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NEWSLETTER

LABOUR MARKET REFORM - APPROVAL OF THE "BIAGI LAW"

1. INTRODUCTION

1.1 On 24 October 2003 Legislative Decree n. 276, of 10 September 2003 reforming Italian labour law (the so-called "Biagi Law") entered into force.

1.2 However, some provisions of the Biagi law will enter into force only at a later time. In fact, the Ministry of Labour is to issue a series of ministerial decrees in order to implement the Law. Moreover, the provisions concerning staff leasing, contracts, occasional performances and "certification procedure" are of an experimental nature: this means that, after an eighteen month trial period, the Parliament must decide whether to amend the Biagi Law or not.

1.3 Furthermore, we note that the Law grants broad regulatory powers to the procedure of National Collective Bargaining, such procedure will now be in a position to make significant amendments to labour market.

2. CONTENTS

The following are the main innovations of the Biagi Law:

2.1 Employment

Public employment structures (the so called *Centri per l'Impiego* - Employment Centres) shall be assisted by "*Agenzie per il Lavoro*", Private Employment Agencies, which shall provide the following services: staff leasing both for an indefinite and a definite term, recruitment, assistance in personnel re-placement and training.

Pursuant to Law no. 675/1996 concerning protection of personal data, the *Agenzie per il Lavoro* shall protect employee privacy and are expressly prohibited from carrying out any search, data processing or pre-selection on the basis of the employee's opinions and status (sex, age, race, health conditions, etc.).

Both administrative and criminal sanctions may be imposed on agencies which operate without the necessary ministerial authorisation or violate the rules governing employment (articles 18 and 19).

Finally, the Biagi Law establishes the "*Borsa del lavoro*" (literally "Labour Exchange"), *i.e.* an information technology system able to contribute to matching job applications and job offers, thus favouring entrance to the market and recruitment by companies (art. 15).

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2.2 Staff Leasing

The Biagi Law amends the previous legal provisions in force concerning temporary employment (so called “Treu Law”) by setting out that (i) companies are allowed to lease staff for a definite term for technical, productive, organisational or substitution reasons (no longer only "in order to meeting temporary requirements") and (ii) it is possible to enter into a staff leasing agreement for an indefinite term when the above mentioned technical, organisational and productive reasons are connected with respect to the following activities: consultancy and assistance in the IT sector; cleaning, custody and concierge service; management of libraries, parks, museums, archives; management consultancy, assistance in connection with auditing, planning of resources, personnel management, recruitment; marketing; management of call centres; construction of buildings within factories; particular productive activities as well as all other cases provided for in national and territorial collective agreements.

The maximum numbers of employees that can be hired according to the staff leasing provisions shall be set out by National Collective Bargaining.

Staff leasing is not allowed for the purpose of replacing employees on strike or in productive units where collective dismissals took place in the last six months.

In the event of the staff leasing being in breach of the Biagi Law, the employee may claim before the Labour Court that the staff leasing agreement should be transformed into an employment contract.

2.3 Contract

Law no. 1369/1969, concerning the prohibition against intermediation and intervention in the performance of work is repealed as of the entry into force of the Biagi Law (art. 85 paragraph 1, letter c).

A distinction is now drawn between contracts, which are regulated by art. 1655 of the Italian Civil Code (according thereto, a contract is the agreement pursuant to which a party undertakes to execute a work or to provide a service against consideration, arranging the necessary resources and managing all the relevant activities at its own risk), and the staff leasing described in point 2.2 above. According to such distinction, a contract exists where the contractor has organisational and managerial powers over the persons employed, while under a staff leasing agreement, the employees are employed by the lessor and perform their activity in favour of the user and under his control.

Moreover, in respect of service contracts only, the Biagi Law provides for a joint liability of contracting party and contractor with respect to any sum due by the employees of the contracting party working in the interest of the contractor and relevant social security contributions.

