# Labour Law

## Last stage of the Jobs Act underway: the last four Legislative Decrees have been approved

7 September 2015

**During the meeting held last 4 September, the Council of Ministries examined and approved the last four Legislative Decrees definitively implementing Law no. 183 dated 10 December 2014, through which Parliament had entrusted the Government with the task of redefining labour market and policies, thereby commencing the legislative reform process known as Jobs Act.**

The approval of the last four Legislative Decrees took place at the end of an intense period of legislative amendments in labour law, which began with Legislative Decrees no. 22 and 23 dated 4 March 2015 (contract with increased protection and reforms on dismissals and social security cushions) and continued with Legislative Decrees no. 80 and 81 dated 15 June 2015 (reform of self-employment and parasubordinate work, new rules on changes to work tasks, amendments to the Consolidated Law on maternity, changes to fixed-term contracts and outsourced labour, apprenticeship reform, etc.).

To this day, the contents of the approved Legislative Decrees are not known; as a matter of fact, the Ministry of Labour itself has only provided a summary of the above Decrees. It shall therefore be necessary to await the imminent publication of the Decrees on the Official Journal in order to have a complete picture of the rules approved and their concrete impact on employment relationships.

However, in light of the summary published by the governmental bodies, the following preliminary comments can be made as of now.

### 1. PROVISIONS FOR THE RATIONALIZATION AND STREAMLINING OF INSPECTION ACTIVITIES ON LABOUR AND SOCIAL SECURITY LEGISLATION

The Legislative Decree provides for the establishment of the **National Labour Inspectorate**, aimed at razionalizing and streamlining inspection activities.

The Inspectorate's main purpose will be that of coordinating surveillance on labour matters, contributions and mandatory insurance, based on the directives issued by the Labour Minister.

### 2. PROVISIONS FOR THE RATIONALIZATION AND STREAMLINING OF PROCEDURES AND OBLIGATIONS THAT APPLY TO CITIZENS AND BUSINESSES AND OTHER PROVISIONS ON EMPLOYMENT RELATIONSHIPS AND EQUAL OPPORTUNITIES

The provisions contained in the Legislative Decree can be divided in three main groups. The first one concerns the streamlining of procedures and obligations that apply to businesses; the second one concerns employment relationships; the third one equal opportunities.

**A. <u>Streamlining of procedures and obligations</u>**

*(i)* Rationalization and streamlining of the procedure for the **targeted placement of disabled persons**, with the purpose of overcoming the problems posed by current legislation. The main features of such action concern the possibility for private employers to hire disabled workers by means of a **personal application**, but not to hire the latter directly (i.e., only disabled persons that are on dedicated lists may be hired).

It also provides for the possibility to include disabled employees with a significant reduced working capacity in the reserve quota, **even if they have not been hired through the targeted placement procedure**. The **procedure granting incentives** in exchange for hiring disabled persons, which has also been revised completely, now provides for the **direct and immediate payment of the incentive to the employer by the INPS** (the National Social Welfare Institution) by means of adjustments to the monthly contribution statements. The incentives for the hiring of disabled workers have also been strengthened, and last longer in case persons with intellectual or mental disabilities are hired.

*(ii)* Rationalization and streamlining of the procedure for the **establishment and management of the employment relationship**. The main changes concern the **single work ledger**, which shall be kept by **electronic means** by the Labour Ministry as of 1 January 2017, and all communications regarding employment relationships, targeted placement, the protection of working conditions, incentives, active policies and professional training, including the approval of subordinate employment for non-EU citizens in the entertainment industry, all of which shall be **made exclusively by electronic means** through simplified forms.

*(iii)* Changes to issues related to **health and safety in the workplace**. In particular, employers are now supplied with technical and specialized instruments for the reduction of risk levels by the INAIL (the government agency for the insurance against work-related injuries), in cooperation with Local Health Authorities through the Regions' Technical Coordination; other changes regard the transmission of the illness or injury certificate to the INAIL solely by electronic means, thereby exempting employers from having to do the latter. Lastly, the register of accidents has been abolished.

*(iv)* Revision of the **sanctions** on labour and social security legislation. The main **changes** concern the **so-called maxi-sanctions** for undeclared employment, with the introduction of sanctions divided in various categories, rather than being linked to single days of undeclared work, with the reintroduction of the warning procedure, which allows for the regularization of ascertained violation. Such regularization is subject to the obligation to keep personnel for a certain amount of time.

**B. <u>Provisions on employment relationships</u>**

Among the main changes:

- **Revision of rules on remote checks on employees**, with amendments to art. 4 of the Workers' Statute to update the regulation based on technological developments, in compliance with provisions on privacy (this topic shall be dealt with in detail as soon as the Legislative Decree is published on the Official Journal);
- The possibility for employees to **transfer, free of charge**, to employees who work for the same employer and who carry out tasks that fall within the same level and category, their **vacation days**, except for the minimum leave entitlement required by law, for

the purpose of assisting minor children who require their parents' constant assistance and care due to particular health conditions;
- The introduction of the possibility to be exempted from the requirement to observe **availability** in case of sick leave, as is the case for public sector employees;
- The introduction of streamlined procedures in case of **resignation and consensual termination of the employment relationship**, to be done **exclusively through electronic means** by filling in dedicated forms made available by the Labour Ministry.

