ITALIAN LABOUR LAW UPGRADES MANUAL

1. New employees' hiring rules and advantages.

1.1 Fixed-term contracts: quota limits.

Before proceeding to a new recruitment on a fixed-term basis is important to bear in mind some rules, in particular about quota limits set by "Dignity Decree" (DL no. 87/2018) entered into force since November 1st 2018 and related to fixed-term contracts.

The quota limit for fixed-term contracts is set at 20% of the number of permanent workers on January 1st of the year of recruitment, instead the limit for fixed-term in administration contracts (called *"contratti a tempo determinato in somministrazione")* has been increased to 30% of the same calculation parameter.

All the other forecasts already into force remain confirmed and therefore, for employers who employ 0 to 5
employees, it is always possible to conclude a fixed-term employment contract. In addition, collective agreements, also may lay down a different limit from the legal limit and derogate from the relevant method of calculation.

For the purpose of determining the percentage, part-time workers, managers and apprentices must be taken into account in the calculation.

In the event of a breach of the above limits, the following penalties shall be imposed:

- 20% of gross monthly remuneration provided for by the National Collective Labour Agreement, for each month or part of a month exceeding 15 days employment, where the number of workers recruited in breach of the percentage limit **is not more than one**;

- 50% of gross monthly remuneration provided for by the National Collective Labour Agreement, for each month or part of a month exceeding 15 days employment, where the number of workers recruited in breach of the percentage limit **is more than one**.

Collective bargaining may provide for wider recruitment margins in companies of up to 5 employees, may derogate from the 20% percentage limit both increasing and decreasing, may choose to determine the basis of calculation at a date other than January 1st or as the average over a given time period.

1.2 Fixed-term contracts: maximum duration and extension of employment

Dignity Decree has led to the termination of the a-causality of fixed-term employment relationships, providing that the duration of the contract of employment may not exceed 12 months.

The contract may have a maximum duration of 24 months, including following extensions and renewals, only if at least one of the following conditions is met:

- Temporary and objective needs, outside the ordinary business
- Need to replace other workers
- Needs related to temporary, significant and non-programmable increases in the ordinary activity.

In the event of the conclusion of a contract of more than 12 months in the absence of cause, the contract shall become a contract of indefinite duration from the date of expiry of the 12-month period.

Without prejudice to the different provisions of collective agreements and with the exception of seasonal activities, the duration of fixed-term employment relationships between the same employer and the same worker, as a result of a succession of contracts concluded for the performance of tasks of the same legal level and category and irrespective of the periods of interruption between contracts, may not exceed 24 months.

Where the 24-month limit is exceeded by reason of a single contract or a succession of contracts, the contract shall be changed for an indefinite period from the date of such expiry.

First of all is important to differentiate between extension and renewal, in particular a contract is extended if, before the expiry of the period, it is extended to another date. On the other hand, there is a renewal when the initial fixed-term contract reaches the originally planned maturity (or later extended) and the parties wish to proceed to the conclusion of an additional contract.

The contract may be extended freely during the first 12 months and, subsequently, only in the event of temporary and objective requirements, which are not part of the ordinary business, or the replacement of other workers or requirements related to temporary, meaningful and non-programmable increments of the ordinary activity.

The term of the fixed-term contract may be extended, with the worker's consent, only when the initial duration of the contract is less than 24 months in and, however, for a maximum of 4 times over the 24 months regardless of the number of contracts. If the number of extensions is higher, the contract shall be converted into an open-ended contract from the date on which the fifth extension takes effect.

1.3 Professional apprenticeship or "contract of work".

The apprenticeship contract is by definition an open-ended employment contract in which the employer must pay the apprentice:

- the remuneration for the service rendered, reduced by comparison with the regular contract for an indefinite period, because of the inexperience of the apprentice;
- The necessary training (in part internal and in part external) to the acquisition of a greater professional competence. In order to avoid abuse and misuse of the apprenticeship contract, which enjoys both remuneration and contribution facilities, the legislator has introduced numerical limits for its use, in relation to the number of employees in the company.

The age limits for professional apprenticeships are set at 18 to 29 years and the purpose is to obtain the professional qualification, valid for contractual purposes.