2.4 Secondment

Under the Biagi Law secondment (which so far had been regulate by case law only) shall refer to any case in which an employer, in order to satisfy his interests, temporarily makes available one or more employees to another company in order to carry out certain activities, while the employer remains in charge of the employees' retribution and compliance with the statutory employment requirements. (art. 30). This definition set out by Biagi Law thus confirms the three conditions stated by case law in order to have a lawful secondment, *i.e.*:

(a) the employer must have a significant interest ("*interesse giuridicamente significante*") in the employee performing his duties in favour of another entity;

(b) the assignment must be of a definite term;

(c) the seconding employer remains responsible for the employment relationship with the secondee.

2.5 Groups of undertakings

In order to simplify fulfilment of the obligations set out by pay-roll, social security and welfare regulations, the Biagi Law allows companies belonging to groups of undertakings (as defined by article 2359 of the Italian Civil Code) to entrust the parent company with the fulfilment of such obligations also with respect to employees of other companies of the Group (art. 31).

2.6 Business transfer

In line with the provisions set forth by Directive 2001/23/EC of 12 March 2001 (and as a partial implementation thereto), relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, the Biagi Law has amended the definition of business transfer (rewording the fifth paragraph and addition of paragraph 6a of art. 2112 of the Italian Civil Code).

Two innovations have been introduced:

(a) as far as transfer of part of a business are concerned, transferors and transferees shall identify the part of business itself in the relevant transfer agreement (with respect to previous legal provisions, more flexibility is granted to the parties because it is no longer required that the part of business pre-exists to the execution of the relevant agreement);

(b) the transferor and the transferee shall be jointly liable if the part of business transferred is used by the transferee in order to perform a contract entered into with the transferor (i.e. if it is "outsourcing").

2.7 New types of "flexible" employment agreements

The Biagi Law has also increased work flexibility by providing for new types of work agreements:

(a) **Job on call** (so called "*lavoro a chiamata*") - (articles 33 - 40). Pursuant to this agreement, an employee makes himself available to the employer, who may use his occasional performance (within the limits to be set out in the national collective agreements). The agreement shall be drawn up in writing and shall set out - among other things - duration, place of work and according to which conditions the employee shall be available, as well as the relevant notice to work to be given to the employee (which shall in no event be shorter than one working day); the economic and regulatory treatment granted to the employee, it has to be adjusted with respect to the activities carried out and the relevant availability indemnity.

Job on call agreements may be entered into for a definite or an indefinite term, and the employee may be contractually obliged to be available in case of call.

(b) **Job sharing** (so called "*lavoro ripartito*") - (articles 41 - 45). Under this agreement two or more employees jointly undertake to fulfil a single working obligation, for

which each employee shall remain personally and directly liable. The contracting parties may decide their respective working hours at their discretion.

Replacement by third parties is instead forbidden, unless it has been agreed with the employer. Moreover, resignation by or dismissal of one of the jointly liable employees shall cause the termination of the whole; on the contrary, should one of the two employees be willing (subject to the employer's consent and upon the latter's request) to perform the obligation in full (or partially), the agreement shall become an ordinary employment agreement.

(c) **Placement agreements** (so called "*contratti di inserimento*") - (articles 54 - 60). These are particular types of agreements aimed at placing or replacing some categories of employees on the labour market (*i.e.* young people between 18 and 29 years of age; long-term unemployed, employees over 45 without any job, women residing in areas having low female employment rates, disabled, etc.).

The placement agreement must be in writing and shall set out an individual placement project (to be agreed with the employee), shall have a term between nine and 18 months and the employee can be categorised two levels below the category of an employee performing corresponding duties. Finally, employees who have been employed according to a placement agreement shall not be taken into account in the calculation of the limits set out by the law and national collective agreements for the purposes of applying particular rules.

However, we note that the criteria to draw up the individual placement project shall be set out by the National Collective Bargaining Agreement (or, in the latter's absence, by the Ministry of Labour and Social Policies).

In addition, Biagi Law grants occupational incentives in case of placement agreement executed with the categories of employees mentioned sub letter c(para 1, with the exception of young people between 18 and 29 years of age.

2.8 Amendments to existing types of agreements

(a) **Part-time agreements**. The Biagi Law sets out a series of amendments to Legislative Decree no. 61/2001 concerning part-time jobs. In particular, pursuant to vertical or mixed part-time agreements, employees can be required to work overtime (*i.e.* beyond the working hours set forth in the agreement) upon the application of the same terms and conditions applied to full time employees: an employee's refusal to work overtime does not constitute a justified ground for dismissal (as well as in case of refusal to convert a part-time agreement to a full-time agreement and vice versa).

