Recent Developments in Employment Law after the so-called "Fornero Reform"

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Upon the entry into force of the major employment law reform known as "Fornero Reform" (Law 28 June 2012, no. 92), the Italian employment law system experienced significant changes, from both a substantive and procedural law perspective. After the enactment of the Fornero Reform, further changes have been introduced, mainly by virtue of "urgent" decrees. In this connection, between the end of 2012 and the summer of 2013 the following decrees have been issued, among others: the so-called "*Decreto Sviluppo-bis*" (D.L. 18 October 2012, no. 179), the so-called "*Decreto del Fare*" (D.L. 28 June 2013, no. 76) and, recently, the so-called "*Decreto Occupazione*" (D.L. 28 June 2013, no. 76). Such decrees have been subsequently converted into law and are currently in force.

1. Incentives granted to employers in connection with permanent hirings

With the intent to promote stable employment, Article 1 of the *Decreto Occupazione* introduced a special incentive to be paid to employers which hire, on a permanent basis, employees between 18 and 29 years of age, provided that they (a) have been unemployed for at least 6 months or (b) do not hold a high-school (or similarly ranked) degree. The incentive amounts to 1/3 of the gross monthly salary relevant for social security purposes, for a 18-month period, and cannot exceed, on a monthly basis, Euro 650,00 per each hired employee.

Please note that: (i) the new hiring must give rise to a "net increase of the employment level", to be calculated by comparing the number of the employees in place each month and the average number of the employees in place over the 12-month period preceding the hiring; (ii) the incentive shall apply starting from the date to be posted by the Ministry of Labor in its official website until 30 June 2015.

The incentive, to be offset with the social security contributions, shall be granted by INPS (the Italian social security authority), to which the relevant application shall be submitted. INPS should enact shortly proper instructions.

2. Fixed-term employment contract

The rules of fixed term contracts, governed by Legislative Decree 6 September 2001, no. 368, as amended by the Fornero Reform, have been further modified by means of the *Decreto Occupazione.* Below is an outline of the main changes:

- the *Decreto Occupazione* confirmed that the first fixed-term relationship, for a term not longer than 12 months, established by and between an employer and an employee for the performance of any kind of duties, does not require that a reason be alleged to justify its fixed-term nature ("**Fixed-Term Contracts Without Specified Reasons**"), this being an exception to the general rule according to which, pursuant to Article, 1, paragraph 1, of Legislative Decree 6 September 2001, no. 368, fixed-term employment contracts must be justified by technical, productive, organizational reasons or by the employer's need of replacing employees temporarily absent from work;

  according to the amendment introduced by the *Decreto Occupazione,* the Fixed-Term Contracts Without Specified Reasons can be "extended", provided that the overall term of the extended contract does not exceed 12 months; according to the Ministry of Labour (Circular 35/2013) the extension may be applied also to Fixed-Term Contracts Without Specified Reasons entered into before the issuance of the *Decreto Occupazione* (and which are not expired, yet);

- the *Decreto Occupazione* established that collective agreements at any level ("*collective agreements, also*

at company level") can identify further cases in which Fixed-Term Contracts Without Specified Reasons can be lawfully entered into;

- pursuant to the *Decreto Occupazione*, the employer is allowed to enter into a new fixed-term contract with the same employee provided that between the previous contract and the new contract the following minimum periods of interruption (which have been reduced, if compared to the previous regime) elapsed: (a) *10 days* from the expiry date of the first contract, if its term was lower than 6 months; (b) *20 days* from the expiry date of the first contract, if its term was longer than 6 months; if the required interruption period is not complied with, the new contract shall be deemed an open-ended contract; according to Ministry of Labour (Circular 35/2013), the new rules shall apply even if the first contract was entered into before 28 June 2013 (*i.e.* the date on which the *Decreto Occupazione* came into force);

- furthermore, according to the *Decreto Occupazione* the employer is no longer required to notify the Labor Offices – before the expiration of the original expiry date – that the employment relationship shall continue over such term and for how long the performance shall continue; it remains unchanged that the fixed-term relationship cannot continue after the expiration of the original term for more that (i) *30 days* (in relation to contracts with a term lower than 6 months) and (ii) *50 days* (in relation to contracts with a term longer than 6 months); under the new regime these rules apply also to Fixed-Term Contracts Without Specified Reasons.

3. Innovative Start-ups companies

The *Decreto Sviluppo-Bis* introduced specific regulations for fixed–term employment contracts entered into by the so-called innovative start-ups companies, whose set of rules have been amended by the *Decreto Occupazione*.

Article 25 of the *Decreto Sviluppo-Bis* details the requirements of the "*innovative start-ups*" that, in order to be defined as such, must comply with some parameters provided for by the law (by way of example, innovative start-ups' exclusive or prevalent corporate purpose must consist of the development and marketing of innovative products or services with technologic value; start-ups must have been incorporated and be operating from no longer than 48 months; they must comply with further alternative parameters provided for by the law concerning the amount of research and development expenditures, the personnel's educational degrees and the ownership of intellectual property rights).

