The new employment law reform: law no. 78 of May 16, 2014

Contents

With the enactment of the law converting the so-called "*Decreto Poletti*", the first step of the employment law reform also known as "Jobs Act" has been completed. The unreadable letter of the converting law gives rise to a number of uncertainties and contains many "flaws", also of legal nature.

The purpose of this newsletter is to outline the main changes introduced by the provisions arising from the aforesaid conversion.

1. Fixed-term employment contracts

The fixed-term employment contract is no longer deemed as "socially dangerous" and eventually in our legal system the fixed-term relationship is no longer considered an "atypical" type of employment if compared to the type of employment that has been deemed so far the only "typical" hiring scheme, *i.e.*, the open-ended employment contract.

The new provisions confirm that fixed-term contracts can be entered into without the need of alleging reasons in support, as the previous "Fornero Reform" had already provided, *i.e.* without identifying technical, productive, organizational reasons justifying the fixed-term nature, for the maximum term of 36 months. However, the number of allowed extensions is increased **up to 5 times** within such overall period, regardless of the renewals. As a consequence, the regime of fixed-term contracts "without reasons" is aligned to, and matches with, the maximum length of fixed-term relationships.

It remains advisable - for employers hiring an employee on a fixed-term basis to replace another employee temporarily absent from work - to specify the reason of the fixed-term hiring, since fixed-term contracts executed for such specific reason are exempted from the additional 1.4% social security burden and do not fall under the restrictions in terms of maximum number of allowed fixed-term contracts mentioned below.

As per the renewal of fixed-term contracts, the "stop and go" rules governing the required interruptions between the previous fixed-term contract and a new one, equal to 10 and 20 days depending on the length of the previous contract, remained unchanged.

The only further restriction to be complied with is that the maximum number of fixed-term contracts cannot exceed 20% of the permanent employees in force as of January 1° of the relevant year, it being understood that employers with up to 5 employees can always hire 1 fixed-term employee.

In this connection, the most significant change introduced by the converting law is the new sanction which applies in case of execution of fixed-term contracts exceeding the mandatory limits. In such a case, rather than the conversion into an open-ended contract, a fine shall apply to the employer, it being understood that the fixed-term nature of the contract shall not be adversely affected.

Special rules have been also introduced in connection with the right of priority in favour of fixed-term employees who have been working for more than 6 months, including the mandatory maternity leave period enjoyed by working mothers, in case of open-ended hirings carried out by the same company. Such right of priority must be expressly mentioned in the fixed-term contract.

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2. Fixed-term staff leasing relationships

Also in light of EU guidelines on the subject matter, according to the converting law the maximum term of 36 months does not apply to the using company within fixed-term staff leasing relationships, having the converting law removed the reference to the using company. Besides strengthening the difference between fixed-term employment contracts and fixed-term staff leasing relationships, which had been already confirmed by the decision of the European Court of Justice dated April 11, 2013, the above shall facilitate the use of the fixed-term staff leasing relationships.

Instead, the 36 months maximum length and the 20% limit shall apply to the fixed-term employment contracts between the staffing agencies and the supplied employees.

No "stop and go" specific provisions exist in relation to fixed-term staff leasing relationships, thus no interruptions are required between the previous contract and the new one.

Furthermore, fixed-term staff leasing employees do not count for the purpose of the aforesaid 20% limit, which applies exclusively to fixed-term employment contracts.

3. Apprenticeship

The new law introduced some changes also to the apprenticeship regime.

Firstly, although it is confirmed that the contract and the probationary period must be in writing, the "individual training program" can be drafted in a short form and the employer is allowed to use templates provided by the so-called "Bilateral Bodies" (*Enti Bilaterali*) or by the applicable collective agreements.

Changes have been also introduced to the rules regarding the "stabilization" of apprentices: save for different limits set forth by the applicable collective agreements, employers with at least 50 employees (while the previous threshold was 30 employees) can hire new apprentices provided that, within the 36-month period preceding the new hiring, *at least 20%* of the apprentices (the previous percentage was 50%) are converted into permanent employees.

As per the type of apprenticeship defined as "*professionalizzante*", the competent Region is required to notify the employer, within 45 days from the mandatory notification of hiring, with the details of the training to be carried out by public/local offices.

4. "DURC" and Social security reductions

The converting law confirms that the regular payment of social security contributions/insurance premiums vis-à-vis the State bodies (such as INPS, INAIL) shall be checked exclusively on-line. The outcome of the on-line inquiry shall be valid for 120 days and shall replace the so-called "DURC" (i.e., a paper certificate issued by the State authorities). More detailed rules shall be set forth by an administrative decree still to be issued.

New provisions reducing significantly the social security burden applicable to employers entering into the so called "*contratti di solidarietà difensivi*" have been introduced. The amount of the social security reduction is equal to 35%.