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STUDIO LEGALE

Employment and Social Security

01/2008

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Legislation

Protocol on Welfare enacted

Law 24 December 2007 n. 247 (published in the Official Gazette of 29 December 2007 n. 301), carrying into effect the so called "Protocol on Welfare" of 23 July 2007, came into force on 1 January 2008.

The new provisions are summarised below:

a) Social security reform

- Law 23 August 2004 n. 243 (a.k.a. "Maroni Act") introduced the so called "scalone" (big step), i.e. the sudden increase of minimum retirement age from 57 to 60 as from 1 January 2008. The Protocol on Welfare has replaced the "scalone" with **a mechanism of gradual increase in the minimum retirement age**: as from **1 January 2008, employees are entitled to retire at the age of 58** (59 for self-employed workers) **provided that they have accrued at least 35 years of social contributions**. Between 2009 and 2013 the minimum retirement age will progressively increase to 61;
- **the possibility to retire three years before the ordinary retirement age** has been established for **employees assigned to fatiguing works** (as classified in Ministerial Decree of 19 May 1999, no. 208), **night shift workers, chain workers** and **public heavy transport workers**;
- pensions, disability pensions and social allowances have been increased;
- reinforcement of the defined contribution system introduced by the 1995 social security reform, updating every 3 years starting from 2010 the transformation rates;
- increase of social security contributions **for workers who are enrolled only in the *Gestione Separata* of INPS (National Institute for Social Security) and are not enrolled in other compulsory social security funds** (24% for 2008, 25% for 2009, 26% for 2010). As from 1 January 2008, for the rest of workers enrolled in the ***Gestione Separata***, social charges will amount to 17%;

b) Welfare support provisions

- **increase in the duration of the unemployment indemnity from six to eight months** (12 months for workers aged 50 or more) **and its amount** (60% of the last salary for the first 6 months, 50% for the 7th and 8th month, 40% for the following months)
- **increase in the unemployment indemnity for short-term workers:** from 30% to 35% for the first 120 days of unemployment and 40% for the following days up to a maximum of 180 days;

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c) Labour market

- **abrogation of job on call (*lavoro intermittente*)**;
- **possibility that collective bargaining agreements provide for special temporary employment relationships** in the show business and tourism industries, during weekends, bank holidays, school holidays and other particular situations;
- **abrogation of staff leasing indefinite term agreements (*contratti di somministrazione di lavoro a tempo indeterminato*)**;
- **maximum duration of 36 months** (including any extensions and renewals) **for fixed-term employment agreements**, **with only one renewal to be entered before the Provincial Employment Office (*Direzione Provinciale del Lavoro*) with the assistance of a trade union representative**. If the above procedure is not complied with, the new agreement will be treated as an indefinite term agreement. The 36 month limit is not applicable to executives and agency workers (*lavoratori somministrati*). The new rules are not applicable to seasonal activities, within the meaning of Presidential Decree 7 October 1963 no. 1525 and other specific activities;
- interim **regime for fixed-term employment agreements in force on 1 January 2008,** which will remain valid until the term originally agreed and will become subject to the new rules with a delay of 15 months;
- **fixed-term employees having worked for more than six months for company to have priority in indefinite term hirings made by that company for the same job description in the following 12 months.** To exercise the priority right, the employee must notify his / her intention to the employer within six months after the end of employment. The priority right lapses after one year from the end of employment.
- abrogation of the general exemption from the limitations on the use of **fixed-term employment agreements** "*in case of increase of the work activity in certain periods of the year*" (Article 10, paragraph 7, letter c Law Decree 6 September 2001 n. 368) and possibility to benefit from the above exemption only for specific shows or TV and radio broadcasts;
- abrogation of paragraph 8 of Article 7 of Law Decree 368/2001 concerning the use of fixed-term employment agreements within geographical areas with high unemployment rates;
- **abrogation of the additional social charges on overtime work** introduced by Law 28 December 1995, no. 549;
- it has been established that, in **part-time employment agreements**, in case **the employer increases the working time or varies its schedule,** save for different agreements between the parties, **employees must be given at least** 5 working days **prior notice** and **special indemnities** must be paid, as provided for by the applicable collective bargaining labour agreements;
- provision of a **priority right for employees who transformed their employment relationship from full-time to part-time,** in relation to new full time hirings made by the employer for the performance of duties equal or similar to those performed under the part-time relationship;

d) Competitiveness

- incentivizing of company-level collective labour agreements with a view to improve competitiveness and increase bonuses through **social contribution rebates for the period 2008-2010** and **tax remission for year 2008**;
- improvement of employment public services;

e) Equal opportunities

- authority has been given to the Council of Ministers for the **reorganization of the regulations on female occupation and childhood services**.

