AGGIORNAMENTO SUL "DECRETO DIGNITÀ"

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The "Dignity Decree" is converted into law

Following publication in the *Gazzetta Ufficiale* on 13 July 2018, the so-called "Dignity Decree" was converted by the Italian Parliament into ordinary law with no. 96/2018 (*Gazzetta Ufficiale* 11 August 2018). The "Dignity Decree" consists of 15 articles divided across five chapters. Articles 1-3 and 5-6 cover the principle new measures which will impact on employment law.

The first chapter of the "Dignity Decree" (Articles 1-3) introduces a new regulation aimed at discouraging the use of fixed term employment contracts by companies, amending a previous related regulation, under the Job's Act (Legislative Decree no. 81/2015, Articles 19 to 21). Articles 5 and 6 of the second title place restrictions on the ability of companies in receipt of state aid to relocate their business activities and/or dismiss employees.

The new regulation applies to all fixed term employment contracts signed after the "Dignity Decree" came into force on 14 July 2018. It also applies to fixed term employment contracts signed prior to the "Dignity Decree" coming into force, but which are renewed or extended after 31 October 2018.

The main changes envisaged by the "Dignity Decree"

ARTICLE 1

Article 1 of the "Dignity Decree" modifies Articles 19 and 21 of Legislative Decree no. 81/2015 by allowing parties to freely execute fixed-term employment contracts without having to provide a reason for a maximum duration period of 12 months.

According to the new Article 19, para. 1, a fixed term employment contract may also have a duration period longer than 12 months (but never more than 24 months), provided it can be justified for the following reasons that must be stated in the contract in writing:Article 1 of the "Dignity Decree" modifies Articles 19 and 21 of Legislative Decree no. 81/2015 by allowing parties to freely execute fixed-term employment contracts without having to provide a reason for a maximum duration period of 12 months.

1. temporary and objective needs unrelated to the employer's ordinary business such as the need for replacements (e.g. of employees during maternity, paternity or sick leave); and
2. needs relating to temporary, significant and unforeseeable increases in the employer's ordinary business.

Should an employer draft a fixed term contract for a period longer than 12 months in the absence of one of the above mentioned conditions, said contract will be automatically transformed by law into an open-ended employment contract from the day after the 12 month-period has elapsed.

Where the fixed term employment contract has a duration of more than 12 days, the terms of said employment must be fully outlined in writing.

Through this mechanism, an employer has the option to hire an employee for a short period (maximum 12 months) without specifying any reason for the fixed term. During this period, the employer can assess the benefits of keeping the employee on full time by: (i) executing a subsequent open-ended employment contract, or (ii) renewing the fixed-term contract for up to 24 months on the occurrence of one of the circumstances listed in the new Article 19, para. 1. At the same time, should an employer fall within one of the above mentioned categories at the time of signing of a fixed term employment contract, they can extend said employee's contract for a longer period of up to 24 months, specifying the reason in writing as per the new Article 19, para.1.

The difference compared to the previous regulation implemented by the Jobs Act the(Legislative Decree no. 81/2015) is clear. According to the latter, the maximum duration of a fixed term employment contract is 36 months with no reason specified. Employers were able to renew fixed term employment contracts sequentially with the same employee up to a maximum final term of 36 months without any reason given.

Regarding extending the duration of fixed-term employment contracts before the expiration of their final term ("*proroga"*), Article 1 of the "Dignity Decree", amending Article 21, para.1, of the Legislative Decree no. 81/2015, reduces the number of possible extensions to four (five under the Job's Act). Exceeding said number of extensions converts fixed-term employment contracts into open-ended ones.

Employers can extend fixed-term employment contracts for a maximum period of 24 months, regardless of the number of renewals made with the same employee. Should an extension be applied within the initial 12 months of a contract, the employer is not required any specific reason for doing so. Should an extension be applied following the initial 12 month period, the employer must provide a reason covered under the new Article 19, para. 1, of the Legislative Decree no. 8172015.

The only exception relates to seasonal workers. Indeed, fixed-term employment contracts executed for seasonal activities can be extended and renewed without giving any reason.

Article 1 extends the period within which an employee can challenge the lawfulness of a fixed-term employment contract and request its conversion to an open-ended employment contract from 120 to 180 days.

ARTICLE 1 *BIS*

In order to incentivise the use of open-ended employment contracts, Article 1 bis provides that the employers hiring employees aged 34 or younger with an open-ended employment contracts in 2019-2020 will benefit from a 50% reduction in social contributions to be paid in favour of said employees during the first three years of their employment relationship.

ARTICLE 2

Amending Article 34, para. 2, of the Legislative Decree no. 81/2015, Article 2 establishes that the above-described rule will also apply to temporary supply employment contracts ("*contratti di somministrazione di mano d'opera"*).

ARTICLE 2 *BIS*

Article 2 *bis* modifies the regulation relating to "occasional work" as per Law no. 96/2017. "Occasional work" refers to temporary work undertaken by employees on short-term employment contracts valued at no more than €5,000 pa. Employers remunerate such work via vouchers provided by the Italian National Social Insurance Institution (INPS). Each voucher is worth €10. Previously, employers with more than five employees on open-ended employment contracts could not hire any further staff for occasional work. The "Dignity Decree" allows companies in the tourist sector who employ up to eight employees on open-ended contracts to hire further staff on an occasional basis.

