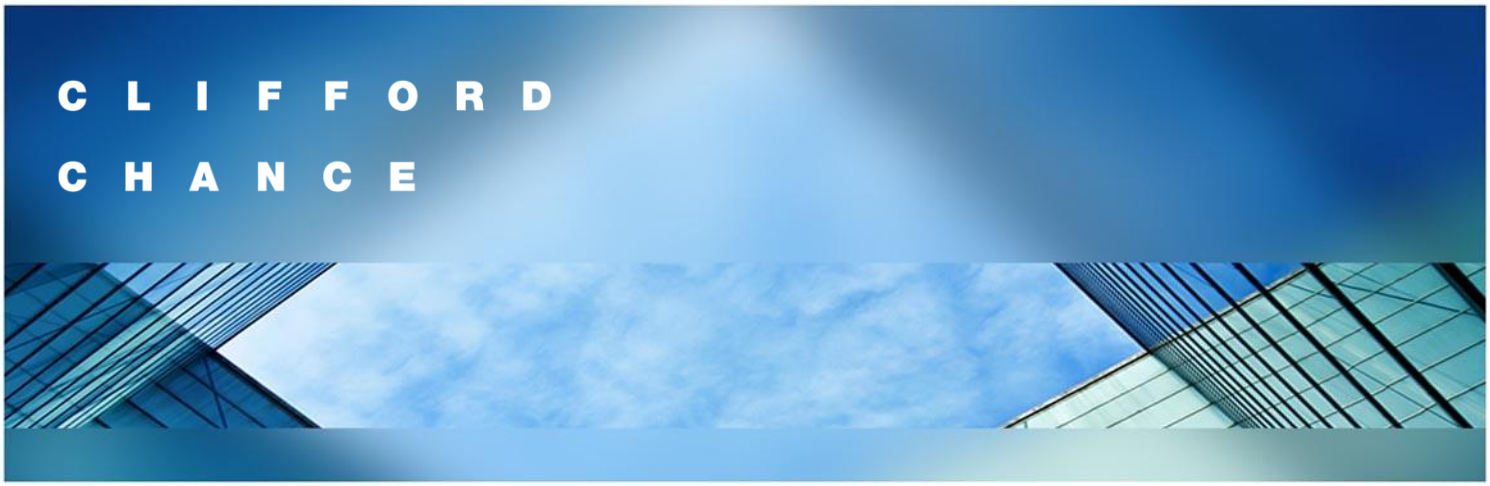

TRANSPARENCY AND WORK-LIFE BALANCE: NEW OBLIGATIONS FOR EMPLOYERS

The Italian Council of Ministers on 22 June 2022 approved two legislative decrees implementing both (i) Directive (EU) 2019/1152, on transparent and predictable working conditions and (ii) Directive (EU) 2019/1158, on work-life balance for parents and carers repealing Council Directive (EU) 2010/18. The text of the decrees is therefore final and will shortly be published in the Official Gazette.

Directive (EU) 2019/1152 requires that workers be informed of all aspects of their employment relationship, with a much greater level of detail than required so far under Legislative Decree 152/1997; as a result, employers will be burdened with performing additional formalities.

Directive (EU) 2019/1158 grants additional safeguards to workers who are carers and aims to promote gender parity by promoting the sharing of these care giving responsibilities.

We set out below the most significant provisions under the new legislation.

Key issues

- More information, to more people
- Limits to exclusivity covenants
- New type of paternity leave
- Parental leave gets longer
- Fines and safeguards

1. TRANSPARENT AND PREDICTABLE WORKING CONDITIONS

1.1 *Objective*

The objective of EU Directive 2019/1152 is to ensure that all workers (i.e., not just subordinated employees), and especially those without a permanent employment contract, are aware of the rights and conditions arising from their employment relationship and are granted minimum safeguards. This is to address the employment market challenges linked to demographic changes, the shift towards digital documentation and the various types of available work contracts.

Working towards the above objective, and with a view to harmonisation, the first of the recently approved Italian legislative decrees amends both

Legislative Decree 152/1997, implementing Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, as well as other legal provisions.

1.2 Content of the legislative decree

• *Scope of application*

The new provisions apply to all subordinate employment contracts, whether fixed-term, open-term, part-time, or intermittent; employment contracts for co-ordinated and on-going cooperation and seasonal or occasional work; and special contracts such as those for maritime, fishery and household workers (with some exceptions).

Outside the scope of the provisions are: contracts with free-lance workers, independent contractors and professionals enrolled in professional registers in accordance with Articles 2222 and 2229 of the Italian Civil Code; principal-agent contracts, work within family-run businesses; certain contracts for work in the public administration; and short-term contracts (no more than an average of three hours per week over four consecutive weeks, for the same employer or employer group, provided that before the start of the work a minimum amount of paid work is guaranteed). For these, the Directive requires employers to inform the worker in writing of "*the essential elements of the work relationship*".

