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Reform of the Italian Labour Market

The reform of the Italian labour market - known as *Riforma Fornero* from the name of the involved Ministry of Labour and Welfare - has been enacted as law no. 92 of June 28, 2012 (the "**Law**") and is in force since July 18, 2012. The key elements of the Law are new rules on: (i) temporary employment agreements and other contractual arrangements aimed at avoiding abuses and to improve the flexibility of the labour market; (ii) termination of the employment relationship, restricting reinstatement to certain specific cases of unfair or unjustified dismissal and simplifying the relevant proceedings before the labour courts.

Therefore companies operating in Italy will need to comply with the provisions summarized in this document for any hiring or dismissal effective as of July 18, 2012.

DISMISSAL

ORIGINAL PROVISIONS OF ARTICLE 18 OF THE STATUTE OF WORKERS

The most controversial element of the Law focuses on the applicable consequences of unfair or unjustified dismissal and, in particular, on the reinstatement of dismissed employees under Article 18 of the Statute of Workers.

Even following the entry in force of Law, the dismissal of an employee must be based on cause (*giusta causa* – that is, a serious breach of one of the employee's duties), subjective justified reason (*giustificato motivo soggettivo* – that is, a serious failure to fulfil the obligations of the employment contract) or objective justified reason (*giustificato motivo oggettivo* – that is, economic reasons, reorganisational reasons or a role or department ceasing to exist).

Before the entry in force of Law, if the dismissal had no such basis, and if the employer employed more than 15 employees (including managers) in the same city or more than 60 employees (including managers) in total, then the labour court, on finding the dismissal to be in breach of the applicable law, would ordered the employer to:

- reinstate the employee (although the employee could refuse reinstatement and instead receive 15 months' salary as an indemnity); and
- pay the employee an indemnity equal to the salary due from the date of dismissal to the date of reinstatement, subject to a minimum of five months' salary, minus any remuneration earned by the employee during this period while working for another employer or while self-employed.

These consequences applied - and apply, even once Law is in force - regardless of the number of employees, if the labour court found that the dismissal was discriminatory under the applicable provisions of Italian law.

NEW GENERAL PROVISIONS ON INDIVIDUAL DISMISSAL

The Law, partially modifying the law on individual dismissal currently in force (Law of July 15, 1966, no. 604) provides that an employer, wishing dismiss an employee, must communicate in writing the dismissal and the related reason contextually.

The Law does not change the term given to the dismissed employee to challenge his/her dismissal (60 days from the communication of the dismissal) but it modifies the term within which a dismissed employee, wishing to file his/her summons before the labour court, may do it. In particular, the Law shortens the term from 270 days to 180 days, which run from the date in which the dismissed employee has challenged the dismissal. Such term of 180 days will apply only to dismissals communicated after entry in force of Law.

NEW PROVISIONS ON DISMISSAL FOR CAUSE AND FOR SUBJECTIVE JUSTIFIED REASONS

The Law modifies Article 18 of Statute of Workers. First, such Article, before named "*Reinstatement in the job position*", following the entry in force of Law, is named by the Law "*Protection of employee in case of unfair dismissal*".

The Law introduces new provisions to apply in the event of dismissal for cause or for subjective justified reason.

If the labour court finds that the dismissal is unfair or unjustified, it will order the employer to pay the employee an indemnity of between 12 and 24 months' salary, depending on circumstances such as age, length of service, number of employees and size of company. The court will assess these circumstances on a case-by-case basis.

If the labour court finds that the alleged breach or failure (i) did not take place, (ii) should have been penalised by a measure less severe than dismissal according to the applicable national collective agreement or disciplinary codes, it will revoke the dismissal and will order the employer to:

- reinstate the employee (although the employee may refuse reinstatement and instead receive 15 months' salary as an indemnity);
- pay the employee an indemnity equal to the salary due from the date of the dismissal to the date of reinstatement, to a maximum of 12 months' salary, minus any remuneration earned by the employee from working during this period (whether for another employer or on a self-employed basis), or that he or she would have earned had he or she duly sought new employment; and
- pay social security contributions from the date of the dismissal to the date of the reinstatement.

The above indicated provisions apply to the employer, entrepreneur or not, having more than 15 employees (i) in each autonomous headquarter, plant, branch, office or department, (ii) in the same city or, in any case, (iii) more than 60 employees.

NEW PROVISIONS ON DISMISSAL FOR OBJECTIVE JUSTIFIED REASONS

The Law makes the following provisions on dismissal for objective justified reason.