A company qualifying as innovative start-up benefits from "favorable" rules regarding fixed-term employment contracts. In particular:

- fixed-term contracts can be entered into for a minimum period of 6 months to a maximum period of 36 months without the need of specifying the reasons in support (as it would be required pursuant to Legislative Decree 6 September 2001, no. 368 - see above paragraph 2), since such reasons are "*deemed as existing*" as long as the contracts at issue are entered into by the start-up company for the performance of activities inherent in, or ancillary to, its corporate purpose;

- additional fixed-term contracts with the same employee can be entered into without the need of complying with the required interruption between two fixed-term contracts (equal to 10 or 20 days, as the case may be – see above paragraph 2), or even without applying any interruption, as long as the employment contract pertains to the performance of the above mentioned activities and, in any case, does not exceed the overall maximum term of 36 months (although an additional fixed-term contract having a maximum duration of 12 months may still be entered into, provided that it is formalized before the competent Labour Office);

- the ordinary restrictions (in terms of maximum number of fixed-term contracts the employer can enter into) do not apply to innovative start-ups.

It must be pointed out that fixed-term contracts entered into by the start-up company shall be deemed (and treated as) open-ended contracts if their performance exceeds, or they are renewed for a time period exceeding,

the maximum terms set forth by the law, or if the company entering into the fixed-term contract does not satisfy the requirements to qualify as an innovative start-up.

4. Self- employment contract on a project basis

The self-employment contract on a project basis ("**Project Contract**") is a special type of agreement (in between employment and self-employment contracts) governed by Legislative Decree 10 September 2003, no. 276 (so-called *Decreto Biagi*). The *Decreto Occupazione* has introduced specific amendments to the regulations of Project Contracts. Below are the main changes:

- *project*: pursuant to Article 61 of the *Decreto Biagi*, as amended by the *Decreto Occupazione*, the project cannot entail tasks (i) which merely reflect the principal's instructions *and* (ii) are very easy to discharge; by replacing the previous word "or" with the word "and", it has been clarified that the project is not valid only if both the circumstances under (i) and (ii) occur;

- *the contract must be in writing:* while in the previous regime the written contract was required for "proof" purposes, according to the current amended provision the written contractual document is a requirement for the validity of the contract;

- *formalities regarding "resignation"/mutual termination*: the mutual termination or resignation of consultants engaged with Project Contracts must be formalized in accordance with the procedure applicable to resignation/mutual termination of employees which has been introduced by the Fornero Reform (Article 4, paragraphs 16-22, Law 28 June 2012, no. 92).

5. The procedure applicable to the dismissal for "objective reasons" carried out by companies meeting the thresholds set forth by Article 18, paragraph 8, Law no. 300/1970

According to the Fornero Reform, companies qualifying as "big size" employers for dismissal purposes can dismiss an employee for "objective reasons" only upon conclusion of a specific procedure ("**Procedure**") to be activated by the employer by written notice to be sent to the competent Labor Office, copied the employee (Article 7, Law 15 July 1966, no. 604, as amended by the Fornero Reform).

In order to sort out some interpretative issues which had arisen in connection with the Procedure immediately after the enactment of the Fornero Reform, the *Decreto Occupazione* clarified that the Procedure does not apply in the following cases:

- dismissals carried out pursuant to Article 2110 of Civil Code, *i.e.* when the sick-leave exceeded the maximum term set forth by the relevant collective agreement;

- dismissals carried out in connection with the expiration of a service contract, if the employee is re-hired by the new service provider pursuant to applicable provisions of national collective agreements;

- termination of open-term employment contracts in the building construction's industry upon completion of the works.

The *Decreto Occupazione* confirmed that the employer can dismiss the employee if the parties failed to reach an agreement during the Procedure or if the competent Labor Office failed to notify to the parties, within the 7-day term, the scheduled date for the meeting to be held for settlement purposes before the same Office. It has been clarified, however, the if one or both parties do not appear before the Office, this will be taken into account by the Labour Court pursuant to Article 116 of the Code of Civil Procedure.

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6. The joint liability regime applicable to service agreements

The *Decreto Occupazione* and *Decreto del Fare* introduced some amendments to the joint liability regime applicable to service agreements. In particular:

- *the joint liability regime applies also to self-employment schemes*: Article 29, paragraph 2, of *Decreto Biagi* provides – *inter alia* – that the principal shall be jointly liable with the contractor, as well as with each of the subcontractors, within the 2-year period following the termination of the service agreement, in relation to salary, social security contributions and insurance premiums pertaining to the employees used in the performance of the relevant services:

  in this connection, the *Decreto Occupazione:* (a) extended the scope of the joint liability regime, by providing that it applies also to the compensation, social security contributions and insurance premiums pertaining to individuals engaged with self-employment contracts; Circular 35/2013 clarified that the reference to self-employment contracts is limited to collaboration agreements and Project Contracts (see paragraph 4); (b) clarified that the provisions of collective agreements on the subject matter at issue (pursuant to Article 29, paragraph 2, above) can regard salary payments only, while no effects would be played by such provisions in connection with social security contributions and insurance premiums payments; therefore, as clarified by the Ministry of Labor, any collective provisions ruling on the subject matter differently from the law would not prevent the social security/State insurer bodies from enforcing the joint liability regime to recover outstanding payments;

- *joint liability relating to VAT*: the *Decreto del Fare* amended paragraph 28 of Article 35 of Law Decree 4 July 2006, no. 223 so to exclude VAT payments from the tax joint liability existing between contractor and subcontractor (in connection with the services rendered by the latter under the relevant agreement) set out in the previous version of the mentioned provision; therefore, in case of lack of, or delayed, payment of VAT by the subcontractor, the subcontractor shall be the sole debtor vis-à-vis the tax authorities in connection with the VAT liability arising out the relevant sub-contract.

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