

## 2014 Italian Labour Measure: New Provisions on Fixed Term Contracts

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By Andrea Gangemi and Camilla Di Matteo

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### Introduction

The Italian Parliament recently issued Law no. 78/2014, approving a new measure for the Labour Market proposed by the Renzi Government. The main points of the new measure concern the reform of apprenticeship and fixed-term contracts, and the simplification of DURC, the Single Document for Regular Contributions to which companies were held.

Law no. 78/2014 follows the 2012 Reform of the Labour Market (the so called *Riforma Fornero*) and subsequent amendments and additions made in 2013. For a more detailed discussion of the previous reforms, please see articles titled “Italy: Recent Provisions To Improve The Labour Market” and “Reform Of The Italian Labour Market” at [www.portolano.it](http://www.portolano.it).

### New provisions on fixed term contracts

Among the changes approved in 2014, the reform of “fixed-term contracts without reason” (or “*contratti a tempo determinato acausali*”) stands out. The maximum duration of fixed-term contracts is 36 months, and in this sense nothing diverges from the changes made by *Riforma Fornero* on 2012. The real news is that now employers can freely enter into fixed-term and supply contracts for the entire duration of the 36 months without giving a reason, while under the *Riforma Fornero* this was possible only for a maximum of 12 months and only in certain cases.

In this way the Government has aligned the maximum duration of the contract with the lack of necessity for a supporting reason, thereby reducing the possibilities of claims.

Excluded by this provision are *dirigenti* (i.e. senior managers), who may enter into a five-year fixed-term contract, with the possibility of termination after three years, in which case the provisions of Article no. 2118 of the Italian Civil Code apply.

In the fixed-term contract the duration and expiration date must be indicated in writing, if not then it will be automatically considered as a permanent employment agreement.

A 20% limit on the use of fixed-term contracts has been introduced, calculated by the number of permanent employees in force on January 1st of the year of hiring. Companies employing up to five employees are only able to hire fixed-term workers.

During the fixed-term relationship a maximum of five extensions are available within the limit of 36 months, regardless of the number of renewals, and on condition that they relate to the same work for which the contract was signed.

Law no. 78/2014, also provides for the right to being treated as a priority for permanent hiring to an employee who has been employed for a period exceeding six months. In cases where mandatory maternal leave occurs during the execution of a previous fixed-term contract, this span will help to determine the total period relevant to accessing this right and, in addition, the right to being treated as a priority for temporary hiring within the next twelve months. The employer is obliged to inform the employee of the opportunity to avail of such a right in the fixed-term contract.

Companies that now have more than 20% of their total workforce as temporary employees must come into compliance within the year, otherwise, from 2015, they will no longer be able to draw up fixed-term contracts.

### Sanctions in case of breach

In cases of breach of the provisions applicable to fixed-term contracts the following sanctions will be applicable:

(i) the fixed-term contract shall be deemed a permanent employment agreement and the fixed-term employee has the right to claim the status of permanent employee if:

- the same fixed-term employee works – with the same role and duties (including extensions and renewals) - for an aggregate period which exceeds the 36-month maximum duration;
- a less than six month contract continues beyond the 30<sup>th</sup> day after the termination date indicated in the contract, or if a six month or longer fixed-term contract continues beyond the 35<sup>th</sup> day after the termination date indicated in the contract;
- a fixed-term employee is re-hired – with a new fixed-term contract – within ten days of the termination of a six month contract, or within 20 days of the termination of a contract lasting more than six months (both the above terms are known as “*periodi cuscinetto*”). In cases where there are two subsequent fixed-term contracts, the permanent employment relationship starts from the date of the first contract unless there is an interruption between the two contracts, in which case the permanent employment agreement will begin from the first day of the second contract.

(ii) the employer must pay a salary increase: if the employment relationship continues after the termination date provided in the fixed-term contract (but within the limits of 30 and 35 days indicated in point (i) above), the employer is required to pay an increase in salary equal to 20% for each day until the 10<sup>th</sup> day, and equal to 40% for the following days.

(iii) the employer must pay an administrative fine: if the 20% limit on fixed-term contracts is not met, an administrative fine is payable by the employer equal to 20% (in cases of one worker being employed in such violation) and 50% (in cases involving more than one worker) of salary for each month of the period of employment.

### Final considerations

The aim of this reform is to encourage hiring and to reduce potential litigation that arose from the previous need to state the reasons why the employer had entered into the fixed-term contract (in the past this was considered as a mandatory requirement to be expressly provided in the fixed-term contract).

However, regardless of the intention of the Government and its future results, employers need to pay attention to the duration of fixed-term contracts. It is unadvisable for an employer to draw up a long fixed-term contract due to the

possibility of extending it up to a maximum of five times. If the company wishes to terminate the contract before its natural termination date (without cause), the fixed-term employee will nevertheless have the right to claim the payment of all wages due until the end of the contract.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*