3 August 2022

DECRETO TRASPARENZA: BETWEEN NEW RULES AND SUMMER FULFILMENTS

On July 29, 2022, **Legislative Decree No. 104 of June 27, 2022** (the so-called "*Decree*"), on transparent and predictable working conditions in the European Union, transposing EU Directive No. 2019/1152, has been published in the *Gazzetta Ufficiale*. The Decree provides for both **information obligations** and **minimum requirements**.

The new rules apply (among others) to the following types of working relationships:

- employment contracts, including agriculture contracts (fixed-term and open-ended, including part-time);
- temporary work agency contracts (fixed-term and open-ended) (*contratti di somministrazione*);
- job on call;
- coordinated and continuous collaborations;
- autonomous occasional contracts;
- contracts entered into with domestic workers.

The new rules **do not apply** to (among others) the following types of working relationships:

- autonomous contracts (i.e. contracts entered into with workers with VAT position);
- agency contracts;
- collaboration contracts with relatives.

A. INFORMATION OBLIGATIONS

1. Information on the employment relationship to be communicated to the employee

The employer shall communicate the following information to the employee (in a **clear** and **transparent** manner):

- identity of the parties, including the co-employers;
- place of work (in lack of a fixed place of work, the employer shall inform the employee that he/she is employed in different worksites, or is free to determine his/her place of work);
- employer's site;
- classification, level and qualification (alternatively, summary job description);
- date of beginning of the employment relationship;
- type of employment relationship (if fixed-term, with indication of its duration and expiry term);
- in the case of temporary agency workers, the name of the agencies;
- length of the probationary period (if any);
- right to receive the relevant training ("*formazione*") (if any);

- duration of holiday leave and any other paid leave to which the employee is entitled (if this is not possible, how it is determined and used);
- procedure, form and terms of notice of termination (both for employer and employee);
- initial amount of remuneration with its payroll elements, period and method of payment;
- normal working hours and conditions for overtime work and its treatment, as well as shift change mechanisms;
- collective agreement(s), including second level company agreement(s) applied, with indication of the signing parties;
- institutions receiving social security and insurance contributions due from the employer and any form of social security protection provided by the employer.

The above-mentioned information obligations are also on the principal, in case of coordinated and continuous collaborations and autonomous occasional contracts.
In addition to the above, in case of **use by the employer of automatic or monitoring systems** (such as, for example, company software for the recording of attendances or the assessing of performances, also aimed at the payment of variable remuneration or other benefits), the **concerned employees and the trade union representatives** must also be informed about:

- aspects of the employment relationship that are affected by these systems (e.g. variable remuneration calculation);
- purposes and aims of the systems and modalities of operation;
- main data categories and elements used to program such systems;
- control measures adopted, any correction processes and name of the responsible for the quality management system;
- level of accuracy, strength and cybersecurity of the systems;
- potentially discriminatory impacts of the systems.

The obligations and limits set out under **Article 4 of the *Statuto dei Lavoratori*** regarding remote control of work activity remain unaffected.
Lastly, with regard to the **provision of work activity performed abroad**, special information obligations apply to the employer with reference to employees seconded to a UE country or an extra UE country.

2. **Timing and modalities of communication**

(a) Work contracts starting from August 13, 2022

The above information must be communicated to the worker in **writing** (i) at the beginning of the relationship or (ii) prior to the beginning of the relationship, by delivering of the work contract or the communication of the beginning of the relationship to the competent Authority (in any case, at the latest within **7 days** following the beginning of the relationship, except for those information highlighted in orange under paragraph 1 above, which must be communicated within **1 month**).

Usually, the main elements to be communicated (e.g. parties, place of work, qualification and level, probationary period, NCBA, etc.) are already included in the individual work contracts and as a consequence we deem that no further information notice is necessary.

With reference to the other elements to be communicated (such as, for example, holidays, paid leaves, signing parties of the collective agreements, institutions receiving social security and insurance contributions) we suggest, instead of including them in the individual work contracts, including them in an **unilateral document separate from the same contract** (a real information notice), to be delivered/sent by email to the employees together with the contract (or later in the terms indicated above).