**C. Provisions on equal opportunities**

Among the main changes:

- The revision of the territorial area of reference of provincial equal opportunities directors, in light of the abolition of provinces;
- The introduction of the principle according to which the *spoil system* as per art. 6, comma 1, of Law no. 145/2002 does not apply to equal opportunities directors.

**3. PROVISIONS FOR THE REORGANIZATION OF RULES GOVERNING THE SYSTEM OF LABOUR SERVICES AND ACTIVE LABOUR MARKET POLICIES**

Establishment of a **national network of services for labour policies**, coordinated by the new **national agency for active labour market policies** (the so-called ANPAL).

A national register for entities authorized to carry out activities on matters related to active labour market policies, an information system of labour policies and the employees' electronic file shall also be established. The ANPAL shall provide for the establishment of the Register, in which employment agencies and agencies that intend to operate in the territory of the regions which have not set up their own authorization procedure will be enrolled. The aim is that of enhancing cooperation among public and private entities and of strengthening the ability to match labour demand and supply. The information system and the employees' electronic file aim at improving the management of the labour market and of the monitoring of the services provided. To simplify employers' fulfilment of obligations, communications pertaining to the hiring, transformation and termination of employment relationships (including those concerning seafarers) shall be made **through electronic means**.

There will also be a national Register for entities authorized to perform professional training activities.

The following 'conditions' have been formally defined: *unemployed* worker, employee who undergoes a *reduction of working hours* (following the start of a procedure for the suspension or reduction of working hours in the form of wage subsidies, 'defensive' job-security agreements or solidarity funds) and employee at *risk of unemployment*. Those who fall under such categories shall be assigned to a so-called «*profiling class*», for the purpose of assessing their level of employability and they shall be called by Job Centers to execute a *Personalized Service Agreement*. The *Agreement* shall state the applicant's willingness to participate to initiatives involving training and retraining initiatives, active policies and to accept adequate job offers. The *re-placement voucher* is provided for unemployed individuals who receive the new employment social security benefits (the so-called NASpi) and have been unemployed for over four months.

The sum, which depends on the employability profile, can be spent at Job Centers or at entities authorized to carry out activities on matters related to active labour market policies.

The voucher shall not constitute taxable income.

Furthermore, employees who receive income support may be called to carry out community services in the territory of the

Municipality in which they reside.

**4. PROVISIONS FOR THE REORGANIZATION OF RULES ON SOCIAL SECURITY CUSHIONS DURING THE EMPLOYMENT RELATIONSHIP**

The provisions contained in the Legislative Decree focus on three goals:

**(i) Inclusion;**
**(ii) Streamlining;**
**(iii) Rationalization.**

**(i) Inclusion**

The Decree formalized the NASpI for 24 months and other social policy measures, i.e.:

- Measures aimed at balancing childcare, work and life (among which the extension of parental leave);
- the unemployment cheque (so-called ASDI), which provides an income for up to six months to NASpI recipients who have minor children, or those over fifty-five who have used up their subsidy without having found a job and who have an ISEE (Equivalent Financial Situation Index) under 5,000 Euro per year;
- the fund for active labour market policies.

**(ii) Streamlining**

The Decree provides for a single regulatory text composed of 47 clauses on temporary redundancy funds and solidarity funds, thereby abrogating over 15 laws and rules which have overlapped over the last 70 years, from 1945 to this day.

This represents a huge simplification for companies, consultants and potential foreign investors: the rules on income supplements are contained in a single text. As far as the GIGO (*Cassa Integrazione Guadagni Ordinaria*, that is, the ordinary redundancy fund) is concerned, the decree provides for the streamlining of the authorization procedures, with the abolition of provincial commissions, authorizing the INPS to deal with them directly. The GIGO request must be filed within 15 days from the beginning of the reduction or suspension. Several simplifications have been made with regard to the GIGS (Cassa Integrazione Guadagni Straordinaria, that is, the extraordinary redundancy fund), i.e.:

- **Streamlining of the trade union consultation procedures**: when notifying the trade unions, it is no longer necessary for a business to communicate the criteria based on which the employees to be suspended have been selected and the rotation mode; as far as the selection criteria and the rotation modes are concerned, it has been established that the adequacy of the selection criteria shall be assessed based on their consistency with the reasons Why the intervention has been requested; the rules on rotation – extremely complicated and difficult to apply – as well as the sanctions that derived therefrom have been abolished.

From now on, the (simplified) sanctions only apply in case of failure to observe the rotation modes agreed upon during the joint assessment.

