

Italy: Recent Provisions on Job On Call Agreement

September 24 2012

By Andrea Gangemi and Marilita Piromalli

- Legal framework
- Job on-call scope
- Duty to inform
- Conclusion

Legal Framework

Law No. 92/2012 (the “**Law**”) – entered into force on July 18, 2012 – introduces significant changes to job on-call regulations, set forth in detail by the Ministry of Labor in order No. 20/2012 .

Job on-call is a type of employment relationship in which an employee makes himself or herself available to carry out activities on behalf of an employer periodically or intermittently, at the discretion of the employer (just on “call of the employer), pursuant to a permanent or temporary agreement signed by the parties.

On-call employee may undertake to answer to all of the employer’s calls and, in such case, the employee is entitled to receive a monthly indemnity (the “**availability indemnity**”) even for unworked periods, in addition to payment for the actual time worked.

The on-call employee forfeits the right to the availability indemnity if the employee does not promptly justify to the employer his or her failure to respond to a request for service. The unjustified refusal of the on-call employee to answer an employer’s call may entail the termination of the on-call agreement and compensation for damages in favor of the employer.

Job on-call scope

As of July 18, 2012, employers may utilize on-call employees only under the following circumstances:

- (i) to carry out intermittent duties as provided by national collective bargaining agreements on the basis of the company's needs;
- (ii) to carry out duties limited to weekly, monthly or yearly terms as set by national collective bargaining agreements;
- (iii) to carry out the intermittent duties set forth in royal decree no. 2657/1923 (e.g., the duties of attendants, doorkeepers, deliverers, etc.).

In addition to the above provisions, an employer may enter into job on-call agreements if the on-call employee is under 24 or over 55 (including retirees) years of age.

As of July 18, 2012, employers are no longer allowed to employ on-call employees during weekends or summer, Christmas or Easter holidays.

The Ministry of Labor has established that these new provisions will not apply to job on-call agreements signed before July 18, 2012 and in force by July 18, 2013.

Duty to inform

The Law has burdened the employer with a duty to inform the authorized labor office – the “*Direzione Territoriale del Lavoro*” (the “**DTL**”) – at any activity of on-call employee. This duty to inform the DTL is added to the existing duty of the employer to communicate the hiring of on-call employee to the authorized labor office – the “*Centro per l'Impiego*”.

The employer may inform DTL of an on-call employment request in the following ways:

- by fax; or
- by email or text message (SMS); or
- online, as of October 1st 2012. (The Government intends to implement the portal *cliclavoro.it* to be used by Android, Windows Phone and other operating systems by this date).

The Law provides that the employer must inform the DTL – at the time of each “call” and before starting the requested working activity – as to the duration of the duties to be carried out by the on-call employee.

Just one notification on scheduled working days is required if the employer uses an on-call employee to carry out a cycle of connected work activities for a duration not to exceed 30 days (e.g., the employer notifies DTL of work activities not over 27 days and provides a schedule of days to be worked, such as: from August 4th to August 19th, from August 25th to August 29th, from September 6th to September 14th).

If the employer breaches the duty to inform, the authorized labor office – the “*Ispettorato del Lavoro*” – will levy a fine against the employer of between 400.00 and 2,400.00 Euros. The Ministry of Labor has specified that the fine applies if *Ispettorato del Lavoro* verifies that job on-call is improperly used by the employer.

Conclusion

The new regulations for job on-call are intended to prevent the unfair use of on-call employees to circumvent labor provisions that apply only to employees. In particular, the duty to inform ensures official oversight of on-call work through the DTL throughout the term of the employment relationship.

The Law does provide employers, however, a streamlined method for complying with these new regulations through the use of modern communication technology such as SMS, fax, and email.

Job on-call is still an effective type of employment relationship appropriate to specific sectors (e.g., the tourist industry, broadcasting sector) in which staffing requirements are periodic or intermittent.

In confirmation of the foregoing, the Ministry of Labor has recently extended (by the order No. 28/2012) the use of job on call to all audiovisual media services (such as, webcasting or live streaming services), before used by-law only to broadcasting services.

The content of this article is intended to provide general information on the subject matter. Legal advice should be sought for case-specific questions.

P O R T O L A
V A L L O P O R T O L A
P O R T O L A
P O R T O L A N O C A V A L L O P O R T O L A N O C A V A L L O P O R T O L A N O C
P O R T O L A N O C