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LABOUR LAW AND INDUSTRIAL RELATIONS

Labour Decree: between old and new horizons

The main changes introduced by Decree-Law No. 48 of 4 May 2023

On 4 May 2023, Decree-Law No. 48 (the "Labour Decree") was published in the Official Gazette, which significantly reviews a number of labour law institutions of particular relevance for companies and introduces a package of measures to support workers' income.

Among the various measures introduced by the Labour Decree, the following are some of the most interesting innovations for companies, relating in particular to:

a) to **the overhaul of the discipline of fixed-term contracts** sanctioned by Decree-Law No. 87 of 12 July 2018 (the "Dignity Decree");

b) to **the simplification of the information obligations** relating to the employment relationship introduced last summer by Legislative Decree 104/2022 (the "Transparency Decree");

c) the new **fringe benefits tax relief measures** for the year 2023.

Fixed-term contracts

The Government has once again intervened on the rules regulating the use of fixed-term contracts, probably one of the institutions that have received the most attention from the legislator over the last ten years, in which, not taking into consideration the emergency discipline introduced during the Covid-19 pandemic, there have been three structural reforms of the relevant regulations.

Specifically, while the current general regulatory framework remains in force, which provides for the possibility of using fixed-term employment without the need to state a reason for employment for the first 12 months of the employment relationship and a maximum duration of this type of relationship not exceeding 24 months, the Labour Decree has set itself the useful goal of overcoming the system of rigid reasons introduced by the so-called Dignity Decree (i.e. Decreto Dignità), with the aim of restoring greater flexibility to businesses through the use of fixed-term employment contracts.

In particular, the Labour Decree set itself this ambitious goal by amending Article 19 of Legislative Decree 81/2015, providing for the possibility of exceeding the 12-month *"acausal"* contract:

a) in the cases provided for by the collective agreements referred to in Article 51 of Legislative Decree No. 81/2015[1];
b) in the absence of the provisions referred to in point a), in the collective agreements applied in the company, and in any case by 30 April 2024, for needs "*of a technical, organisational or productive nature"* identified by the parties;
c) in replacement of other employees.

It is therefore interesting to note how the spirit of the reform, assuming it remains so when the decree will be converted into law, intended to give centrality to the determination of the parties both through collective bargaining which, when fully implemented, will have to deal with typifying the reasons that will allow the drawing up of contracts lasting more than 12 months, as well as through the identification by the parties signing the fixed-term contract of the *'needs of a technical, organisational or productive nature'* to be indicated (i) in the absence of regulation of the reasons by the national, territorial or company collective agreements applied in the company and, in any case, (ii) until 30 April 2024.

Therefore, without prejudice to the necessary caution and attention that the parties must pay in resorting to the general reason given by "*requirements of a technical, organisational or productive nature"* until 30 April 2024 - a reason that recalls the one already provided for by Legislative Decree no. 368/2001, which had created significant application problems, also due to the interpretations offered by case law that had generated massive litigation on the matter - collective bargaining agreement, also and above all at a company level, will play a decisive role to have recourse to fixed-term contracts lasting more than 12 months and, therefore, to the relative flexibility that now characterises the organisation of work. The point offered by the Labour Decree could represent the decisive impetus for extensive recourse to company level collective agreements, which are becoming increasingly important in regulating relations within the company.

[1] Pursuant to Article 51, Legislative Decree 81/2015, collective agreements are understood to mean national, territorial or company collective agreements entered into by the comparatively most representative trade union associations at national level, or company collective agreements entered into by their company trade union representatives or unitary trade union representation

Please bear in mind that the above provisions will not apply with regard to fixed-term contracts entered into by public administrations, as well as those entered into by private universities and other institutes, including public ones, of research workers called upon to carry out teaching, scientific or technological research, *know-how* transfer, innovation support, technical assistance or coordination and management activities, since the 'liberalised' regime set out in the original version of Legislative Decree 81/2015 (i.e., a-causal contracts lasting up to 36 months) has been reinstated for these cases.