If the labour court finds that the dismissal was unfair or unjustified because of the absence of objective reason (ie, because it was not a reasonable response in the circumstances or because the employee could have been assigned to another role), the court will order the employer to pay the employee an indemnity of between 12 to 24 months' salary, depending on circumstances such as age, length of service, number of employees and size of company. The court will assess these circumstances on a case-by-case basis.

If the court finds (i) that the objective reason – consisting in employee's physical or psychological incapability – indicated in the dismissal letter clearly does not apply; (ii) that the employee was dismissed in breach of Article 2110 of Civil Code (ie if the dismissal is communicated to the absent employee before the end of the provided sick leave or maternity leave), (iii) that the objective reason is clear inexistent, it will order the employer to:

- reinstate the employee (although the employee may refuse reinstatement and instead receive 15 months' salary as an indemnity); and
- pay the employee an indemnity equal to the salary due from the date of dismissal to the date of reinstatement, to a maximum of 12 months' salary, minus any remuneration earned by the

employee from working during this period (whether for another employer or on a self-employed basis), or that he or she would have earned had he or she duly sought new employment.

The above indicated provisions apply to the employer, entrepreneur or not, having more than 15 employees (i) in each autonomous headquarter, plant, branch, office or department, (ii) in the same city or , in any case, (iii) more than 60 employees.

CONSEQUENCES OF PROCEDURAL VIOLATIONS

The Law provides that the employer may be ordered to pay an indemnity of between six and 12 months' salary if the dismissal is well founded, but the employer failed to (i) indicate in detail the reasons for the dismissal in the dismissal letter; (ii) comply with the specific two-step procedure required in the case of dismissal for cause or for subjective justified reason; or (iii) comply with the preliminary procedure mandated for the dismissal for objective justified reason (see below).

The above indicated provisions apply to the employer, entrepreneur or not, having more than 15 employees (i) in each autonomous headquarter, plant, branch, office or department, (ii) in the same city or , in any case, (iii) more than 60 employees.

PRELIMINARY STEPS AND LEGAL PROCEEDING

NEW PRELIMINARY PROCEDURAL STEP IN DISMISSAL FOR OBJECTIVE JUSTIFIED REASONS

The Law introduces a preliminary procedure to be followed in the event of dismissal for objective justified reasons. Its aim is to reduce the workload of the labour courts and to encourage parties to reach an early settlement.

If a company that employs more than 15 employees in the same city or more than 60 employees in total wishes to dismiss an employee for objective justified reason, it must communicate its intention in advance to the local labour office – the *direzione provinciale del lavoro* (DPL) – providing a copy to the employee in question (either sending it by registered letter to the address indicated in the employment agreement or formally communicated by the employee or hand delivering it during a meeting with the employee).

The employer must give detailed and specific reasons for the dismissal and the potential outplacement measures for the employee in question.

Within seven days of receiving the communication (indicated in the Law as mandatory term), the DPL must convene a meeting between employer and employee to consider alternatives to dismissal and, failing this, to try to settle the dispute without the parties going to court. In case of licit and proved impediment of the employee to attend the meeting, the procedure may be suspended up a maximum of 15 days.

The procedure must be concluded within 20 days of the DPL sending the convocation letter, unless the parties wish to continue in order to pursue a settlement agreement. If the negotiations over the settlement agreement fail or the 20-day time limit expires, the employer may send the dismissal letter to the employee. However, if the parties settle the case, the employee is entitled to unemployment benefit and the outplacement measure (if provided).

The Law provides that if the parties go before the labour court, their conduct during the preliminary procedure – for example, one party's unjustified failure or refusal to settle – will be taken into account by the judge in determining the size of any potential penalty (eg, the size of the indemnity to be paid by the employer in cases of unfair or unjustified dismissal).

Finally, the Law provides an important aspect of the dismissal procedure, that is the date of effectiveness of the dismissal. In particular, the Law establishes that dismissal ordered following up the above described procedure is effective from the date in which the employer communicates the intention to the DPL to dismiss the employee, unless the possible employee's entitlement to the notice period or the indemnity in lieu of it. Furthermore, the Law states that the effects of the dismissal are suspended in case of injury in the workplace.

The latter provisions on the date of effectiveness of the dismissal apply even to dismissal ordered by an employer following up the disciplinary procedure under Article 7 of Statute of Workers.

NEW SPECIAL PROCEEDINGS FOR DISMISSAL DISPUTES

Under the Law, if a company meets the headcount threshold (ie, 15 employees in the same city or 60 employees overall), dismissal disputes and questions relating to changes in the nature of the employment relationship are eligible for a form of ad hoc proceedings. This is effectively a fast track compared with the ordinary proceeding before the labour court.

