

Recent legislative innovations

This newsletter focuses on the most important recent revisions to legislation, pending developments relating to approval of the so-called "*Collegato Lavoro*". This bill contains new provisions regarding dispute arbitration and settlement, fixed-term contracts and labour proceedings, amongst others, and was resubmitted to the House by the President of the Republic, Mr Napolitano, last March 2010. The amended version of the bill was approved by the House on 19 October 2010 and is now pending final approval by the President of the Republic.

Legislative innovations in the field of employment law and social security of particular interest are Law no. 122, 30 July 2010, which converted Decree Law 78, 31 May 2010 on "*Urgent measures regarding financial stabilisation and economic competitiveness*" (so-called "2010 Financial Manoeuvre") into law. Additional legal provisions and interpretative circulars have also been issued over the past few months.

New "movable windows" for access to retirement

As regards social security, the principal innovation provided by the 2010 Financial Manoeuvre concerns retirement procedures. The "fixed" retirement age system is replaced by a "sliding" (or "movable") retirement age system.

As compared to the previous fixed system, which was linked to the date of birth of the worker and split real retirement age based on a six-month period during which retirement requirements were met, the new movable system provides that retirement or old-age payments can be claimed 12 months after the date on which the individual meets the pension requirements. For those who meet the requirements for pension commencing from 2011, the current "windows" will become a single "window" and consequently the pension payment will be deferred. Practical instructions regarding operative procedures for the new "movable window" system were provided by INPS (the social security agency) in circular no. 126, 24 September 2010.

The following will be excluded from the abovementioned system, and will continue to be subject to the old "fixed" retirement windows:

- those who meet pension requirements on or before 31 December 2010;
- employees whose notice period is already in progress as at 30 June 2010, meeting pension requirements on or before the date of termination of the employment relationship;
- employees who are no longer qualified to engage in working activities for the purpose of reaching retirement age;
- within the limit of the first 10,000 applications received, workers admitted to mobility programmes pursuant to articles 4 and 24 of L. 223/1991, based on agreements entered into prior to 30 April 2010 and who meet the requirements within the period in which they are entitled to the mobility indemnity provided by article 7 (2) of such law (so-called "ordinary" mobility), and workers admitted to mobility programmes pursuant to article 7 (6 and 7) of Law no. 223/1991 (so-called "long-term" mobility) pursuant to collective agreements stipulated by 30 April 2010.

Key issues:

New "movable windows" for access to retirement

Stock options: additional 10% taxation

Further innovations in the 2010 Financial Manoeuvre

Community secondment missions

New rules regarding inventions developed by employees

New workers' badges in contracts and subcontracts

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Particular attention should be paid to the exclusion provided for workers under mobility programmes. Within the limit of 10,000 beneficiaries the exclusion from the new "movable window" system applies both to workers admitted to "ordinary" mobility programmes and to those admitted to "long-term" mobility programmes (originally provided by law no. 223/1991 and subsequently extended, on more than one occasion and most recently by way of the 2007 Finance Act). Long-term mobility acts as a "bridge" towards retirement for those concerned, allowing workers to reach retirement age without actually engaging in activities. Therefore, unlike ordinary mobility programmes (which are required by law for a period of 12 to 36 months, according to the age of the beneficiary, with an increase to 48 months for workers in the South of Italy) under long-term mobility programmes the beneficiary is "accompanied" to retirement age. For the first two years the workers receive the indemnity from INPS; upon completion of the two-year period and up until fulfilment of retirement requirements, the indemnity will be co-financed by the State and by the enterprises concerned.

With reference to the relationship between ordinary mobility and old-age pensions, it is useful to recall that the ordinary mobility indemnity can be paid up until the date on which the first window for access to the old-age pension opens and solely when this occurs during the period when the mobility indemnity is paid. In the event that the window opens after completion of the mobility period, the Ministry for Employment has authorised INPS to pay an extraordinary monthly benefit equal to the mobility indemnity and to the family allowance, without any additional charge, pending opening of the first useful window for access to an old-age pension (see INPS message no. 15953/2008). This benefit applies exclusively to employees who have been dismissed and admitted to an ordinary mobility programme by 31 December 2007 and who meet requirements for access to an old-age pension by 31 December 2009 (see Ministry for Employment note no. 14628/2009), and up until all retirement conditions are met (the benefit in question will be calculated for the purpose of entitlement to a pension). In the absence of new indications by INPS and/or the Ministry for Employment, it must be held that payment of this benefit does not apply to workers who meet old-age pension requirements after 31 December 2009.