- **Amendments to the Transparency Decree**

The Labour Decree, accepting the stimuli of numerous operators in the sector as well as - probably - offering a more precise regulatory interpretation of the EU source regulations, after less than a year from the entry into force of the *Transparency Decree*, has introduced significant simplifications to the regulation of the information obligations incumbent on the employer with respect to specific institutes of the employment relationship.

With this in mind, it has been provided that the information obligation may be deemed to be discharged by the employer per *relationem*, i.e. by simply indicating the regulatory reference and/or collective bargaining agreement, including company agreements, in relation to the following information

a) the duration of the trial period
b) the right to receive training provided by the employer;
c) the duration of holiday leave and other paid leave (or the manner in which they are determined and taken)
d) the procedure, form and terms of notice in the event of termination by either party;
e) the initial amount of remuneration and its constituent elements, with an indication of the period and method of payment;
f) the planning of normal working hours and the conditions for changing them, any conditions relating to overtime and its remuneration, and any conditions for shift changes
g) the bodies and institutions receiving social security and insurance contributions due from the employer and any social security protection provided by the employer.

In order to fulfil the disclosure obligations, instead of compiling voluminous annexes and contractual clauses, the employer may therefore simply provide the employee with a copy of the laws and collective agreements applicable to the employment relationship, together with the company regulations (where they exist) governing the aforementioned institutions subject to disclosure, or, even more interestingly, with a view to simplification and de-bureaucratisation, a copy can be made available of the relevant texts on the company intranet, which the individual employee may then access to obtain the information of interest.

Thus, the employment contracts templates in force at companies will have to be adapted once again with the aim, it is hoped, of definitively simplifying and lightening a discipline that, although starting from noble aims, had led to an enormous burden of bureaucratisation of information process at the recruitment stage.

The Labour Decree then intervened on a further profile related to the Transparency Decree: it was, in fact, specified that the obligation to inform workers and trade union representatives about the use of automated decision-making or monitoring systems for the management of the employment relationship applies only in the case of *'fully'* automated systems, thus restricting the scope of the

provision to cases of fully automated work performance and not also in cases where the automated system is only partially used in the management of the employment relationship, with the exception of systems protected by industrial and commercial secrecy.

- **Fiscal measures for corporate welfare**

On the subject of *welfare*, the Labour Decree introduced a new measure for the de-taxation of fringe benefits paid to employees with dependent children (including adopted and foster children), raising the tax exemption limit for certain types of services. Specifically, it has been provided that, limited to the 2023 tax period and notwithstanding the provisions of *articolo 51, comma 3 del Testo Unico delle Imposte sui Redditi* = Article 51, paragraph 3 of the Consolidated Income Tax Act, the value of goods sold and services provided to employees with dependent children, as well as the sums paid or reimbursed to them by employers for the payment of domestic water, electricity and natural gas services, these will not contribute to forming taxable income, up to a total limit of €3,000 (instead of the normal limit of €258.23). This is a very interesting measure as it is aimed at supporting the sharp increases in the cost of living that have characterised recent years through the detaxation of *fringe benefits* paid by employers.

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The Labour Decree has also introduced further provisions aimed at: i) overcoming the *'Reddito di Cittadinanza = Citizenship Income'* through the introduction of the *'Assegno di inclusion = Inclusion Allowance'*; ii) amending some specific provisions of Legislative Decree No. 81/2008 concerning health and safety in the workplace; iii) introducing incentives for the employment of young people and disabled workers; iv) the *Cassa Integrazione Guadagni in Deroga = Wage compensation fund in derogation* on an exceptional basis for exceptional corporate crisis and reorganisation causes.

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The Firm remains available with regard to any further information and to provide all necessary support in order to assist in the adaptation, within the time periods, to the relevant legislation.

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