

Secondment of employees from EU to Italy: which changes for the employers?

The Italian Government has recently introduced in our legal system stricter constraints on the employment of employees seconded to Italy by companies established in other EU Member States: these new measures are set forth in the legislative decree no. 136/2016, published in the Official Journal on July 21, 2016 (and effective starting from July 22, 2016), that has implemented the Directive 2014/67/EC concerning secondment of employees in the EU.

The rules provide for new obligations in terms of advance communication and impose serious sanctions in the event of a breach, as well as new measures aimed at preventing and sanctioning unlawful secondment of employees.

The new regulations apply to any company established in a Member State that secondes one or more employees, in the framework of a services agreement, to another company – even belonging to the same group – or to another business unit. These provisions also apply to temporary workers staffed by external agencies established in a Member State that send their workers to a user company with its registered office or a business unit in Italy.

As a result of the new regulations, the seconded employees must be granted the same terms and conditions of employment that apply in the Member State where the secondment is to be carried out. This means that the hosting employer shall grant equal treatment to the seconded employees and the other employees of its in the same host Member State. This equal treatment is limited to the following matters: maximum working hours and minimum rest periods, holidays, minimum economic treatment, limits on the employment of temporary workers, protection of maternity rights and children, health and safety at work and equality of treatment between men and women.

Furthermore, these regulations strengthened checks and controls aimed at avoiding possible misuses of EU secondment through: (a) increased powers of inspection and (b) new disclosure obligations.

In particular, the National Labor Inspection Bodies shall control and inspect the employers, in order to ascertain possible breaches of the above summarized rules concerning secondment.

In addition to the above, the Ministry of Labor and the National Labor Inspectorate are entitled to assess – also in close cooperation with the seconding Member State – whether the secondment is genuine, based on its features. This assessment is based on the analysis of the following: (a) where the seconding company has its registered office; (b) where the seconded employees were hired; (c) whether the activities that the seconded employees are to perform are temporary; (d) the number of executed secondment contracts and (e) the reimbursement of expenses.

In case from this assessment it comes out that the secondment is not genuine, the seconded employees will be deemed to be actually employees of the host company where they are temporarily working, and the host company, together with the seconding company, will be subject to serious administrative sanctions.

With reference to the advance communication obligations, the new rules state that the seconding employer must give notice of secondment to the Ministry of Labor within 24 hours before the secondment starts and any following amendment within the next 5 days. The notice must include the following information: number and personal details of the seconded employees; starting and end date and the place where the seconded employees will perform their working activities. In addition to the above, the employment contracts, the pay-slips and any other documentation related to the payment of salaries must be drafted also in Italian. Moreover, the seconding employer has to appoint a person to liaise with, as well as to send to and receive documents

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from, the competent authorities in the host Member State in relation to the seconded employees. Breaches of these obligations will be punished with relevant sanctions.

A special Observatory is being established at the Ministry of Labor and the regulations also provide for practical guidelines to be adopted by the National Agency for Active Labor Market Policies. The Observatory will have access to the following information: number, duration and place of the secondment in Italy, the contractual level of the seconded employees and the kind of services provided by the seconding employer.

The new regulations aim at promoting administrative cooperation among the Member States and at ensuring a more effective information flow concerning employment terms and conditions between companies and employees, in order to prevent abuses and to guarantee the lawfulness of seconding employees within the EU.

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