With respect to vertical and mixed part-time jobs only, the Biagi Law introduces the possibility of flexible clauses concerning increase in the duration of working performances. The terms and procedures to introduce such clauses shall be set out by the National Collective Bargaining.

The following existing obligations of the employer, have been eliminated:

(i) obligation to previously hire part-time employees who have asked to convert their agreements to a full-time agreement, before hiring new full-time personnel;

(ii) obligation, where requested, to "adequately provide the reasons" underlying the refusal to convert a part-time agreement into a full-time agreement in case of new hiring.

(b) **Apprenticeship agreement** (articles 47 - 53). The Biagi Law divides this agreement up into three categories: (i) apprenticeship for training and education, aimed at achieving professional qualification (for young people up to 15 years of age); (ii) "professionalising" apprenticeship, aimed at achieving a qualification through training in the workplace (for persons between 18 and 29 years of age); (iii) apprenticeship to obtain a degree or higher education certificates (for individuals between 18 and 29 years of age).

Please note that, until the three categories of apprenticeship are regulated as already requested by the Regions, the current legal provisions in force shall continue to apply.

(c) **Consultant agreement** (the so called "*collaborazioni coordinate e continuative - co.co.co.*") and "**occasional work of an accessory nature".** Consultant Agreement can be entered into, in addition to the cases set out in the following paragraph, only in the event of **project works** ("*lavoro a progetto*")**,** *i.e.* activities which are connected with execution of one or more specific projects or work programs or stages thereof. The assignment shall be by written agreement, specifying the relevant term (for a definite term or for a term to be agreed), the details of the project, the relevant remuneration and the criteria adopted for calculation thereof.

Individual intellectual activities which can be carried out performing only subject to registration with professional Registers (existing as at the date of entry into force of the Biagi Law) and the office as members of Boards of Directors (or Sole Directors) shall continue to be considered as self-employees with a consultancy agreement: as a consequence they shall not be subject to the new provisions concerning project works.

Accidents at workplace, sickness and maternity shall not imply the termination of the consultancy agreements: the agreement shall be suspended without payment of any amount. However, the agreement shall be deemed to have been terminated if the suspension continues: (i) for a period exceeding one sixth of the agreed term, if the latter has been agreed by the parties, or (ii) for a period exceeding 30 days, if the term has not been set forth in the agreement. Finally, the agreement shall be terminated upon execution of the project, program or stage thereof. The parties may withdraw from the agreement for just cause or according to the other conditions agreed.

The following activities are not deemed to be project works (and are considered as occasional performances):

(d) **occasional work,** *i.e.* work executed for a term not exceeding thirty days during a calendar year, for the same employer, except in the event that the remuneration obtained in the same calendar year exceeds Euro 5,000 (in such case the provisions concerning project work shall apply);

(e) **occasional work of an accessory nature carried out by particular individuals** (articles 71 - 74). Such activities are merely of an occasional nature (petty housework, private lessons, petty gardening etc.) and are carried out by particular individuals (unemployed, housewives, students, pensioners, disabled, etc.).

2.9 **"Certification"**

A "certification" procedure will be introduced for the purpose of qualifying the nature and content of labour agreements. Such certification shall be issued by appropriate

commissions established at the Local Labour Offices (*Direzioni Provinciali del Lavoro*). The agreements which can be certified are the following: job on call agreements, job sharing agreements, part-time agreements, project work agreements and staff leasing agreements.

However, it is possible to challenge with the Labour Court disqualifications of the agreement through certification, or the non compliance between the contents of the certified agreement and the related performance, or defect of consent.

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3. CONCLUSIONS

The Biagi Law is to introduce several innovations in Italian labour law, which will not disrupt but certainly amend employment relations significantly.

However, the labour market reform may be of influence to other labour issues (such as the obligation to reinstate in his job position an employee who was unlawfully dismissed - i.e. article 18 of the Workers' Rights Bill - and arbitration on labour disputes), which are currently being discussed by the Labour Commission of the Senate.

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