

NEW 'DIGNITY DECREE': MORE RESTRICTIONS ON FIXED-TERM CONTRACTS, COMPENSATION FOR UNJUSTIFIED DISMISSAL AND RELOCATIONS

On 14 July 2018 the Decree Law 87 of 12 July 2018, the so-called 'Dignity Decree' (the "**Decree**"), came into force. The Decree tightens up the rules on fixed-term contracts of employment and temporary agency workers. It also increases the compensation to be paid in the event of unjustified dismissal of employees hired on or after 7 March 2015. It furthermore provides measures aimed at reducing relocations and protecting the occupational levels related to companies that benefit from public subsidies.

More specifically, the Decree requires employers to specify reasons justifying the fixed-term nature of any contract that has a term exceeding 12 months. Employees may challenge the relevant term included in the contract within 180 days from the termination of the employment relationship.

The Decree also reduces the maximum length of fixed-term contracts of employment from 36 to 24 months, and every contractual renewal will entail an increase in social security contributions of 0.5%.

The new rules will apply also to temporary agency workers, except that the period in which they may challenge the term included in the contract that would be 60 days, as it is currently.

The Decree increases the compensation to be paid in the event of unjustified dismissal of employees hired under the so-called 'graduated safeguard' employment contract: the compensation – that increases according to the length of

Key issues

- Reintroduction of justifying reasons in order to enter into fixed-term contracts longer than 12 months;
- Maximum term for fixed-term contracts reduced to 24 months;
- The rules governing fixed-term contracts apply also to temporary agency workers;
- Compensation to be paid in the event of unjustified dismissal is increased; and
- Measures intended to reduce relocation of activities, and safeguard employment levels at companies that benefit from public subsidies.

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service of the employee – is now subject to a floor of 6 months' pay, and a ceiling of 36 months' pay.

NEW RULES ON FIXED-TERM EMPLOYMENT

During recent years the flexibility around fixed-term employment relationships increased, first with Decree Law 34/2014 and later with Legislative Decree 81/2015. The above legislation removed the requirements specified under Legislative Decree 368/2001 that required for fixed-term employment to be justified "for technical reasons, or for reasons relating to production, organisational or employees replacement requirements".

The Decree reintroduces the requirement to justify reasons where a fixed-term contract exceeds 12 months, but not for contracts with shorter terms.

Specifically, a contract may only be for a fixed term in excess of 12 months where there are:

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

In the event of a dispute, a Court that finds there was no such lawful ground will convert a fixed-term contract into an open-term employment relationship. The period in which an employee may challenge a fixed-term and thereby try to obtain an open-term employment relationship has been extended from the previous 120 days from the contract's termination, to 180 days therefrom.

All fixed-term contracts that are renewed must now include a justifying reason, irrespective of their term. Where a contract is extended, on the other hand, grounds for that extension must be included only where the period of employment exceeds 12 months in total.

There is a reduction to the maximum term for fixed-term contracts, from 36 to 24 months. The maximum number of times that a contract can be extended is also decreased, from 5 to 4.

Where a fixed-term contract of employment is renewed, an additional 0.5% must be paid by the employer by way of social security contributions, on top of the 1.4% to be paid on such contracts according to previous legislation. This increase also applies to temporary agency workers.

These provisions apply to fixed-term contracts of employment entered into after the Decree's entry into force, and to renewals and extensions of existing contracts, and no particular transitional provisions apply.

CHANGES TO TREATMENT OF CONTRACTS FOR THE SUPPLY OF FIXED-TERM STAFF

Temporary agency employment relationships were also liberalised in previous years. Legislation removed the requirement for there to be a specific justification for the fixed-term nature of the employment agreement, and for

that justification to be based on technical reasons, or reasons relating to production, organisational or worker replacement requirements.

The Decree extends the rules on fixed-term contracts also to temporary agency workers. There are only a few exceptions to this, such as the priority given to fixed-term employees where permanent positions would be available.

It follows that also temporary agency employment relationships cannot exceed 24 months and will be subject to the same requirement to specify justifying reasons as with fixed-term contracts of employment.

The period of 60 days for challenging the fixed-term nature of the relationship appears to have remained unchanged, although this point remains subject to possible change as part of the law that will convert the Decree into definitive legislation, or by ministerial interpretation.

COMPENSATION IN THE EVENT OF UNJUSTIFIED DISMISSAL

Legislative Decree 23/2015 introduced a new form of employment contract – the so-called 'graduated safeguard' employment contract – in order to provide more flexibility to the rules governing dismissal of middle-managers (*quadri*), white-collar employees (*impiegati*) and blue-collar employees (*operai*) hired on or after 7 March 2015 by employers of the dimensions specified under article 18 of Law 300/1970 ("Worker's Statute") – which means more than 15 employees within a particular municipality, or more than 60 employees overall.

In the event of an unjustified dismissal, in principle the previous compensation to be paid was 2 months' salary for every year of service, with a minimum of 4 months and a maximum of 24 months, calculated using the last relevant salary payment for the employee's severance pay calculations. The Decree increases the amount of that compensation, to a minimum of 6 months and a maximum of 36 months.

The circumstances in which these employees can be reinstated in the workplace remain unchanged: where the dismissal is void by reason of discrimination or on other statutory grounds, such as where the employee is dismissed verbally, or it has been proven, in proceedings, that the facts contested with the employees do not exist.

For small businesses, the compensation to be paid in the event of unjustified dismissal will range from 3 to 6 months' salary.

The compensation related to the conciliation procedure provided under article 6 of Legislative Decree 23/2015 remains between a minimum of 2 months and a maximum of 18 months.

RELOCATION AND THE SAFEGUARDING OF LEVELS OF EMPLOYMENT

Title II of the Decree provides for measures that seek to address relocation processes and safeguard levels of employment.

With respect to the employment law aspects, article 5 of the Decree establishes that businesses which benefit from public subsidies *"that provide for an assessment of the impact upon employment, and, aside from cases motivated by an objective reason of redundancy, reduce levels of employment*

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within the production or operating unit gaining from the benefit in the 5 years following the date of completion of the investment, shall lose the benefit where the reduction exceeds 10 per cent.; and the loss of the benefit shall be arranged proportionally with the reduction in the level of employment, and be total where that reduction exceeds 50 per cent."

CONCLUSIONS

Employers must be particularly careful when entering into new fixed-term contracts of employment, and in entering into supply agreements for temporary workers with agencies.

Additionally, the new statutory requirements demand careful scrutiny when renewing or extending fixed-term arrangements.

The Decree has provoked considerable controversy. It remains to be seen whether all its provisions will remain in place, and how a number of other unresolved questions (such as the deadline for challenging temporary agency employment relationships or the amount to be paid within the relevant conciliation procedure) will be handled. Certainty on these aspects must await the law that will convert the Decree into definitive legislation, which must be approved no later than 11 September 2018.

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