From 2016 it is possible to recruit with this type of contract also workers over 29 beneficiaries of mobility or unemployment treatment, without age limits, for the purpose of their qualification or retraining.

The apprenticeship contract must be concluded in writing and must contain the individual training plan defined also on the basis of forms established by collective bargaining or bilateral organizations. In professional apprenticeship, the employer has to provide training for each year of apprenticeship, according to regional public training, or in the absence thereof, through internal or external training. For this reason, there is an obligation for a tutor or a business contact to be present in the company meeting the requirements of national collective bargaining. Compulsory training, the duration and modalities of which are determined by the apprentice's age, degree of education and qualification, must be certified by bodies accredited to the region. The Ministry recently made it clear that training in cross-cutting subjects is not compulsory for those over 29 who have already had work experiences, it is assumed that they already have such skills.

The duration of the apprenticeship contract in general may not exceed three years, extended to five years in craft enterprises, unless otherwise provided for in collective agreements, on the basis of age and type of professional qualification to be attained. The minimum duration is not less than six months. If none of the parties withdraws from the employment relationship, the employment relationship will continue indefinitely at the end of the apprenticeship period.

Below is a table on apprenticeship contribution:

<table>
<tr><th colspan="2">Employer's contribution rates</th><th rowspan="2">Apprentice's contribution rates</th></tr>
<tr><td>companies up to 9 employees</td><td>companies over 9 employees</td></tr>
<tr><td>1st year of contract (1,50% + 1,61%) = 3,11%</td><td rowspan="3">(10% + 1,61%) = 11,61%</td><td rowspan="3">5,84%</td></tr>
<tr><td>2nd year of contract (3% + 1,61%) = 4,61%</td></tr>
<tr><td>Following years (10% + 1,61%) = 11,61%</td></tr>
</table>

As for apprenticeship without age limits, the INPS has specified that the recruitment in professional apprenticeship for those receiving unemployment benefit is valid only for those workers who have received the application for unemployment.

1.4 Incentive to the NEET occupation.

The objective of this incentive is to improve the employment levels of young people aged 16 to 29 who are not in education or training (NEET = Not Education, Employment or Training).

All private employers, even non-entrepreneurs, who, without being required to do so, recruit young people from the "Youth Guarantee" programme are eligible.

The facility is available for recruitment within the national territory, with the exception of those having their place of employment in the autonomous province of Bolzano.

Recruitment for an indefinite period, including for administrative purposes, as well as employment relationships. The advantage cannot be granted in the event of an indefinite conversion of time contracts, since in this case the young person would not have the characteristics of NEET.

In the case of recruitment for the purpose of administration, the exemption shall be granted for both indefinite and time-limited administration, including any periods during which the worker awaits assignment. In favour of the same worker, the incentive may be recognised for a single employment relationship, Therefore, after a first concession it is not possible to issue new authorisations for new hires made by the same or other employer, regardless of the reason for the termination of the previous employment relationship and of the extent of the actual benefit.

The incentive is equal to the employer's social security contribution, excluding the premiums and contributions due to the INAIL, for a maximum amount of 8.060,00 euro on an annual basis, repaired and applied on a monthly basis for twelve months. The maximum threshold for exemption of the employer's contribution related to the period of monthly pay is therefore 671,66 euro (8.060,00 euro/12) and, for the employment relationships established and resolved during the month, This threshold shall be re-portioned by reference to the amount of 21,66 euro (671,66 euro/31) for each day of use of the contribution exemption.

In the case of part-time employment relationships, as expressly provided for in Article 5, paragraph 2, of Decree no. 3/2018, the maximum benefit must be reduced proportionately.

1.5 Documents before and after recruitment.

When establishing an employment relationship, there is a great deal of information to be provided by the worker to the new employer, to enable him to implement correctly and promptly all the obligations related to the contractual, legal, social security and tax management of that employment relationship. Some documents required of the newly recruited worker are necessary, while others are "appropriate", that is, facilitate the management of the relationship with the employee.

At the time of recruitment and before the beginning of work, the employer has to provide the worker with a copy of the electronic declaration of recruitment; or alternatively, a copy of the individual employment contract, including information on the establishment of the employment relationship. In the case of a sanctioned performance, the employer should keep evidence of such communication.

