

Newsletter

March 2014

THE FIRST EMPLOYMENT MEASURES OF THE RENZI GOVERNMENT: THE REVOLUTIONARY LIBERALISATION OF FIXED-TERM EMPLOYMENT AND THE SIMPLIFICATION OF APPRENTICESHIP

On 21st March 2014 Law Decree no. 34/2014 entered into force, containing urgent measures to fight unemployment, revitalise occupation and simplify employers' fulfilments (hereinafter, the "Decree"). It is the first and most immediate act of the significant labour law reform which has been announced by the Renzi Government under the name of "Jobs Act".

The Decree **only modifies the legislation on fixed-term employment and apprenticeship**. The additional expected changes (concerning first of all unemployment social plans and the reorganization of the numerous existing work contracts) will take a little bit longer, since for such purpose the Government has to exercise a specific delegation to legislate on behalf of the Parliament, pursuant to a draft law which has also been defined in the last few days.

The provisions contained in the Decree, although limited in scope, represent a real turning point, since they modify principles – especially with respect to fixed-term employment – which seemed to be a fundamental part of the Italian labour law system.

The Decree will become final only upon conversion into law, which must occur within 60 days from the date of its entry into force. However, it would be a political issue for the Parliament to take a step backwards once a so radical choice has been made.

FIXED-TERM EMPLOYMENT

Through a series of very focused changes to Legislative Decree no. 368/2001 (i.e. the main legislation on fixed-term employment), the Decree significantly modifies the rules governing the use of fixed-term contracts, as follows:

- **all fixed-term contracts can be entered into in the absence of the (so far required) specific technical, organizational, production or replacement-related reasons, for a maximum duration of 36 months.** The possibility to by-pass the existence (and indication in the contract) of such specific reasons, which had been first introduced on an exceptional basis in 2012 limited to the first contract and up to 12-months, has therefore now become the general rule;

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- the extension of fixed-term contracts, until now allowed just once, is now admitted up to a maximum of 8 times, always within a maximum contractual duration of 36 months and provided that the extensions refer to the same activity for which the contract has been originally entered into;
- fixed-term employees may account for no more than 20% of the total headcount, unless collective agreements introduce different rules. This limit, which may somehow reduce the appeal of the instrument, is however mitigated by the fact that fixed-term contracts entered into (i) to replace employees on leave of absence, (ii) to meet seasonal needs, (iii) to perform specific shows or radio/TV programs, (iv) with employees over 55 or (v) for start-up reasons do not fall within the calculation of the above 20%. Companies staffed with five employees or less will be allowed to hire just one fixed-term employee.

Fixed-term employment has therefore been “liberalised”, and the obligation to justify its use – which characterized the discipline of such contract in the last 50 years – no longer exists. The only remaining limit is the 36-month total duration of a fixed-term relationship having as subject matter the same duties (including any fixed-term staff-leasing). Also the already existing 10/20-day interval between one contract and the following one still applies, depending on whether the previous contract had a duration lower than or exceeding 6 months.

Fixed-term employment, which is already used for more than 50% of new hires, will therefore likely become the main instrument for accessing the labour market.

The Decree was welcome by employers, since it offers extreme flexibility to face a still uncertain economic context. However, also some criticism arose. It is finally to be assessed whether EU Directive 1999/70/CE, which imposes objective constraints and limits to the reiteration of fixed-term contracts, can be considered as still correctly implemented by Italy after the enforcement of the provisions contained the Decree.

FIXED-TERM STAFF LEASING

Similarly to what happened for fixed-term contracts, also the fixed-term staff leasing benefited from a clear “liberalisation”. As a matter of fact, article 1, para 2, of the Decree allows the use of leased staff also in the absence of the specific technical, organizational, production or replacement-related reasons which were so far required.

APPRENTICESHIP

The above mentioned liberalisation of fixed-term employment may reasonably entail a more limited use of apprenticeship, that the most recent labour policies had identified as the privileged instrument for the access of young people in the labour market.

The Decree tries to somehow **revitalise this instrument, by simplifying the several constraints and formalities that according to employers have so far limited its use**. To this regard the Decree, among the others:

- cancels the obligation to set out in writing the individual training plan (which used to be attached to the contract);
- cancels certain obligations to carry out an “external” training during the course of the contract;
- cancels the obligation to confirm as open-term employees a certain minimum number of apprenticeships as a condition to hire new ones.

Even if this simplification process should encourage the use of apprenticeship, it is questionable whether the cancellation of the “external” training (although sometimes scarcely organized) may really enable apprenticeship to become an instrument capable of improving skills and actually helping young people to access the labour market, rather than remaining a tool to simply reduce the labour costs of new hires.

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THE OTHER NEW RULES

The Decree also introduces changes in the area of labour public services and initiatives, simplifies the modalities for the verification of the correct payment of social security charges by employers and provides for further financial funds to be assigned to the collective agreements aimed at avoiding dismissal through a reduction of working time (so-called “contratti di solidarietà”).

The Labour and Employment department of Legance is available to provide any clarifications, also in respect of any specific situation which may be of interest for you.

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