

## THE ITALIAN 'DIGNITY DECREE' IS CONVERTED INTO LAW

Italian Law no. 96 (the "Law"), converting into law Decree Law no. 87 of 12 July 2018 (the "Dignity Decree"), was published in the Official Gazette on 11 August 2018. The Law enacts significant changes affecting fixed-term employment contracts, temporary agency workers, and incentives to hire younger workers. It also enhances the offer that the employer should make if it wishes to settle claims concerning dismissals under the so-called "graduated safeguard" employment contract.

The Law confirms that the maximum length of fixed-term contracts of employment will be 24 months, rather than 36 months. Any contract longer than 12 months will need to be justified by setting forth in the contract the reasons that support this choice.

The Law provides for an interim period until 31 October 2018, during which several different regimes will be applicable to renewals and extensions of fixed-term contracts.

The Law also sets out a new cap, providing that temporary agency workers, together with fixed-term employees, cannot represent more than 30% of the open-term employees as of 1 January of the year in which they are hired, unless collective bargaining agreements permit otherwise.

### NEW RULES ON FIXED-TERM EMPLOYMENT

**Maximum term of one contract:** The duration of a fixed-term employment contract cannot exceed 24 months in total, including all extensions.

**Maximum duration of several contracts:** in principle, 24 months is also the maximum duration of all fixed-term relationships between the same worker and the same employer pursuant to a series of contracts entered into for services of the same level and legal category, taking into account any fixed-term agency agreements and disregarding any interruption between one contract and the next. The exceptions to this provision are seasonal contracts

#### Key issues

- The Law confirms that reasons must be specified to enter into fixed-term contracts longer than 12 months and that contracts may last up to 24 months
- A new interim regime applies to fixed-term contracts
- A new cap, in percentage terms, is set out for temporary agency workers
- The Law provides for the offence of fraudulent agency work
- The Law increases the settlement offer for settling dismissal claims under a "graduated safeguard" employment contract;
- The incentives for younger workers are extended

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and of other duration as permitted under collective bargaining agreements. It is still possible to enter into an additional fixed-term employment contract in front of the Local Labour Unit for no more than 12 months, with no further extensions permitted, subject to setting forth the reasons that justify such a choice, as described below.

**Justifying reasons:** A first fixed-term agreement can be entered into, for up to 12 months, without setting forth the reasons that justify such a choice. On the other hand, if the fixed term exceeds 12 months, the agreement must specify which amongst the following reasons justifies such a choice:

- temporary, objective needs beyond ordinary operations;
- need to temporarily replace other workers; or
- need connected to significant, temporary, non-programmable increases in ordinary operations.

In the absence of valid justifying reasons in a fixed-term contract for more than 12 months, the relationship will convert into an open-term employment relationship on the first day after the expiry of 12 months.

**Extensions:** A fixed-term contract can be extended during the first 12 months without any justification beyond a duration of 12 months; the contract can be extended only if one of the above justifying reasons exist, and only up to a maximum of 24 months in total, subject in each case to a maximum number of **four** extensions (rather than the five extensions previously allowed). If a fifth extension is made, the relationship is automatically converted into an open-term relationship even if 12 months have not passed or, if 12 months have passed, even if reasons for the extension have been set forth.

No justifying reasons need to be expressed in case of extensions of seasonal contracts. The Law allows start-up companies to derogate from the above limitation on extensions for four years after they are formed.

**Renewals:** Renewals of a contract must include the underlying, justifying reasons, regardless of the term of the contract. Failing this, the relationship will be automatically converted into an open-term relationship as from the start of the renewal term. No justifying reasons need to be expressed in cases of renewals of seasonal contracts.

**Upon each renewal** of a fixed-term contract, an additional 0.5% must be paid by the employer by way of social security contributions, on top of the standard contribution payable under the law, currently at a rate of 1.4%, for the entire renewal term. Therefore, the applicable rate increases with each renewal. The Law does not alter the current so-called "stop and go" provisions requiring a time gap between contracts between the same worker and the same employer, and continues to permit derogation from these provisions by start-up companies within their first four years of existence. No justifying reasons need to be expressed in case of extensions of seasonal contracts.

**Written form:** employment contracts must set out the term of the contract in writing, except for contracts with a term of 12 calendar days or less.

**Challenges:** The Law confirms that the period available to an employee to challenge termination of the employment relationship is now increased to 180 days (rather than the previous 120 days) from the contract's termination.

**Interim provisions.** The new provisions on maximum duration and reasons justifying the fixed-term contracts will apply to contracts entered into after 14 July 2018, i.e. the date of enactment of the Dignity Decree, and to contract extensions and renewals entered into after **31 October 2018**. Given that the Law provides that all measures adopted remain valid and all the effects and relationships arising pursuant to the Dignity Decree remain unprejudiced, currently four regimes are applicable to fixed-term contracts:

- a) Fixed-term contracts entered into on or before **13 July 2018** are governed by the so-called Italian Jobs Act (Legislative Decree No. 81 of 2015);
- b) Fixed-term contracts entered into **from 14 July 2018 through 11 August 2018**, i.e. before enactment of the Law, are governed by the Dignity Decree;
- c) Fixed-term contracts entered into during the "interim period" from **12 August 2018** through **31 October 2018** are governed by the Law. It is debatable whether any extensions and renewals which occur until 31 October 2018 may be still governed by the Italian Jobs Act;
- d) Starting from **1 November 2018**, all fixed-term contracts, as well as all extensions and renewals, will be governed by the Law.