Without prejudice to the above, in case of application of second level company agreements or policies regulating elements that are not commonly included in the work contracts (e.g. duration of holidays, paid leave), it will be necessary to include such elements in the information notice.

(b) Work contracts in force as of August 1, 2022

The employer/principal shall update the above indicated information **only upon written request of the employee/collaborator** within **60 days** from such request. In lack of request, however, the minimum rights set out under paragraph B below (such as, maximum probationary period, exclusivity, training, etc.) must be respected.

(c) Work contracts starting from August 2 to 12, 2022

Please note that it seems that work contracts starting between 2 and 12 August 2022 (a period not covered by the Decree) are excluded from the information obligations referred to in the same Decree. Clarifications by the law will therefore be necessary.

3. Amendments of the contract's elements during the working activity

The employer/principal shall notify the employee/collaborator in writing, no later than the first day on which the amendment applies, of any change in the elements concerning the work relationship **that does not come directly from the amendments of law provisions or collective agreements**. In such a case, no further communication must be made to the employee.

4. Sanctions

The employee may **report** to the Labour Authority (*Ispettorato Nazionale del Lavoro)* any failure, delay, incompleteness or inaccuracy in fulfilling the above-mentioned information obligations. In the event of breach, the employer/principal may be condemned to pay an **administrative fine ranging from EUR 250 to EUR 1,500** for each concerned employee/collaborator. Different and more serious sanctions are provided for in the event of breach of the obligations related to the **use of automatic and monitoring systems** mentioned above.

In the light of the above, the Decree provides for various new rules and requires companies to fulfil, within a very tight timeframe, particular obligations, under administrative sanctions which can have a serious impact, from an economic point of view, especially on those companies with many employees.

For this reason, it is **appropriate as soon as possible** to:

- examine the work contract provisions in use today;
- check the missing information;
- analyze the collective agreements applied (and any regulations or policies in force);
- review the work contracts and provide for the above mentioned information notice.

B. THE OTHER IMPORTANT NEWS OF THE DECREE

1. Probationary period

The maximum limit of the probationary period is set at **6 months**, without prejudice to the shorter duration provided for by collective agreements. This duration is automatically **extended** in the event of accident, illness, maternity/paternity leave to an extent corresponding to the period of absence.
In **fixed-term** employment relationships, the probationary period must be proportional to the duration of the contract. In the event of renewal, for the performance of the same tasks, a new probationary period is forbidden.

2. Exclusivity in the employment relationship

Without prejudice to the employee's duty of loyalty under Article 2105 of the Civil Code, the employer **shall not prohibit** the employee from performing other (**non-competitive**) work activities outside working hours.
This ban does not apply (and thus the employer may require the employee to work exclusively for him) if at least one of the following conditions is met:

- detriment to **health or safety** (including compliance with rest time regulations);
- need to ensure the **integrity of the public service**;
- the different and additional work activity is in **conflict of interest** with the main one, even though it does not breach the duty of loyalty under Article 2105 of the Civil Code.

These provisions also apply to coordinated and continuous collaboration relationships.

Note: this new provision must be carefully assessed on a case-by-case basis, also in order to verify the existence of the conditions justifying the exclusivity obligation in individual employment contracts.

3. Mandatory training

The mandatory training activity is **free** for the employees.
Furthermore, the training must be carried out during working hours and is considered as work activity.
This obligation does not cover professional training or training necessary for the employee to obtain, maintain or renew a professional qualification, unless the employer is required to provide it by law or by collective bargaining agreements.

4. Stability in work conditions

An employee/collaborator with at least six months of service with the same employer/principal, who has successfully passed the probationary period, may request to be granted with **more stable conditions,** if available. Within 1 month from the request, the employer/principal shall provide a justified written response. In the event of a reiterated request by the employee/collaborator, companies up to 50 employees may respond in oral form.
An employee/collaborator who has received a **negative reply** may submit a new request after 6 months.

5. Termination of employment and collaboration

In the event of termination of the work contract, the employee/collaborator may request for the **reasons of termination** to the employer/principal who, in that case, is required to provide such reasons in writing within **7 days** from the request. It is on the employer the burden of proof that the reasons of termination are not linked to the request from the employee/collaborator under the Decree.

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