ARTICLE 3

Article 3 provides for an increase in the additional contributions payable by employers pursuant to Article 2, para. 28, of Law no. 92/2012 ("*Fornero Law*"). This contribution is calculated based on an employee's taxable salary that their employer pays to social security institutions together with the ordinary social contributions that fund the monthly unemployment allowance (NASPI). Prior to the "Dignity Decree" coming into force, this contribution was set at 1.4% of taxable salary for social security purposes and applied to all fixed term contracts. It is now increases by 0.5% on each renewal of a fixed term employment contract.

Moreover, Article 3, modifying Article 3, para. 1, of Legislative Decree no. 23/2015, increases sanctions against an employer in the event of unlawful dismissal of an employee. In such cases, a judge may order an employer to pay an indemnity to an employee equal to a sum of not less than six and no more than 36 times their previous monthly salary. Previously, the range was between four and 24 months' salary.

Article 3 also modifies Article 6, para.1, of Legislative Decree no. 23/2015 that provides that, in case of unlawful dismissal of an employee hired after 7 March 2015 with an open-ended employment contract, the employer, in order to avoid a legal dispute, must offer to said employee a sum not less than three and no more than 27 times their previous monthly salary. Previously, the range was between two and 18 months' salary.

ARTICLE 5

Article 5 is aimed at discouraging Italian and overseas companies operating in Italy and receiving state aid ("*Aiuti di Stato*") relocating their business activities abroad.

The above Article requires companies, whether Italian or international, operating in Italy and in receipt of state aid to implement certain production-related investments, which relocate their business to a non-EU Country (excepting those within the European Economic Area – EEA)[1] before a five-year period has elapsed since the completion of said investments, will suffer sanctions ranging from two to four times the state aid received and shall be required to return the full value of said state aid with increased interest.

The same Article also specifies that when companies, Italian or international, which operate in Italy and receive state aid on the basis of the location of their sites, relocate from said location/site, whether in Italy, the EU or the EEA within a five year period following the end of said subsidised investment, they are required to return said state aid in full.

For the purposes of the "Dignity Decree", "relocation" is taken to be the transfer of economic activity, in part or in whole, from the site tied to the state aid incentives to another site, whether by the original company or one to which it is connected with or controlled by as per Article 2359 of the Italian Civil Code.The same Article also specifies that when companies, Italian or international, which operate in Italy and receive state aid on the basis of the location of their sites, relocate from said location/site, whether in Italy, the EU or the EEA within a five year period following the end of said subsidised investment, they are required to return said state aid in full.

Given the different types of state aid available, the new regulation entrusts the relevant public officials tasked with arranging and managing state aid with both identifying the procedures for monitoring compliance with the aforementioned new restrictions, and the methods for returning said state aid when required.

The new Article applies to companies in receipt of any kind of state aid (grants, subsidised loans, tax aids etc.), irrespective of whether relocation involves the need to reduce their workforce.

Regarding state aid granted or tendered prior to the "Dignity Decree" coming into force, the previous regulations will continue to apply. According to Article 1, para. 60, of Law 147 dated 27 December 2013, companies operating in Italy in receipt of state aid lose this entitlement and are also obliged to return any such aid previously received if, within three years they relocated their production facilities to a non-EU country and, as a consequence, reduced their workforce by at least 50%.

The above new regulations are intended to reduce such relocations which have recently been undertaken many large industrial companies and groups that, given globalisation, have chosen to relocate their business outside Italy.

ARTICLE 6

Article 6, with specific reference to the measures requiring an employee impact assessment to determine the granting of state aid to a given company, establishes that companies in receipt of state aid will have to reimburse any such aid received in the event of a reduction of more than 10% of the workforce assigned to any subsidised activity within five years of the completion of an investment, except in cases of dismissals for justified and/or objective reasons. The percentage of state aid returned will be proportionate to the reduction in staff and will be equal to 100% of the granted benefits in the event of a staff reduction of more than 50%. Even in such cases, Article 6 entrusts the relevant public officials with determining the procedures for assessing compliance with the aforementioned rules, as well as the methods for quantifying and returning the granted benefits.

CONCLUSION

From an employment law perspective, the "Dignity Decree" aims to limit the use of fixed term employment contracts and to increase that of open-ended ones. At the same time, it also looks to limit the number of companies in receipt of state aid from relocating and to discourage them from reducing their workforces.

There is concomitantly a risk that these reforms may cause hesitation and concern from businesses when it comes to extending and renewing fixed term employment contracts they may recently have concluded in lines with the previous legislation.

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[1] The European Economic Area (EEA) was created on 1 January 1994 following an agreement (signed on 2 May 1992) between the European Free Trade Association (EFTA) and the European Union to allow EFTA countries access to the EU single market without being members. The EEA comprises Iceland, Norway, Liechtenstein, Austria, Belgium, Bulgaria, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, United Kingdom, Romania, Slovakia, Slovenia, Spain, Sweden, Hungary and Croatia.