New duties for the Executive responsible for the preparation of corporate accounting documents

Article 1, paragraph 7, letter b) of Legislative Decree no.195 of 6 November 2007 (implementing European directive 2004/109/CE on the harmonization of the transparency duties of listed companies) has introduced new duties for the Executive responsible for the preparation of corporate accounting documents.

In particular the new provisions have amended Article 154 bis, paragraph 5, of Legislative Decree no. 58 of 24 February 1998 (Consolidated Text on Financial Intermediation), providing that the Executive certifies by a **special report on the annual financial statements, the six–month short form financial statement and, if any, the consolidated financial statements**:
a) **the fairness and the effective application of the rules on the required publication of corporate information** during the period of time to which the documents refer;
b) the compliance of accounting documents with accounting European principles (as under prior legislation);
c) **the correspondence between the documents and accounting books and their suitability to provide a truthful and correct representation of the financial situation** of the company and of the group of companies included in the consolidated financial statements (as under prior legislation);
d) **as to annual financial statements and the consolidated financial statements**, that the directors' report includes **a reliable analysis of the economic trend and results**, as well as of the situation of the issuer and the group of companies included in the consolidated financial statement, together with a description of the main risks and uncertainties to which such companies are exposed;
e) **as to the six–month short form financial statements**, that the directors' interim management report includes **a reliable analysis of the information provided**.
The above certification has to be made on a **form approved by a CONSOB regulation.**

Case Law

Work continuing for more than six days in a row

Work continuing beyond the sixth day, with the related shifting of the weekly rest to a day different from Sunday, **must be remunerated more** than ordinary work, **also in the absence of a specific provision established by the applicable national collective bargaining labour agreement**.
This is what the Supreme Labour Court stated in decision no. 18708, rendered on 6 September 2007, adjudicating the case of a bank employee, who had worked for more than six days in a row without receiving any additional salary or indemnity for such work.

Disciplinary dismissal: notice of disciplinary charges and new facts

The employer can **dismiss the employee for disciplinary reasons on the**

basis of facts become known during the audition of the employee, even if **different than those notified to him**, **provided that also said facts are made part of disciplinary charges notified in writing to the employee and the latter has been assigned a new term to respond.**
This is what the Supreme Labour Court stated in decision no. 23071, rendered on 5 November 2007.

***De facto* resignation**

Leaving the work place and stating to the employer one's intention to leave for having found a new job, is equivalent to resigning. This is what the Supreme Labour Court stated in decision no. 25262, rendered on 4 December 2007, adjudicating the **case of a worker employed just for two days, who, after a quarrel with a colleague, in an outburst of rage, in leaving the office, stated to the employer that he was going away having found a new job**.

Monitoring employee's business e-mails

The Fifth Criminal Section of the Supreme Court, by judgement no. 47096 of 19 December 2007, acquitted an employer charged with unlawfully monitoring of business e-mails of an employee who was then dismissed on grounds related to the information gathered through that monitoring.
The Supreme Court ruled that **if the company electronic data system is protected by passwords and such passwords are known by both the employer and the employee, the e-mails contained in that electronic data system can be lawfully known by both of them.**

Trial period: carrying out of duties different from those provided in the employment agreement

The Supreme Court, by judgement no. 25301 of 5 December 2007, ruled that a **dismissal during the trial period is unlawful if the job duties performed by the employee were different from those provided in the employment agreement.**
In the case at hand, the dismissed employee actually worked as a driver, messenger and waiter while in the probationary clause of the employment agreement the duties to be performed were those of security guard.

Administrative Practice

Social charges for stockholders/directors/employees of commercial companies

By Judgement no. 20886 of 5 October 2007, the Supreme Court held that a person who is at the same time a director/employee of a commercial limited liability company and a stockholder of such company, does not have to enrol in the pension funds provided for directors and that provided for merchants, as this would be an unlawful duplication of the social security obligations that can be referred to one single source of income.

Nevertheless, by note of 4 December 2007, INPS (National Institute for Social Security) gave notice that it will abide by the Supreme Court's ruling only after a Supreme Court's consistent case law is established and, therefore, for the time being, it will continue to impose the double enrolment.

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