

P O R T O L A N O
C O L E L L A
C A V A L L O
s t u d i o l e g a l e

10 years

Constitutional Court clarifies indemnity for invalid temporary employment agreements

November 23, 2011

By Andrea Gangemi and Lucia Ceccarelli

Background

Towards the end of 2010 Parliament approved a significant piece of legislation - Law 183/2010, known as the Collegato Lavoro - which affects several aspects of employment law, including the indemnity that an employer must pay when an individual is employed under an invalid temporary employment agreement.

The previous provisions of labour legislation were not sufficiently specific on the amount of this indemnity, which resulted in an unacceptable lack of predictability in case law. Articles 32(5), (6) and (7) of the Collegato Lavoro were intended to remedy this by requiring an employer to pay comprehensive indemnity of between two-and-a-half months' salary and one year's salary if a temporary employment agreement does not comply with the provisions of the law.

In addition, the Collegato Lavoro states that if an applicable national collective agreement provides for the reclassification of employees who were previously employed under a temporary agreement, the maximum indemnity is halved.

Under the previous legal framework, if an employee sought to have his or her temporary employment relationship reclassified as permanent, the Labour Court granted payment of all remuneration due from the date on which the employee asked to be reclassified until the

date on which he or she was instated on permanent terms. As a result, the duration of the court proceedings added significantly to the indemnity that the employer had to pay.

Under the provisions outlined in the Collegato Lavoro, the duration of such proceedings does not affect the amount of the indemnity. Instead, the amount is determined according to the company's size, the employee's professional seniority and the conduct of the parties, and is limited by a minimum and maximum value.

The greater certainty introduced by the Collegato Lavoro is particularly significant in view of the fact that the average duration of Labour Court proceedings is around one-and-a-half years; if an employer wins at first instance, but loses the appeal, the proceedings may last for four years.

Constitutional Court decision

On November 11 2011 the Constitutional Court issued Decision 303/2011, which confirms the validity of Articles 32(5), (6) and (7) and rejects the argument that such provisions are unconstitutional because they reduce the protection available to employees.

The court declared that the provisions comply with constitutional principles. In considering an employer's violation of the legal requirements on temporary employment agreements, it observed that the indemnity is merely additional to the main remedy that the law provides in favour of the employee, which takes the form of the reclassification of the employment agreement as permanent (ie, the subsequent re-hiring of the employee on permanent terms).

The decision makes clear that the provisions in question represent not a reduction in employee protection, but a balancing of the respective interests of employee and employer by allowing for a prior determination of the compensation due as a result of the employer's failure to comply with the requirements of the law.

Finally, the court upheld the validity of the provision whereby the maximum indemnity is halved in the event of the reclassification of employees who were previously employed under a temporary agreement provided by the applicable national collective agreement.

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.