The Jobs Act: the code for contracts and the end of project-based collaborations

At the end of June, Legislative Decree 81/2015 came into force, implementing the fourth decree of the ***Jobs Act***.

This decree, which now acts as a real code for contracts, deals with the reorganization and rationalization of several types of "atypical" contracts. The most far-reaching intervention is in relation to those contracts for "coordinated and continuous collaborations" and those based on specific projects, the so-called "co.co.co" and "co.co.pro" contracts, which over the years have been very successful in the Italian labour market, and which have also been subject to abuse.

With effect from 1 January 2016, "employment rules will also apply to collaborative relationships consisting in the performance of work which is exclusively personal, continuous and whose performance is organized, also in terms of place and working hours, by the employer."

This involves the repeal of the project contracts that, as a consequence, cannot be executed any more starting from 25 June 2015, without prejudice however to the previous rules and regulations which will continue to govern the existing contracts until their expiration.

For co.co.co, however, the point of reference will be art. 409, n. 3) of the Civil Procedure Code, which defines coordinated and continuous collaboration as "the performance of continuous and coordinated work, mainly personally, even if outside of the scope of an employment relationship". Therefore, even after 25 June 2015, it will be possible to enter into co.co.co contracts which will remain valid and fully effective also after 1 January 2016, provided that the collaborations will consist in the performance of work which is "mainly" (not "exclusively") personal and whose performance is not organized, also in terms of place and working hours, by the employer (but are decided by the collaborator in coordination with the principal).

In essence, collaborators that do not have a minimum organizational structure and/or are not supported – even a little – by anybody else, as well as those that are not at all autonomous in their decision-making process concerning "how", "where" and "when" performing their work, will be considered as employees.

The following will continue in any case to be considered as "collaborations", subject to the provisions above:

a) those specifically provided for and regulated by national collective agreements in order to meet peculiar production and organizational needs of the relevant business sector (eg. outbound call center operators);

b) those provided for by registered professionals (eg. accountants and lawyers);

c) the activities of the members of corporate bodies (eg. directors and auditors);

d) performance of work for associations and amateur sports associations affiliated to the national sports federations, as well as to associated sports and sports promotion bodies recognized by CONI.

In this context, it may be more successful than in the past, the certification of contracts, which, as specified by the Decree, allows to attest, given the necessary conditions, that the collaboration is not an employment relationship.

The intent of the legislature is clear: on the one hand, it has introduced in our legal system the employment contract with progressive protection in case of dismissal which significantly decreases the economic risks related to the dismissals (especially in the first years of the employment relationship) and making, therefore, the employment contracts more attractive; on the other, it has repealed the contracts co.co.pro, downsized of the scope of the co.co.co. contracts and reviewed the relevant rules and regulation, in order to sharply limit

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the use of atypical contracts and strongly affirm the principle that the "common" form of employment is the subordinate one.

In order to achieve its objectives, the legislator has supported the new rules (also) with some significant economic incentives: the Decree provides, in fact, that - as of 1 January 2016 - in the case of conversion of co.co.co and co.co.pro. contracts (but also of self-employment contracts) into open-term employment contracts, any administrative, tax and social security offenses, relating to the erroneous classification of such collaborations (or self-employment) will be cancelled, with the exception of any offenses already ascertained by the inspection bodies of Italian labour authorities prior to the beginning of the employment relationship.

It is worth pointing out that this cancellation of the offenses will apply provided that:

a) former collaborators waive before Trade-Unions or local offices of Welfare Ministry any claim relating to the qualification of the prior collaboration with the prospective employer; and

b) the open-term employment contract is not terminated ended by the employer in the first 12 months from its establishment, except in the case of termination for just cause or disciplinary reason (i.e. for serious breach of contract).