This mandatory written notification must be included in the individual employment contract or a copy of the compulsory communication establishing the employment relationship, to be delivered to the worker at the time the employment relationship is created and before the start of work performance (for certain information only, it is possible to provide it within the following 7 days or within a month after the start of work performance). In case of any later change that is not the direct result of changes in the law, regulations or collective bargaining agreements, the employer must notify the worker in writing before the day when the change becomes effective. This information must also be retained and made available at any time at the worker's request.

The legislative decree extends the applicability of these new obligations not only to newly-commenced work relationships, but also to existing relationships (whereas, previously, these obligations to inform were triggered only at the request of the worker).

• *Obligations to inform*

The new legislation expands the type of information that must be provided, adding the following on top of the base information to be provided at the worker's request under Legislative Decree 152/1997 (such as the type of contract, the name of the employer, the place of employment, the classification of the worker, the remuneration, the start date and, in case of fixed-term contracts, the end date of the relationship):

- the planning of regular working hours and any conditions relating to overtime and shift changes (alternative details will have to be provided only in the event of they were unforeseeable);

- the duration of any paid leave due to the worker;

- the right of the worker to receive training from the employer (if any is envisaged);

- the duration of any trial period, holidays, and notice period and the procedure and form of withdrawal from employment;

- the entities receiving social security and insurance contributions from the employer and any form of social security protection provided by the employer;

- the parties that signed the national, collective bargaining agreement (CCNL) applicable to the work relationship;

- any second-level collective agreements applicable to the work relationship, and the parties who signed them.

Employers using automated decision-making or monitoring systems will have to carry out in-depth evaluations and provide detailed information to workers and to the company-level union representatives (or, in their absence, to the most representative national trade union), also in compliance with the law on the processing of personal data and subject to the requirements under Article 4 of the Workers' Statute.

If the information provided changes, and implies changes in work conditions, the employer must notify in writing the workers of the change at least 24 hours in advance of the change becoming effective.

Workers have the right to access the data and to request further information, either directly or through the local or company union representatives, and the employer must reply in writing within 30 days. The Ministry of Labour and the National Work Inspectorate may also request to be provided with and to access the same information and data.

Furthermore, additional information is required, and must be provided, for workers on secondment or on mission abroad.

Employers must retain evidence that the information has been provided to, or received by, the workers.

• *Trial period*

For employment in the private-sector, the trial period cannot exceed six months, unless a shorter duration is provided for by the collective bargaining agreements.

For fixed-term work contracts, the trial period is set proportionally to the duration of the contract and the duties assigned. If a contract is renewed for performance of the same duties, the employment relationship may not be subject to a new trial period.

In case of absence during the trial period because of illness, accident, or mandatory maternity or paternity leave, the trial period will be extended by the duration of the related absence.

• *Training*

Employers are also required to provide workers with the necessary training in accordance with European and national law, and collective bargaining agreements. The employer may not charge the cost of training to the workers and training must take place during working time where possible and, in any event, must be deemed to be working time.

• *Limits to exclusivity covenants*

The legislative decree provides that an employer cannot prohibit a worker from carrying out other work outside of scheduled working time, nor may treat a worker less favourably if such worker does carry out other work. Derogations are permitted for the protection of the health and safety of workers (including compliance with the rest period rules), the elimination of conflicts of interest and the integrity of public service.

• *Minimum predictability*

If the working time and shift hours are not pre-defined, the employer may not require the worker to carry out work (which the worker can therefore refuse without being subject to disciplinary sanctions), unless both of the following conditions are met:

- the work is to be carried out during pre-defined reference hours and days; and

- the worker is informed of the conditions of the work or performance to be performed with reasonable notice.

• *Transition of contractual forms*

Workers with at least six months of seniority who have completed their trial period may request, within six months from the date of termination of the work relationship to be granted different work, which has more predictable, safe and stable conditions, if any is available. This priority right expires after one year from the date of termination of the work relationship.

The employer must provide a reasoned written reply within one month of the worker's request. If the reply is negative, the worker can submit a new request after no less than six months from the prior request.

• *Worker protections and sanctions*

The failure to provide timely information or providing incomplete information entails an administrative fine ranging from EUR 250 to EUR 1,500 for each worker involved (thus, in case of multiple hirings, it is possible for the fine to be quite high). The penalty may be imposed by the Labour Inspectorate after its inspection, following a complaint by the worker.

