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The Role of Fixed-term Employment Contracts in the Italian Legal System

In recent years across a variety of sectors, the **fixed-term contract** has become an instrument of flexibility in Italy - as it has been understood to facilitate **organizational flexibility** in a positive and constructive manner.

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Beyond some unpredictable situations that have occurred - on the whole the use of **fixed-term employment contracts** has been used by Italian companies to ensure - especially in periods of **economic crisis** - the achievement of their production and work objectives through a strategy which sees a gradual inclusion of new employees to be integrated into the workforce - in line with the strategic management of new hires in the company in order to keep pace with the evolution of the market and unpredictable fluctuations in the economy (dare we say covid or energy crisis).

Statistics on employment in Italy from **ISTAT** (the Italian National Institution of Statistics) confirms the upward trend of this flexible workforce strategy. In fact, ISTAT reported that in December 2023 the growth of employment involving employees on fixed-term contracts grew to an estimated 2,986,000 - and the use of self-employed persons in the workforce grew to an estimated 5,045,000. Overall employment in Italy in December 2023 was an estimated 23,754,000 - a figure which approximately 456,000 more than the same reading a year earlier in December 2022. This latter number is further broken down into 418,000 permanent employment positions, 42,000 self-employment positions and 5,000 more new fixed-term **employment contracts**.

Italy has - apart from the numerous emergency **labour legislations** enacted during the Covid pandemic - seen a relative period of stability in terms of labour legislation over the past decade. We have definitely witnessed a push to the stabilization of permanent employment in the Italian workplace through the introduction of choice - such as the possibility to use a fixed-term employment contracts within the limits established by law on this form of employment.

It must be noted here that many years ago in Italy there was a trend for companies hiring workers on fixed-term employment contracts that they just kept renewing for eternity ... never making them permanent employees. This created great instability in the workforce as workers never quite knew where they stood ... and hence requiring a need for **regulatory intervention**.

It was Italian Legislative Decree no. 368/2001 (which introduced EU Directive 1999/70/EC into Italian law) that started to create Jersey barriers reinforcing the need for a proper requirement to justify any temporary or exceptional need for employers to access the path of the **fixed-term employment contract** (in the face of the alternative - a true permanent employment contract). It was necessary for companies to stay on this path, despite the presence of a real technical, organizational or production need business.

Here the requirement of the temporariness and exceptional nature of the reasons to justify the use of a fixed-term **employment contract** were on the assumption of the dominant nature of permanent employment (as highlighted by the historic labour litigation case in the Italian Supreme Court No. 8068/2023). It was with the **Jobs Act** of 2015 (anticipated by the a-causality of the reasons for hiring with a fixed-term employment contract introduced in 2012 by the Fornero Law) that an attempt was made to bring the fixed-term employment contract back to a more significant proximity to the objectives of flexibility within the workforce - which are a prerequisite for a **modern business organisation**.

If we look at the regulation of **employment contracts** contained in Legislative Decree no. 81/2015 (articles 19 to 29), in the text resulting from the multiple changes that have been stratified over the last ten years - we can note that the use of fixed-term contracts is actually freer today. This is true even with the a-causality system for the first 12 months of the contract with its contingent and flexible staff needs (except of course the maximum limit of 24 months of hiring - which can only be done for specific reasons after the first fixed-term employment **contract** of 12 months). However, we still must remember that the 2 fundamental prerequisites of this form of employment contract are a priority of the **Italian legal system**.

The first of these presuppositions (a prerequisite) is that the use of the fixed-term employment contract must be kept within precise quantitative limits, without prejudice to the "different provisions of collective agreements" (including territorial or **company ones**). Also for consideration are the exception of the sectors for which these limits have not historically found application (for example with seasonal jobs). This opens up the fundamental role of collective bargaining on this subject matter (and already since the old discipline and Law no. 56/1987) - which the Italian legal system wanted to return to after the 2023 Decree which is investigated further below.

The second is that employment with a **fixed-term contract** must always be consistent with the principle contained in Art. 1 of Legislative Decree no. 81/2015 i.e. that "the permanent employment contract constitutes the common form of employment relationship". Which means that, if the criterion of exceptionality has now been overcome, the principle remains that the use of this form of contract must respond to specific and rigorous reasons, which can also be traced back to fundamental needs - including strategic ones - of production and Work.

Starting on May 5th, 2023 (the day Legislative Decree no. 48/2023 - which amended art. 19, c. 1 of Legislative Decree no. 81/2015 - entered into force), the use of hiring with Fixed-term employment contracts for **periods exceeding 12 months** was made possible if the following criteria are met:

- the use of a fixed-term employment contract is provided for by the collective agreements referred to in the Art. 51 of Italian Legislative Decree no. 81/2015 (this applies to collective agreements at all levels, provided they are signed by the comparatively most representative **trade union organizations** - art. 19, c. 1, letter a) of Legislative Decree no. 81/2015) or it is provided for in the collective agreements currently applied in the company;
- in the absence of provisions for a fixed-term employment contract in any **collective agreements** in force - and within December 31st, 2024 if there is an operational need of a technical, organizational or production nature identified by the parties (employer and employee) in the employment contract (as per art. 19, c. 1, letter b), of Italian Legislative Decree n. 81/2015);
- when there is a requirement for a substitution of an employee (art. 19, c. 1, letter b-bis of Italian Legislative Decree no. 81/2015). For example due to a sudden long term illness of a worker or maternity leave.

Exceptions to these rules are of course seasonal contracts - in addition to some other particular types of **employment contracts** such as contracts stipulated by Public Administrations and fixed-term employment contracts issued by private universities.

The reasons also apply to hypotheses of an extension and renewal of a fixed-term **contract** beyond 12 months. This innovation constitutes an important opening towards simplification, practically aligning the a-causality regime for extensions and renewals of less than 12 months (new art. 21, c. 01 of Italian Legislative Decree no. 81/2015). While previously, even the simple renewal of a fixed-term employment contract between the employer and employee for the same tasks - even when the period was for less than 12 months of overall duration of the employment relationship - recourse to the reasons were still required by law.

The role of **collective bargaining** on this subject matter is fundamental, especially at the **company level**. It is only at this level that the real needs of a business organization - and the strategic evaluation of its development and growth - can be negotiated, also through the conscious use of all the contractual tools available. We must not forget art. 8 of Italian Legislative Decree no. 138/2011 regarding specific collective agreements - where we are reminded of not only of the important flexibility tools such as the **fixed-term contract** - but also part-time employment contracts and working hours.

Only in a regulatory system in which production needs and flexibility find the right balance, within the framework of the needs and peculiarities of the sector - that only national collective bargaining knows and interprets best - is it possible to correctly read the data on employment. It is here that how best to use of the **fixed-term contract** in our legal system has once again come into the spotlight reinforcing its important purpose in the Italian workforce.

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