Stock options: additional 10% taxation

Article 33 of the 2010 Financial Manoeuvre introduced an additional 10% taxation upon emoluments – in the form of stock options and bonuses – paid to executives or workers under the so called "ongoing and coordinated collaboration agreements" (*collaborazione coordinata e continuativa*; for example, generally speaking, members of the Board of Directors of a joint stock company), operating in the financial sector.

The additional percentage applies to sums that exceed three-times the fixed salary paid and is withheld as substitutive tax upon payment of the emolument. Income tax legal provisions will apply to assessments, collections, sanctions and disputes in this area.

This rule follows amendments to stock options introduced by Decree Law no. 112/2008, as converted, i.e. abrogation from the favourable tax regime as specified under sub-paragraph g-bis), paragraphs 2 of article 51, TUIR, and further providing for an exemption from welfare contributions (on this point cf. our Newsletter in January/February 2010).

Under the new rules therefore the difference between the value of the stock at the date of allocation and the amount paid to the employee is subject to taxation, and in the events illustrated above an additional 10% will apply.

The new taxation rule does not concern welfare contributions. Therefore the amount subject to taxation will continue to be excluded from the salary base for the purpose of calculating social security contributions (cf. INPS circular no. 123, 11 December 2009).

Additional innovations in the 2010 Financial Manoeuvre

Other provisions of the 2010 Financial Manoeuvre of interest in the employment and social security sector are the following:

- the term for evaluating the risk of work-related distress provided by article 28 paragraph 1-bis) of Legislative Decree no. 81/2008, has been deferred from 1 August to 31 December 2010;
- certain public entities and bodies responsible for health and safety in the workplace, such as IPSEMA and ISPEL, have been abolished and their functions have been allocated to INAIL (the agency for insurance against injuries at work and occupational diseases);
- the percentage of invalidity necessary to access a pension remains 74 per cent; the conversion law has abrogated the originally envisaged increase to 85 per cent.

Community secondment missions

New community social security regulations (Regulation no. 883/2004 and Implementation Regulation no. 987/2009) became effective on 1 May 2010; based on certain recent interpretative circulars by INPS below is a summary of innovations in this regard (circulars no. 83, 10 July 2010, no. 99, 21 July 2010 and 105, 3 August 2010).

New Regulation no. 883/2004 modernises and simplifies complex regulations under the previous Regulation no. 1408/1971. The principle guide-lines under this previous Regulation have however been maintained. In particular, the criterion of *lex loci laboris* has been confirmed as a general rule for the purpose of identifying legislation applicable to employment relationships, as has the principle of the individual nature of legislation applicable and the aggregation of all periods for the purpose of establishing welfare contributions accrued in various Member States for the calculation of pension rights.

The principal reform introduced by the Regulation is that of extending to 24 months the maximum duration of the period during which it can be held in principle that a person seconded to another Member State is subject to social security legislation in the Country of origin (i.e. the Country in which such worker normally pursues his activity). So, if an Italian employer decides to send an employee on secondment to another Member State for up to 24 months, contributions will continue to be paid to INPS in accordance with rules applicable to that type of worker within Italy.

Moreover under the abovementioned INPS circular no. 99/2010, Form E 101 (which could have a duration of 12 months and following which it was possible to compile an E201 form in case working activities continued for an additional 12 months) has been replaced by the A1 Form (a certificate relating to social security legislation applicable to the worker) which is directly valid for 24 months. The new A1 form must continue to be sent to the competent Regional INPS offices, in accordance with rules applicable to the previous E 101 form.

New rules regarding inventions developed by employees

Article 37 (1) of Legislative Decree no. 131/2010 (amending article 64 (2) of the Intellectual Property Code) introduced new rules regarding inventions developed by employees. In particular provision has been made whereby fair payment to the inventor must be made also in the event that the company believes that it will not patent the invention but rather will use it under a secrecy regime. Obviously this is without prejudice to events in which the employee has already been paid a specific fee for possible inventions.

This is an innovative provision, considering that case law has always held the contrary so far. Consequently any company – in particular those engaged in Research & Development – may have to deal with significant costs if they fail to previously agree upon calculation criteria for the determination of this fee.

New workers' badges in contracts and sub-contracts

Finally, Law no. 136/2010, effective from 7 September 2010, provided for amendments to badges that workers (employees and self-employed) must have when performing contracts and sub-contracts.

Employees' badge must include their photograph, personal details and indicate who their employer is; the badge must also indicate the starting date of employment and, in case of a sub-contract, the relative authorisation. Self-employed workers' badges must indicate the name of their principal.

This Client briefing does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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