Decreto Dignità: considerations on the conversion law

Following publication in the Official Gazette of the Italian Republic no. 186/2018, the conversion Law no. 96/2018 (which converted into law the "Decreto Dignità" – Law Decree no. 87/2018) is in force since August 12.

While the Decreto Dignità introduced significant changes on the discipline of fixed-term employment agreements, temporary agreements, protection against unlawful dismissal and relocation of business' activities, the conversion law also intervened on matters such as occasional work and employment of young people.

Please find below a brief overview of the main amendments operated by the conversion law, with specific reference to the issues which have attracted more attention due to the relevant impact on business organisations.

1. Fixed-term employment agreements

The main amendments operated by the Decreto Dignità were left unchanged by the Parliament. The latter, in fact, added a few - but rather relevant - amendments. The conversion law:

- clarifies that, in case of execution of a fixed-term agreement longer than 12 months without the provision of one of the specific statutory reasons, the agreement is converted into an open-term one as of the date in which the limit of 12 months is exceeded (same rule applies in case of extension and renewal: the agreement converts into open-term as of the date of extension/renewal); and
- regulates a transition period, which is quite unclear, with the risk of getting the already chaotic scenario more complicated.

The private employer (please note that the public sector is exempted from the new regulation), when executing a new fixed-term employment agreement after July 14, 2018 (when the Decreto Dignità entered into force) will be bound to comply with the recent regulation.

It is also certain that the agreements executed, extended, or renewed before July 14, 2018 will be regulated by the previous discipline until expiration.

Since the conversion law does not specifically address the point, extensions and renewals carried out between July 14, 2018 and August 11, 2018 appear to fall under the restrictions of Decreto Dignità.

And what about extensions and renewals as of August 12, 2018 (when the conversion law entered into force)? The Italian Parliament allowed the parties to apply to the latter the preceding more flexible discipline (before the Decreto Dignità entering into force). This will be possible until October 31, 2018.

Thereafter, the new regime will be integrally applicable. However, the conversion law does not clarify if it is possible, before October 31, that the parties renew/extend a fixed-term agreement expiring after that date, thus benefiting from the more flexible regime of the transition period.

Finally, going back to the first scenario, *i.e.* executing a new fixed-term employment agreement after July 14, 2018: we said that the new regulation applies. It is therefore logic to wonder whether, by means of operating an extension or renewal in the timeframe between August 12 and October 31, an agreement originally regulated by the new discipline can benefit from the application of the precedent regime.

Unfortunately, it appears that only litigation in Court will create precedents to answer the question.

2. Temporary agreements

Four main amendments to the Decreto Dignità have been introduced by the conversion law regarding temporary agreements, namely:

- it appears that the fixed-term employment agreement between agency and worker must include, in case of extension/renewal, the specific statutory reasons to execute fixed-term employment agreement related to the company, and the same reasons should be indicated in the commercial agreement regulating the relation between the agency and the company;
- agencies are exempted from complying with the "stop & go" rule (which refers to the periods of time that have to elapse in between different fixed-term agreements with the same worker);
- a new limitation has been introduced (*i.e.* fixed-term employees and fixed-term agency workers cannot exceed overall 30% of the entire personnel);
- fraudulent staff-leasing (which results in a fine amounting to Euro 20 per day per worker involved), has been re-introduced after being abolished by a previous reform in 2015 (so called "Jobs Act").

Fraudulent staff-leasing (*i.e.* when staff-leasing is carried out with the specific purpose of circumventing mandatory provisions of law or collective agreement applied to the worker) might also be configured, among other possible cases, when an employer uses staff-leasing in order to avail of a worker previously hired under a fixed-term employment agreement, whenever the statutory reasons to renew/extend said agreement do no not exist.

3. Changes to protection in case of unlawful dismissal and conciliation offer

The changes introduced by Decreto Dignità with reference to the protection in case of unlawful dismissal for the open-term employees hired after March 7, 2015 (indemnity from 6 to 36 monthly salaries, and from 3 to 6 monthly salaries for smaller companies) were confirmed by the conversion law.

The latter adjusted accordingly also the so-called "conciliation offer" in case of dismissal (which is free of tax and social security contributions): however, in order to see the real impact of the amendment, we will have to wait a few years. In fact, while the offer is anchored on the same parameters, *i.e.* 1 monthly salary per each year of service, for bigger companies, the range was increased to 3 (minimum) and 27 (maximum) monthly salaries. The quantification must be reduced by half for smaller companies, without prejudice to the maximum limit of 6 monthly salaries.

4. Other amendments operated in the context of the conversion law

The conversion law also intervened on the "occasional" employment, making this type of work more flexible limited to certain determined sectors, and simplifying the communication and payment procedures.

Finally, further measures are aimed to incentivize the employment of workers under the age of 35, by introducing an exemption equalling half of the social charges borne by the employer (up to a maximum of Euro 3,000 on an annual basis for employment agreements executed in 2019 and 2020).

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