## CHANGES TO CONTRACTS FOR FIXED-TERM AGENCY WORKERS

The Law introduces a new percentage cap to limit the use of agency workers, requiring that the total of fixed-term agency workers plus all employees hired under fixed-term contracts cannot exceed **30% of the number of open-term employees** in force as of 1 January of the year in which the agency/ fixed-term workers are hired. Any different provision on the matter set out in collective bargaining agreements or under the law will prevail over this cap. The Law also exempts certain categories of workers from counting against the cap: fixed-term agency contracts for (i) workers involved in collective redundancy procedures under Law 223 of 1991 (Article 8(2)), (ii) unemployed workers who have benefited for at least six months from non-agricultural unemployment benefits or other social remedial measures, and (iii) workers classified as specially protected workers under Italian law.

The Law confirms that provisions applicable to fixed-term agreements – i.e. **maximum total duration of 24 months, need for justifying reasons for contracts with terms longer than 12 months, and contract extensions and renewals** – will apply also to fixed-term agency agreements. In this case, the justifying reasons are to be with reference to the beneficiary company; therefore, the contract between the worker and the agency must set out the needs of the company that will avail itself of the services of the agency worker.

Renewals of agency work contracts also give rise to an increase, by 0.5% upon each renewal, of the social security contributions payable by the employer in connection with such a renewed contract.

Exceptions from this regime continue to be the "stop and go" provisions, as well as those allowing priority hiring of fixed-term employees where permanent positions are available.

Finally, the Law recreates the offence of "**fraudulent agency work**", which occurs when an agency contract is used with the specific intent of evading mandatory provisions of law or of the applicable collective bargaining agreement. The offence is punishable with a fine of Euro 20 for each worker involved, for each day of agency work.

## INDEMNITY IN THE EVENT OF UNJUSTIFIED DISMISSAL

The Law confirms the increase in the indemnity to be paid in case of unjustified dismissal of employees hired under the so-called "graduated safeguard" employment contract (i.e. since 7 March 2015): the available indemnities, which under the Italian Jobs Act ranged from a minimum of four months' to a maximum of 24 months' salary (with an increase of two months' salary for each year of a worker's seniority), are increased under the Law from

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a minimum of six months' to a maximum of 36 months' salary. In each case, the "month salary" to be taken into account is that of the last salary used in calculating the payable mandatory termination indemnity.

The Law also increases the indemnity that may be offered under a tax exemption to settle employees' claims deriving from the dismissal. This indemnity may be no less than three months', and no more than 27 months' salary (with an increase of one month's salary for each year of a worker's seniority). Under previous legislation, the minimum was two months' and the maximum 18 months' salary. An exception is created for small businesses, for which the tax exemption will apply to a minimum of one and a half months' salary up to a maximum of 6 months' salary.

## **EXEMPTION TO FOSTER THE EMPLOYMENT OF YOUNGER WORKERS**

The Law includes a new provision that extends to 2019 and 2020 the incentives created in 2018 with the aim of encouraging the hiring of workers under 35 years of age, pursuant to an open-term, graduated safeguard employment contract.

The incentive exempts the employer from paying 50% of the social security contributions due in relation to the worker, excluding for this purpose the contribution payable in relation to accidents at work, up to EUR 3,000 per year calculated on a monthly basis.

## **OCCASIONAL HIRES**

The Law amends the regime applicable to workers who provide occasional services, making it easier to use this "contract" format in the tourism sector, as well as in agriculture and by local authorities.

Pursuant to the Law, hospitality businesses with up to eight employees can occasionally avail themselves of services by paying with the newly-created "vouchers", in accordance with a now streamlined procedure.

## **RELOCATION AND THE SAFEGUARD OF EMPLOYMENT LEVELS**

Amongst the measures that seek to address relocation processes and to safeguard levels of employment, article 6(1) of the Dignity Decree as amended by the Law provides that if a business that benefits "*from public subsidies that provide for an assessment of the impact upon employment, aside from cases motivated by an objective reason of redundancy, reduces by more than 50% the levels of employment within the production or operating unit gaining from the benefit in the five years following the date of completion of the investment, it will lose the benefit; where the reduction exceeds 10%, the benefit is reduced proportionally to the reduction in the level of employment.*"

## **CONCLUSIONS**

Employers must be especially careful in managing fixed-term work relationships, considering the several regimes that may apply and their uncertain interpretation. The Ministry of Labour has announced it will provide advisory materials by way of a Circular Letter.

Although the Dignity Decree aims to reduce "precarious" hiring arrangements, the Law's effect may be a peak of renewals and extensions from now until 31 October 2018, which will not vary the large number of workers that are hired under fixed-term contracts, estimated by the Social Security Agency to be 4.5 million workers and by the Ministry of Labour to be 2.5 million workers. Thereafter, it is likely that fixed-term contracts will indeed be replaced by other types of contracts, but not necessarily by subordinate employment contracts, which also would not lead to the result intended.

Use of agency workers, too, will need to be carefully monitored in light of the new provisions of the Law, such as the cap on the use of fixed-term agency workers.

Finally, in the case of dismissal of an employee hired under the so-called "graduated safeguard" employment contract, if the employer wishes to offer an amount to settle any claims related to the dismissal, it must consider the new provisions governing tax incentives so as to make a proposal in accordance with the amendments brought on by the Law.

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