Employment

Jobs Act: from reinstatement to compensation, through social contribution relief

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On 20 February 2015 the Council of Ministers definitively enacted the first two Legislative Decrees implementing the employment reform (the so called Jobs Act). The latter is a governmental decree that meets the requirements set forth in a primary law dated 10 December 2014, in particular the obligation to promote, in accordance with EU guidelines, fixed-term employment contracts that are more convenient and provide increased protection (i.e., linked to the years of service). Such decree also addresses the need to reform the provisions on dismissal for economic reasons and invalid or discriminatory dismissal.

A careful analysis of the above legislation clearly shows the lawmaker's will to **replace** the previous regime based on the **property rule** (reinstatement where the judge does not approve the entrepreneur's conduct) with a regime based on the **liability rule** (where the employer's responsibility is limited to the payment of a predetermined indemnity, that varies depending on the mutual reliance between the parties).

As mentioned above, the first enactment decree (which will be published in the Official Journal in a few days) provides for a **new fixed-term contract with increased protection** for new hires, that shall replace the **old fixed-term contract** (which remains unchanged for existing contracts); such decree has also introduced **substantive changes on dismissal**, thereby slackening the constraints provided by article 18 of the Italian Workers' Statute, with considerable changes in the rules on labour market entry and exit in particular.

A major focal point of the new provisions is undoubtedly the **right to reinstatement** for unfairly dismissed employees, which represents an **exception limited to specific cases** (as of 2015).

By contrast, **economic compensation** (indemnity) becomes a **general remedy** in case of unfair dismissal. **The amount of such indemnity is certain and commensurate to the length of service**; it is equal to **2 monthly salaries for each year of service, with a minimum of 4 and a maximum of 24 equal to the last total salary received**. Therefore, the judge no longer has any discretionary power when determining such amount.

The monetary compensation regime shall also apply to **collective dismissals** (at least 5 within a period of 120 days) where the procedures and criteria for the choice of employees to be dismissed are violated.

It must be pointed out that the limitations to reinstatement vary depending on the

reason behind the dismissal. In particular, in case of dismissal for economic reasons (e.g., elimination of job position, corporate reorganization, etc.), the so called **dismissal for objective just cause**, the possibility of reinstatement is no longer provided. Therefore, if a Judge ascertains the unfair dismissal, he can **only declare the employment relationship to be terminated and condemn the employer to the payment of an indemnity**.

On the contrary, in case of discriminatory, invalid or oral dismissal, the lawmaker has maintained the reintegration option, so that, following the judge's decision, the employee may be reinstated and receive payment of all compensation owed to him from the date of dismissal to that of actual reinstatement (with a minimum of 5 salaries).

Finally, another change that brings to mind aspects typical of the two provisions described above concerns the **dismissal for subjective reasons or for just cause**. In these cases, the delegated lawmaker has admitted the possibility to reinstate the dismissed employee only if the absence of the violation ascribed to the employee is proved directly in court; **otherwise**, the same rules provided in the case of dismissal for economic reasons shall apply.

The amount of the indemnity owed by the employer (between 4 and 24 monthly salaries for each year of service) shall be halved **in two specific cases**, (i) in the case of dismissals characterized by formal and procedural violations (**dismissal without giving reasons or violation of the procedures provided for disciplinary dismissals**) where the cap is set at **12 monthly salaries** and (ii) in the case of **dismissal by enterprises having less than 15 employees** (capped at 6 monthly salaries).

Increased protection does not just entail the provision of rules to be applied in case of dismissal, but it also represents a **powerful hiring incentive**.
In fact, the primary law should be read together with the provisions of the so called Stability Law (published in the Official Journal on 29/12/2014) and in particular the one providing for **social contribution reliefs** (**exemption from payment of social contributions for three years**), that apply exclusively to new fixed-term hires, entered into between 1 January 2015 and 31 December 2015.

The incentive, set forth in art. 1, paras. 118-124 of law 190/2014, reaches **a maximum of Euro 8,060** for all new fixed-term hires, thus making the latter more convenient than flexible forms of employment. Furthermore, **circular no. 17/2015** of the INPS (the National Social Security Institution) has broadened the scope of such incentive, specifying that such employment bonus shall also apply if hiring is done to comply with a legal obligation (e.g. mandatory hiring).

Another issue of substantive nature dealt with by Jobs Act has to do with the introduction of a **quick settlement procedure** which the employer may offer the employee within the terms for filing an appeal (60 days).

The abstract concept of contracts providing for increased protection thus takes on the form of a settlement offer (article 6 of the decree) aimed at avoiding any future actions.

The lawmaker's aim was that of reducing litigation on employment matters, by allowing for an economic compensa-

tion - in exchange of the employee's waiver of any other rights - equal to one total monthly salary for each year of service, no less than two and no more than eighteen.

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