

NEWSLETTER

LABOUR LAW REFORM – FOLLOW UP

On October 24, 2003 the Legislative Decree n. 276 (the so called "Biagi Law") reforming Italian labour law entered into force.

Since to date several decrees – both under a legislative and ministerial level – have been issued to fully implement Biagi Law, please find below a brief summarize of the main provisions introduced.

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1. **CONSULTANT AGREEMENTS AS SUBSTITUTED WITH “PROJECT WORK” AGREEMENTS (ART. 61 AND FOLLOWING BIAGI LAW)**
- 1.1 Biagi Law substituted the consultant agreements (the so called “*collaborazioni coordinate e continuative*” – “**co.co.co**”) with “project work” agreements, which can be entered only for the execution of one or more specific projects (or work programs or stages thereof). Starting from October 24, 2005 “co.co.co.” agreements cannot be further executed, except for those concerning: (i) intellectual activities, which can be carried out upon the admission to professional Registers only; (ii) offices as members of Boards of Directors (or Sole Directors), Panels or Commissions; (iii) performances carried out by a retired person.
- 1.2 Circular no. 1 of January 1st, 2004 of Ministry of Welfare clarified that:
 - “project work” has to be intended as a productive activity well identified and functionally connected to a final result of which the “project worker” takes part through his performance, while the work program represents a set of projects aimed to a target common to all of them;
 - the “project work” agreement must provide for: (i) the contracting party’s goal; (ii) the term within which the project or program has to be realized; (iii) the performance modalities; as well as (iv) the performance timing and the compensation, which has to be proportioned to the quality and quantity of the activity required. In lack of this, an individual hired with a “project work” agreement can claim before the Labour Court the recognition of an indefinite-term employment relationship starting from the date of execution of the “work project” agreement;
 - the “project work” agreement can be renewed while the execution of a new “project work” agreement between the same parties is admitted only in case of project or programs having different contents.

2. **SOCIAL SECURITY AND INSURANCE ISSUES RELATED TO: PROJECT WORK, SELF-EMPLOY, OCCASIONAL WORK AND CO.CO.CO.**

2.1 With circular no. 9 of January 22, 2004 INPS (“*National Social Security Office*”) clarified that project workers, co.co.co. consultant and occasional workers (receiving a compensation not higher than 5,000.00 euros and performing their activity for a period lower than 30 days) as well as self-employees and home-workers (with a yearly compensation higher than 5,000.00 euros) must file with a special Register managed by INPS in order to pay the social security contributions (so called “*Gestione Separata*”).

2.2 Starting from January 1st, 2004 the contribution to be paid to INPS amounts to:

- (a) 10% of the global compensation paid to individuals registered with a mandatory social security fund (such as those settled for particular work categories) or to individuals entitled to indirect pension¹;
- (b) 15% of the global compensation paid to individuals entitled to direct pension²;
- (c) 17.80% or 18.80% (depending, respectively, if the global compensation is lower or exceeds 37.883,00 euros) of the global compensation paid to individuals non registered with any mandatory social security fund.

2.3 With circular no. 22 of March 18, 2004 INAIL (“*National Office for the Insurance against Accidents at Workplace*”) clarified that the insurance regulation on accidents at work and professional illnesses applies also to project workers, occasional workers, members of Board of Directors and Committees, as well as to consultants retired.

3. **SERVICE CONTRACT (ART. 29 BIAGI LAW)**

3.1 Biagi Law (i) introduced the distinction between service contract and staff leasing, (ii) repealed law no. 1369 of October 23, 1969 concerning the prohibition against intermediation and interposition in the performance of work and (iii) established a rule of joint liability between contracting party and contractor with reference to the payment of social security contributions in favour of those employees working under the service contract (within a 12 months-period starting from the termination of the service contract). Legislative Decree no. 251 of September 3, 2004 (“**Revising Decree**”) extended this joint liability also to those serviced contracts concerning the realizations of a piece of work.

3.2 In case of unlawful service contract, the employee is entitled to claim the recognition of an indefinite-term employment relationship with the contractor.

4. **SECONDMENT (ART. 30 BIAGI LAW)**

4.1 According to Biagi Law there is a lawful secondment if: (i) the employer has a significant interest (“*interesse giuridicamente rilevante*”) to have the employee performing his duties in favour of another entity; (ii) the secondment is on a temporary basis and (iii) the employment relationship between the employer and the seconded employee is maintained

¹ The indirect pension is granted to the relatives of an employee deceased as consequence of the execution of his/her work performance.

² An individual is entitled to an indirect pension in case of permanent work disability rising from the execution of his/her work performance.



during the secondment. With circular no. 4/2004 the Ministry of Welfare affirms that the secondment is lawful even if:

- (a) it implies the change of duties of the seconded employee (provided that this does not imply also a disqualification). Such modification is also subject to the consent of the employee;
- (b) made on a part time basis: as a consequence, the seconded employee will perform his activity in favour of both the seconding employer and the seconded employer.

4.2 In case of unlawful secondment, the seconded employee is entitled to claim the recognition of an indefinite-term employment relationship with the employer who benefits of his work activity, starting from the date of secondment (art. 7 of Revising Decree).

