established in about a year and a half (precisely seventy-eight weeks, starting from 2017).

Pending the reform of the contract types, “para - subordinate” (coordinated and continuous or project) workers are provided with an experimental, specific service (called DIS - COLL), which reproduces (as far as compatible with the peculiarities of this contract) the NASPI’s characteristics.

The system ends with an unemployment income support check (ASDI) which intervenes in case the unemployed subject runs out of the unemployment benefits and lives in extreme poverty (according to the “economic condition of need” wording in the draft Decree).

HELP IN FINDING NEW EMPLOYMENT

One of the main objectives of the enabling act is the reorganising and strengthening of the national agency for employment policy on the basis of European guidelines for maximising jobs and the “flexicurity” model (i.e. combining flexibility of employment with job security). A national employment agency will be set up, reinforcing pro active politics in order to bring a balance between supply and demand in the Italian workforce market.

In particular, an employee who is dismissed under the new rules will receive a voucher from his or her local governmental Job Centre in order to receive help in finding new employment from private job agencies. The employee is required to cooperate with the Job Centre and provide a profile in order to facilitate his reintroduction to the work force.

The employment agency is called upon to take concrete and effective action, since it is possible to collect the voucher’s value “only in case of result.” This measure, which political objective is clear, however, presents sensitive issues on how implementation will be performed, as there is the risk that agencies (especially private ones) are only activated in practice regarding professionalism and subjects attractive to the market (in order to collect the vouchers from the public authorities, as well as the employers’ compensation regarding the mediation activities).

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Hórisma

The series “Hórisma” intends to publish and disseminate multidisciplinary - theoretical and empirical - analysis of young scholars willing to look beyond the boundaries of their discipline.

The goal is to promote meeting and comparison on subjects of collective interest.

The theme of the volumes will be selected by the Advisory Board based on the possibility of multidisciplinary enrichment, placing particular emphasis on impact topics for young people. The contributions will be selected by a scientific committee set up on the materials involved.

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