Any retaliatory behaviour against workers who have filed a complaint or commenced judicial or other proceedings to ensure protection of their rights, is prohibited. Not only will any such retaliatory actions be deemed null, but they will also entail an administrative fine ranging from EUR 250 to EUR 1,500. In case of claims of retaliatory conduct, workers can turn to the Labour Inspectorate. Workers dismissed from work or subject to equivalent measures can expressly request the employer to inform them of why the measures were adopted. The employer must set forth those reasons in writing within seven days of the request and will bear the burden of proving in judicial proceedings that those reasons existed.

Workers who claim their rights were breach have the option of triggering certain quick dispute resolution mechanisms, without prejudice to their right to commence judicial and administrative proceedings.

1.3 *Conclusions*

The new legislation has a common purpose, namely to ensure that working conditions in the European Union are known.

However, in contrast with the express provisions of EU Directive 2019/1152, the legislative decree does not allow the option of fulfilling the obligation to inform by making reference to the CCNL.

It is envisaged that the regulatory and CCNL provisions relating to the information to be communicated by employers will be made available to publicly on the Ministry of Labour's website; however, we do not believe that this exempts employers from their obligation to inform.

Therefore, if the legislature does not take any corrective action, an employer may be required to duplicate the contents of the CCNL in its communication to the workers. This will result in a significant increase in the formalities to be performed by an employer, which will likely be forced to re-draft all subordinate employment contracts and a large part of its contracts with independent contractors, and to update any existing contracts within 30 days after any workers so request. Moreover, given the level of detail of some CCNL provisions, the employer will bear the risk that the information it provides may be inconsistent, incomplete or otherwise unclear.

2. BALANCE BETWEEN PROFESSIONAL ACTIVITY AND FAMILY LIFE FOR PARENTS AND CARERS

2.1 *Objective*

The objective of the directive is primarily to reconcile work-life balance for workers who are "carers", i.e. who have care-giving responsibilities, with a view to promoting true gender parity both in professional and family settings, through a balanced distribution of these caregiving obligations.

The second of the approved legislative decrees amends both Legislative Decree 151/2001 (i.e., the Consolidated act on the protection and support of maternity and paternity), and - with a view to harmonisation – as well as Law 104/1992 (i.e., the Framework law on assistance, social integration and the rights of disabled persons), Law 81/2017 (Measures for the protection of self-employed, non-entrepreneurial workers and favouring flexible working hours and sites in subordinated employment), and Legislative Decree 81/2015 (governing employment contracts).

Initiatives and measures to promote and advertise measures in support of parents and care givers are expected.

2.2 *Content of the legislative decree*

• *Paternity leave*

The new legislative decree formalises compulsory paternity leave of 10 working days. Compared to previous legislation, paternity leave will be available also before the birth of the child – i.e., from 2 months before to 5 months after the birth – rather than only after the birth.

• *Parental leave*

The legislative decree extends the workers' right to indemnity, in the form of a 30% allowance, for parents who are eligible for parental leave up to the time when the child turns 12 years old. Under previous legislation, the only indemnity available was leave, up to the time when the child turned six years of age.

In addition, available leave time can now be shared among the two parents: three months are available to either parent as an alternative to the other, while three months are for each parent and are not transferable to the other.

With a view to greater protection for single-parent households, the total duration of parental leave for a single parent has been increased from ten to eleven months.

At present, as parental leave, workers are entitled, for a maximum period of six months, to an indemnity equal to 30% of remuneration until the child turns six years of age; the parents may choose to share the six months of indemnity or one parent can receive the full six months.

• *Problem pregnancies and independent contractors*

The right to maternity indemnity is now granted also to independent contractors and professionals and covers any early absence from work due to problems or risks relating to the pregnancy.

• *Priority for remote work*

Employers who allow remote working are required to give priority to requests from workers who have children 12 years of age or under or children of any age with disabilities and to workers with care giving obligations.

• *Applicable fines*

Employers who refuse, oppose or hinder the use of paternity leave are punishable with an administrative fine ranging from EUR 516 to EUR 2,582.

Moreover, employers who prevent the use of compulsory paternity leave will not be able to obtain gender parity certification, if they have adopted such conduct in the two years preceding the application for such certification.

Gender parity certification, once obtained, attests that policies and real and actual measures have been adopted by the certified employer to reduce the gender gap in career opportunities, to pursue equal pay for equal work, and in to manage gender differences and to protect maternity. For 2022, certified private-sector employers will be granted an exemption from the payment of their employer-side social security contributions; for each employer, the exemption cannot exceed 1% and is capped at a maximum of EUR 50,000 per year.

2.3 Conclusions

Public-sector employment is generally out of the scope of the directive, which is not ideal. This should be corrected to achieve greater gender parity in all employment sectors.

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