Special proceedings may be brought by means of a complaint filed before the labour court, followed by a judge's order to schedule the first hearing within 40 days. During the first hearing, the judge listens to the parties without the specific formalities not essential to cross-examination. In the same hearing, the judge goes on with preliminary phase (eg, examination of witnesses) and upholds or rejects the complaint with an immediately enforceable order.

A party can challenge this order, filing a complaint within 30 days of notification or the communication of the order itself. In the event of a challenge, the judge will schedule the hearing to take place within 60 days. At least 30 days before the scheduled hearing, the claimant must notify the counterparty of the claim and the order; the counterparty can file a brief up to 10 days before the hearing.

At the hearing the judge hears the parties (again without following formalities not essential to cross-examination) and then has 10 days in which to issue a judgment to reject or uphold the claim. The judgment is immediately enforceable and is a valid title to register a judicial mortgage.

The parties may appeal a judgment to the competent court of appeal. According to the reform, the same time limits apply as in the challenge phase of the special proceeding.

The appellate court's judgment can be finally challenged – within 60 days of its notification or communication – before the Supreme Court, which must schedule a hearing within six months.

The reform also provides that the labour courts, the courts of appeal and the Supreme Court, when planning their schedules for hearings, must include specific days on which they will deal with the new special proceedings for dismissal disputes.

CONTRACTS

NEW PROVISIONS ON FIXED-TERM CONTRACTS

Fixed-term contracts are regulated in depth by Legislative Decree 368/2001. The Law confirms that they are an exception to permanent employment contracts, which are identified as the "ordinary form of employment relationship". However, it introduces an important change which promotes the use of fixed-term contracting.

The Law provides that the technical, organisational or production-related reasons, or the need for replacements – which are the normal preconditions for entering into a fixed-term contract – are not required if: (i) the working relationship is the first between the parties; (ii) the duration of the fixed-term contract is no more than twelve months; or (ii) the temporary contract may not be extended.

These temporary contracts (so called "**temporary contracts without reason**" or "***contratti a tempo determinato acausali***"), concluded in the absence of the usual justifying circumstances, may be used to fill any employee role, even for labour supply contracts, but they cannot be extended.

In addition, the Law states that the national collective agreements – signed by the more representative at national level trade unions of employees and employers – may provide different regulations in the use of temporary contracts by employers involved in company reorganization, brought about by (i) starting new activities; (ii) launch of an innovative product or service; (iii) implementation of an important technological change; (iv) supplementary phase of a significant project of research or development; (v) renewal or extension of a considerable order. In such cases, the employers may hire temporary employees (by fixed term contracts or labour supply contracts) within the thresholds of 6% of all employees in force in the same office.

Another important change concerns an extension of the period (known as "*periodi cuscinetto*") which must elapse between two fixed-term contracts in order for the second not to be deemed a permanent contract. Where an employee was previously employed on a fixed-term contract of up to six months, at least 60 days must elapse before he or she is rehired on a fixed-term contract – the previous minimum gap was 10 days. Where the previous fixed-term contract was for more than six months, 90 days must elapse – the previous minimum gap was 20 days.

The Law provides, that the required periods which must elapse between two fixed term contracts may be shortened by the national collective agreements – signed by the more representative at national level trade unions of employees and employers – in case of company reorganization (please see above). In particular, in case of company reorganization, the periods of 60 days and 90 days may be shortened, respectively, to 20 and 30 days.

Moreover, the Law introduces the maximum duration of 36 months - included renewals and extensions - of a temporary contract. Such maximum duration takes into account both fixed term contracts and labour supply contracts signed between the parties of an employment relationship.

Finally, with reference to the fixed term contracts, the Law modifies the terms to challenge them. In particular, a fixed term employee may challenge his/her contract within 120 days – no more 60 days – from the termination day and must file his/her summons before the Labour Court within 180 days – no more 270 days – from the date of challenge the fixed term contract. Such provisions will apply since January 1, 2013.

NEW PROVISIONS ON APPRENTICESHIP CONTRACTS

Apprenticeship contracts are regulated by Legislative Decree 167/2011. The Law introduces a new minimum duration of six months, except for apprenticeship contracts relating to activities that are carried out in seasonal cycles.