5. **JOB ON CALL (ART. 33 BIAGI LAW)**

5.1 The Revising Decree extends the possibility for the employer to use the job on call contract also with regard to (i) fixed period of the week, month or year, regardless the provisions set forth by the applicable collective bargaining agreements (f.i. week-end, summer, Easter or Christmas vacations) and (ii) for the performance of those activity set out by Royal Decree no. 2657 of December 6, 1923 concerning occasional work activity.

5.2 However, the regulation of job on call is not fully in force since the Ministry of Welfare and INPS has to establish further applicative dispositions.

6. **PART-TIME WORK (ARTT. 46 AND 85 BIAGI LAW)**

6.1 With circular no. 9 of March 18, 2004 the Welfare Ministry confirmed Biagi Law's regulation on part-time work, according to which (i) is lawful the performance of "over-time work" (so called "*lavoro straordinario*") by a part-time worker (under the conditions set out for full-time workers) and (ii) the collective bargaining agreement has to establish the reasons and the limits under which the performance of "additional work" (so called "*lavoro supplementare*") by part-time workers is possible.

7. **PRIVATE EMPLOYMENT CENTERS AND STAFF LEASING (ART. 4 BIAGI LAW)**

7.1 In order to simplify the contact between offer and demand of work Biagi Law partnered Public Employment Centres to Private Employment Centres (so called "*Agenzie per il Lavoro*").

7.2 Biagi Law provides the possibility to enter into a staff leasing agreement both for fixed and indefinite term (in this latter case for technical, productive, organisational or substitution reasons only). To date, the staff leasing regulation is fully in force. In addition, the Revising Decree increased the sanctions with regard to unauthorized placement of employees increasing the relevant fee from 5 to 50 euros for any employee implied and imprisonment up to 6 months.

8. **PLACEMENT AGREEMENT (ART. 54 BIAGI LAW)**

8.1 Placement agreement (which substituted the "training agreement" – so called "*contratto di formazione e lavoro*"), is a fixed term agreement (with duration comprised between 9 and 18 months) which is aimed to place or re-place the employee within the labour market.



- 8.2 The agreement has to be in written (otherwise is null) and must indicate the individual “placement project” to be agreed with the employees. As provided by a Federal Agreement of February 11, 2004 (i) placement project has to contain at least a 16-hours period of training (including training on safety at workplace and company organization); (ii) the employer has to record the skills acquired by the employee; (iii) the period worked under a placement agreement is counted in order to calculate the employee’ seniority, in case of conversion of the placement agreement in an indefinite term relationship.
9. **APPRENTICESHIP (ART. 47 BIAGI LAW)**
- 9.1 Biagi Law modified the previous regulation on apprenticeship agreement, introducing the distinction between three type of apprenticeship: (i) training and education apprenticeship; (ii) professional apprenticeship; (iii) apprenticeship for the achievement of a school degree. Aim of the apprenticeship agreement is to train young workers that must face for the first time the labour market.
- 9.2 Until the Regions and the collective bargaining agreements do not fix the rules concerning the calculation of the training credits and the terms for the training evaluation, the previous legal provisions will continue to apply.
10. **SUMMERTIME TRAINEESHIP COURSES (ART. 60 BIAGI LAW)**
- 10.1 Biagi Law allows students ranging between 15 and 25 years old to attend traineeship courses (for a maximum of 3 months) during the “summer vacation”. The traineeship course does not imply the establishment of an employment relationship between the student and the host company, although the latter is entitled to pay to the first an amount up to 600 euros as aid grant.
11. **CERTIFICATION OF EMPLOYMENT AGREEMENTS (ART. 75 BIAGI LAW)**
- 11.1 Biagi Law has introduced a “certification” procedure (assigned to special Committees established at Local Labour Offices – so called “*Direzioni Provinciali del Lavoro*”) in order to “certify” the type of agreement entered by the parties and, as a consequence, reduce future litigation cases on the recognition of the nature of the employment relationship.
- 11.2 The agreements which can be certified are the following: job on call, job sharing, part-time, project work and staff leasing agreements. However, the parties are allowed to claim before the Court the fairness of the certification.
12. **LABOUR NATIONAL EXCHANGE (ART. 17 LEGGE BIAGI)**
- 12.1 Biagi Law issued the Labour National Exchange (so called “*Borsa Nazionale del Lavoro*”), an information technology system able to contribute to matching job applications and job offers, thus favouring the entrance to the market and the recruitment by companies. To date, this Exchange is effective at Regions Lombardia, Veneto and Liguria only.
13. **NATIONAL COLLECTIVE LABOUR AGREEMENTS (“CCNLs”)**
- 13.1 Biagi Law has transferred to the CCNLs many regulatory powers. To date, the main CCNLs which have been modified following to the entrance into force of Biagi Law are the following:



- CCNL for employees of Commercial Companies (modified on July 2, 2004), with regard to placement agreements, fixed-term agreements, staff leasing, apprenticeship and part-time;
- CCNL for employees of Medium-size Food Companies (modified on May 6, 2004) with regard to job sharing, job on call, staff leasing and apprenticeship;
- CCNL for employees of Energy and Oil Companies (modified on April 1, 2004) with regard placement agreements and apprenticeship.

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