- **Streamlining of the authorization procedures**: it will be possible to request the GIGS for the entire period necessary (directly for 24 months in case of reorganization). For the 'defensive' job-security agreements (which become a reason for the CIGS, whose rules shall apply), also 36 consecutive months under certain conditions (see below).
- **Certainty of schedule**: the CIGS starts 30 days following the request (for requests sub mitted after 1 November 2015).
- **Streamlining of controls**: a single control three months before the end of the CIGS period.

***(iii)* Rationalization**

The overall maximum duration of income supplements has been revisited: for each production unit, the ordinary and the extraordinary wage supplement cannot exceed an overall maximum duration of 24 months in five years.

By using the CIGS as a reason for the 'defensive' job-security agreements, such term can be extended to 36 months in five years, since the duration of such agreements is calculated as half for the part not exceeding 24 months and in full for the entire extension period.
Examples:
• 12 months of CIGO+12 months of CIGS (e.g., reorganization): max 24 months
• 12 months of CIGO+24 months of 'defensive' job-security agreement: ok 36 months
• 12 months of CIGS (e.g., crisis)+24 months of 'defensive' job-security agreement: ok 36 months
• 36 months of 'defensive' job-security agreement: ok
• 12 months of CIGO+12 months of 'defensive' job-
security agreement: another 6 months of CIGO/ CIGS or another 12 months of 'defensive' job-security agreement. The decree includes a mechanism aimed at enhancing companies' responsibility through a share percentage contribution in case of use (additional contribution).
It provides for an additional contribution equal to 9% of the wages lost during the redundancy fund period (by adding up CIGO, CIGS and 'defensive' job-security agreements) for up to one year in the five year period; equal to 12% for up to two years and equal to 15% for up to three years.

The additional contribution is not owed in case of objective unavoidable events. In light of such progressive increase of the additional contribution, a general 10% reduction of the ordinary contribution paid for each worker is provided in case of the CIGO (the CIGS is formally borne by ordinary taxation). The share percentage of the ordinary contribution paid by all companies regardless of their use of the redundancy funds therefore falls from 1.9% to 1.7% of the salary for companies which have up to 50 employees; from 2.2% to 2% for those that have over 50 employees; from 5.2% down to 4.7% in the building sector. It is forbidden to authorize income supplements for all workable hours by all workers for the entire term available, both with regard to the CIGO and the CIGS. Basically, it is forbidden to apply the redundancy fund with zero working hours to all personnel during the entire redundancy fund period. Such prohibition, which does not apply to the CIGS du-ring the first 24 months following the entry into force of the decree, also serves to favour rotation in the use of income supplements, as well as the reduction of working hours rather than the suspension. In relation to the CIGS, the decree rationalizes the provisions on the reasons for the granting of the funds. **The CIGS may only be granted for one of the following three reasons**:

- **business reorganization** (which embraces the current restructuring) reorganization or company conversion reasons, for maximum 24 months in a five year period;
- **corporate crisis**, for maximum 12 months in a five year period. As of 1 January 2016, it shall no longer be possible to grant the CIGS in case a business or one of its branches suspends its production activities.
However, a 50 million euro fund is envisaged for each of the following years 2016, 2017 and 2018; the latter provides the possibility to authorize, following an agreement entered into at central government level, a further extraordinary redundancy fund for maximum twelve months in 2016, nine in 2017 and six in 2018 if, upon completion of the corporate crisis program production has stopped but prospects for the transfer of the business and he subsequent rehiring of employees are good;
- **'defensive' job-security agreements**, up to 24 months in a five year period, which can go up to 36 if the business does

not use the CIGO or other reasons for the CIGS during such five year period. The current "A" type 'defensive' job security agreements, which are provided for businesses that fall under the CIGS, therefore become a reason for the latter and take on its rules in terms of duration and additional contribution. The average hourly reduction cannot exceed 60% of the daily, weekly or monthly working hours. To protect workers, the total percentage of reduction of working hours cannot exceed 70% throughout the entire period during which the 'defensive' job-security agreement is in force. The Decree envisages a transitional period to adjust to the new provisions. As a matter of fact, the new rules shall only apply to requests submitted following the coming into force of the decree. Pre-existing rules shall apply to previous programs, the duration of which shall be calculated based on the maximum time limit in the five year period only in relation to the period following the entry into force of the decree. In other words, past programs shall not be calculated as being part of the new five year period: calculations start from scratch. Therefore, the new time limits shall apply as of the end of 2017, not before then. The prohibition of the zero hours of CISG for everyone throughout the entire authorized period shall enter into force only two years (end 2017). Trade union agreements executed before the entry into force of the decree (even if the redundancy fund has not been authorized yet) shall remain valid also in case they provide for longer terms. However, the periods used as of the entry into force of the decree shall be calculated based on the new limitations.

*Ughi e Nunziante – Studio legale*