Moreover, the Law introduces new thresholds for employers in hiring employees as apprentices. The employer may hire an aggregate number of apprentices not superior to a *ratio* of 3 to 2 of qualified and specialized employees in force before the same employer (eg. an employer with 10 employees in force may hire 15 apprentices). The Law provides that, in any case, the above indicated *ratio* may not exceed 100% in case of an employer which employer lower than 10 specialized and qualified employees. Finally, an employer (i) without specialized and qualified employees or (ii) with a maximum of 3 specialized and qualified employees, may hire an aggregate maximum number of 3 apprentices. Such provisions will apply since January 1, 2013.

Besides, new apprentices may be engaged only if, over the previous three years, at least 50% of apprentices excluding ceased apprentices for (i) termination during the probationary period, (ii) resignation; and (iii) dismissal for cause - have been taken on as regular employees. Such percentage of 50% is shortened to 30% until the next 3 years from the entry on force of Law. Apprentices who are hired by the employer in breach of the such provisions are automatically deemed permanent employees from the beginning of their employment relationship. The Law specifies that such provisions do not apply to companies not exceeding a number of 10 employees.

NEW PROVISIONS ON PROJECT WORK CONTRACTS

The Law makes significant changes to project work contracts, which are cooperation agreements (regulated by Legislative Decree 276/2003) in connection with the realisation of a specific project that justifies their use.

In particular, the Law states that the project (i) must be functionally related to an effective final result of business carried out by the employer; (ii) may not merely replicate the employer's core business; (iii) may not consist merely in carrying out ordinary or repetitive duties; and (iv) must be described in detail in the contract with specific reference to the final result.

With reference to project workers' compensation, the Law provides that it must be related to the quality and the quantity of activities carried out by the project workers and that it, in any case, may not be lower than the minimum compensation provided by specific national collective agreements – to be signed by the more representative at national level trade unions of employees and employers – taking into account typical project workers professional profiles. In any case, in failure of specific national collective agreements, the compensation may not be lower than the minimum compensation provided by the national collective agreements, applied to the sectors in which project workers are engaged, for similar activities performed by employees with the same professional profile of project workers.

The Law provides that in the absence of a project ("the essential element in the validity of a work project contract"), the contract is considered to be a permanent employment contract from the beginning.

In addition, the Law provides that if a project worker carries out work in the same manner as the company's regular employees, the project worker's working relationship with the employer is considered to be an employment relationship from the beginning, although it remains open to the employer to demonstrate that this is not the case.

The Law also amends the rights of the parties to withdraw from a project work contract. The employer may withdraw from the contract before its termination date if the worker is professionally incapable of completing the project; the project worker may withdraw from the contract before its termination date on terms set out in the contract.

These provisions will apply only to project work contracts signed after the Law 's entry into force.

Finally, with reference to the project work contracts, the Law modifies the terms to challenge them. In particular, a project worker may challenge his/her contract within 60 days from the termination day and must file his/her summons before the Labour Court within 180 days – no more 270 days – from the date of challenge the project work contract. Such provisions will apply since January 1, 2013.

NEW PROVISIONS ON FREELANCE CONTRACTS

Freelance contracts are regulated by the Civil Code and Legislative Decree 276/2003. The Law imposes limits to ensure that such contracts are used only in genuine cases.

For this purpose, the reform adds Article 69*bis* to the legislative decree. It provides that unless the employer can demonstrate otherwise, the working relationships of freelancers with value added tax position are considered as "cooperation relationships" if two of the following conditions are met: (i) the duration of the service relationship is greater than 8 months in a calendar year; (ii) the payment derived from the service relationship represents at least 80% of the total compensation received by the freelance in the calendar year; and (iii) the freelance has his or her own desk or assigned working space in the employer's offices.

The above provisions do not apply in the following cases: (a) the working activity carried out by the freelancer is characterized by theoretical and high skills, acquired by significant training, or by technical skills acquired by important experiences accrued in effective performance of activities; and (b) the working activities are professional activities for which the entry in an appropriate register or role is required. Working activities (a) and (b) will be individuated by the Ministry of Labour and Welfare within 3 months from the entry in force of Law, heard trade unions.

These provisions with reference to freelance contracts will apply only to contracts signed once the Law is in force; in the case of existing freelance relationships, the rule will apply 12 months after the Law's entry into force.

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*This document was prepared by **Portolano Cavallo Studio Legale** with the intended to provide a general guide to the subject matter. It is not a legal advice or a substitute for it. Specialist advice should besought about your specific circumstances. In this respect further information can be obtained by contacting **Andrea Gangemi** at Portolano Cavallo on +39 06 696661 or agangemi@portolano.it*