Tax Declaration is made by the employee that allows the employer/tax substitute to tax the income from paid employment, with the correct allocation of tax deductions to the receiver. There is no ministerial model and it is therefore necessary to define all the useful information to be requested from the worker who has to sign the declaration, committing himself to communicate any changes in good time. The model should be brought to the attention of the worker at the beginning of each tax period, even if there is no change from the previous communication. When recruiting, it must be completed before the first fee is paid.

When recruiting, the employee must declare on a specific model the choice of destination of the

severance pay (called TFR) already made before with other employers; in case of "first" choice, to the new worker-taken is left a period of 6 months from the date of recruitment for its TFR. The choice has to be expressed through the ministerial model called TFR2.

Worker must be informed about the processing of his personal and sensitive data, used by the employer or by other people appointed and identified by the employer, for contractual and legal purposes relating to the employment relationship in place. To this end, a document signed by the worker certifying that he has received information relating to the processing of his data (called "informed consent") should be submitted to the newly recruited worker.

Finally, the employer has to provide the worker with adequate information:

- on the risks to health and safety at work associated with the work carried out by the company;
- on first aid procedures;
- procedures relating to fire-fighting and evacuation of workplaces;
- on the names of persons working with the employer to ensure safety in the company.

Since it is a matter of sanctioned fulfilment, the employer should retain proof that the information has been provided and require the worker to sign a declaration to that effect.

2. Safety in the workplace.

The health and the safety on the job must be pursued through a culture of prevention that is created, first of all, with the formation and the information. The workers are not only the protected subjects but also active actors: they must be aware of the conditions of their own environment of job, of the use of the safety devices and participants to the evaluation of the risks and in the prevention.

Training activities (information and training) aimed at workers, as well as at the various persons concerned with safety and prevention at work, are essential.

2.1 General measures of guardianship.

The following are among the general protection measures underlying the Single European Act on safety at work:

- adequate information and training for workers;
- adequate information and training for managers and managers;
- adequate information and training for workers' representatives for safety;
- appropriate instructions for workers;
- participation and consultation of workers;
- participation and consultation of workers' representatives for safety;
- the planning of measures deemed appropriate to ensure the improvement of safety levels over time, including through the adoption of codes of conduct and good practice.

The central role of information and employee participation is thus also evident in the general principles.

2.2 Risk assessment.

Risk assessment is a key issue for ensuring safety in any working environment. It must cover all risks to the safety and health of workers, including those relating to groups of workers exposed to special risks. It is also important to note that women who are pregnant, as well as women who are pregnant, are also affected by gender differences, age and origin in other countries.
The outcome of the risk assessment should be formalised in the Risk Assessment Document (called DVR). Any tasks which expose workers to specific risks must also be identified.
The communication of the obligations, relating to safety, to the Workers' Representative for Safety must be timely also in case of subsequent updates (Law 161/2014).
Following the entry into force of Legislative Decree No 151/2015, risk assessment support instruments have been identified through a special Ministerial Decree, including those computerised on the basis of the prototype O.I.R.A. (Online Interactive Risk Assessment), in order to facilitate the employer in the assessment of the risks present and in the preparation of the relevant document.

2.3 Health Surveillance.

Health surveillance shall be carried out by the competent doctor in the cases provided for in the legislation in force and for requests made by the worker relating to work risks. To the various general assumptions existing some dating back to measures of the 50s, are added the specific forecasts for those activities that expose workers to specific harmful factors (asbestos, noise, ionizing radiation, chemicals, carcinogens, mutagens or biological, manual handling of loads, use of VDUs, etc.).

The purpose of health surveillance is to assess the worker’s suitability for the specific tasks for which he is intended. The examinations may be preventive, periodic or linked to particular events (change of job, or periods of illness longer than 60 consecutive days). At the end of the examination and on the basis of their outcome, it is for the competent doctor to decide on the suitability itself. In the event of an employer being judged to be unfit for work, he must, where possible, refer the worker to another job compatible with his conditions.

2.4 Company responsible people for employee's safety in the workplace.

Among those responsible for safety at work, a special role is assigned to the Head of Prevention and Protection Service (called RSPP) who is appointed by the employer and participates with the medical practitioner and the employee representative for safety at the regular meeting convened annually by the employer. The figure of the RSPP can be internal or external to the company. In some types of companies it can be the employer to cover this role.
The Safety Representative (called RLS) is the key interlocutor of the RSPP and the employer on workplace safety issues.
In companies employing up to 15 employees, the RLS is usually directly elected by the workers within them, or is identified in a territorial area or in the productive sector.
While in companies with more than 15 workers, the employee representative for safety is elected or appointed by the workers within the union representations in the company, if they are present.
The RLS is entitled to be consulted by the employer in advance on risk assessment, identification, planning, implementation and verification of prevention by the employer. It shall receive information

and documentation relating, inter alia, to risk assessment and prevention measures relating to dangerous substances and preparations, machinery, installations, the organisation and working environment, accidents and occupational diseases.

3. Absences at work.

3.1 Absence at work due to illness.

Illness is defined as a pathological condition resulting in incapacity for work and the total temporary impossibility of benefit. The definition also includes situations not directly related to the psychophysical alteration of the worker, such as the need for special therapies or periods of convalescence. Illness is a cause of partial incapacity for the benefit leading to the suspension of the employment relationship.

In the event of illness, if the law does not establish equivalent forms of provident or assistance, the remuneration or compensation shall be due to the provider to the extent and for the time determined by the special laws, customs or fairness . A worker who is absent due to illness is entitled to the preservation of his job, in accordance with the conditions laid down by law and by collective bargaining, and is entitled to financial treatment for the duration of his illness.

The employer is responsible for the payment of illness benefit during the period of payment during which the worker resumed his employment. The employer has to pay advances under the collective agreements, in any case, not less than 50% of the remuneration of the previous month, subject to compensation.

The INPS pays directly to those entitled to illness benefits for agricultural workers, with the exception of managers and employees, for temporary workers engaged in seasonal work; for domestic and family service workers; for workers who are unemployed or suspended from work and who do not receive redundancy fund treatment (called CIG); for persons under the separate INPS management.

The daily illness benefit is payable from 4th day of illness (non-indemnity of the first 3 days is currently indicated by the term “deficiency”). If the first day of illness coincides with the last day of work, the allowance shall also start on the fourth day of illness. The 4th day of illness shall be taken into account in principle from the date of issue of the relevant certificate. There is no application of the deficiency (meaning that the allowance must be paid from the first day) in case of relapse into the same disease or other consequential disease occurring within 30 days from the healing date of the previous disease.

Illness benefit is payable for the days qualifying for compensation (for workers, compensation is paid on all working days, and for employees on all calendar days except Sundays and national holidays during the week or on Sundays) included in a maximum period of 180 sick days in a calendar year.

3.2 Maternity and parental dismissal.

Mother workers (and father workers in the cases provided for by law) are entitled to a daily allowance of 80% of their earnings for the whole period of maternity permission (ex abstention). The allowance is inclusive of any other illness benefit. Mother and father workers are also entitled to parental permission (ex optional abstention):

- up to 3rd year of life of the child, an allowance equal to 30% of earnings, for a maximum total period between parents of 6 months;
- outside the case referred to previous point
- until the child reaches the age of 8th, and in any case for the remaining period of parental permission (ex optional abstention), to an allowance equal to 30% of earnings, in the event that the individual income of the person concerned is less than 2,5 times the minimum pension amount payable by the general compulsory insurance.

3.2.1 Maternity/paternity permission periods payable.

The daily maternity allowance shall be payable for the following periods:

- the 2 months preceding the presumed date of delivery;
- any period between the expected date of delivery and the actual date of delivery. The day of delivery should be considered neutral. In fact, neither in the abstention ante partum, nor in that post partum should be considered as the dies a quo;
- 3 months after the effective date of delivery. The beginning of the compulsory period of abstention after delivery begins on the day following the date of delivery; these three months are calculated according to the timetable.

If the date of delivery is earlier than expected, the days of compulsory abstention (maternity permission) before delivery shall be added to the period of compulsory abstention (maternity permission) after delivery.

3.2.2. Parental dismissal periods payable.

Maternity allowance is paid for a maximum period of 6 months of 10 or 11 months in the cases provided for by law when the father also benefits from the period of abstention. On the understanding that, according to the law, the total period of abstention among parents cannot exceed, as said, the 10 months, and that, if the father has abstained for a period of not less than 3 months, whether or not split, and intends to receive additional periods of up to 7 months, the total months among parents may be up to 11, specify that the periods may be divided between mother and father according to their needs in accordance with the following criteria:

- the mother may not in any case exceed 6 months abstention;
- the elevation to 7 months of the father is possible only if the mother does not exceed 4 months.

3.2.3. Rests for breastfeeding.

In the first year of child's life, the employer must provide the mother worker during the day with two rest periods, also cumulative.

If the daily working time is less than six hours, the rest period is unique. These rest periods are one hour each and can be taken by the worker even on leaving the firm, but shall be reduced to half an hour if the worker is in or near a day care or other suitable establishment, established by the worker on the holding. In the case of multiple births, rest periods have doubled.

The same right to rest shall apply to the father if:

- children should be entrusted to him
- employed mother does not make use of it
- if the mother is not an employee
- in case of mother's death or her serious illness

3.3 Holidays.

Our Constitution states that workers are entitled to a period of permission, stressing that this period is indispensable.

The holiday institution, therefore, is explicitly designed to enable workers to "take a break" after one year of work and to reintegrate their psycho-physical energies which have been worn out by work; not only that, it also has the purpose of allowing him to place more care and time in affective and social relationships.

National Collective Labour Agreements determine the length of permission to which the worker is entitled, while the employer has the power to determine when the employee may be absent from work, which, however, in addition to the needs of the undertaking, must take into account the interests of the subordinated provider. The employer must notify the service provider in advance.
Worker cannot arbitrarily choose the holiday period, being an event which must be coordinated with the requirements of an orderly conduct of the business of the undertaking and the granting of which is a prerogative attributable to the organisational power of the employer: in this case, the absence is unjustified and the application of the disciplinary sanctions provided for until dismissal is lawful.

Unless collective or individual employment agreements provide more favourable conditions, the provider shall be entitled to an annual period of paid permission of not less than four weeks: therefore, in the case of use of a consecutive working period of four weeks, this period shall be equivalent to 28 calendar days. Except as provided for by collective bargaining, the 4-week period shall be enjoyed for at least two consecutive weeks, in the case of a worker's request, during the maturing year and for the remaining two weeks, 18 months after the end of the year of maturation The employer must notify the provider in advance of the period for which permission is to be taken.

It is possible to distinguish three different holiday periods, namely:

1. an initial period of at least two weeks to be taken during the year of maturation, which, if so requested by the worker, must be enjoyed continuously; it is therefore essential that the worker request it on time, so that the employer can organize. Collective bargaining can only reduce this minimum limit if there are exceptional reasons for service;

2. a second period, also of two weeks, which may also be used in a split way, except for special provisions of collective bargaining, the two weeks in question (14 days) must be enjoyed within a period of 18 months from the end of the ripening year. Therefore, in relation to this second "block" of two weeks of holiday, collective bargaining can also postpone the term for enjoyment beyond the 18 months provided by law. On the other hand, if the time limit laid down in the collective agreement is shorter than 18 months, exceeding it does not give rise to

the sanction provided for in the law but to any sanctions provided for in the collective agreement;

3. a third period given by the fact that the collective or individual agreement provides for more than 4 weeks' permission: in this case, it may be used in a split way with the possibility of monetization.

3.4 Permissions at work.

3.4.1 Remunerated permissions at work.

Workers may obtain permissions to take time off work for justified reasons. Except in cases of proven urgency, absence must be notified to the employer at least two days in advance.

3.4.2 Absences at work.

A worker who is unable to show up for work, for unpredictable reasons, must notify the company within the normal working hours of the day on which his absence occurs. In addition, he shall give reasons for his absence no later than the day following his absence, unless justified.

3.4.3 Non-remunerated permissions at work.

If justified reasons and in accordance with the requirements of the service, the management may allow the worker to be absent for short unpaid permission.

The requirement for unpaid permission by workers with disabled family members is justified, provided they provide evidence of the need.