The Transparency Act

08/09/2022 EMPLOYMENT AND PENSIONS

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By issuing Directive (EU) 2019/1152 on transparent and predictable terms and conditions of employment in the European Union the EU legislator aimed at further standardising the labour market within the Member States by introducing minimum requirements concerning, on the one hand, the information on the essential elements of the employment relationship and, on the other hand, the terms and conditions of employment applicable to each single worker.

The Transparency Act (Legislative Decree No. 104 of June 27th, 2022), transposing Directive (EU) 2019/1152, focussed on both the above profiles by expanding the set of information as formerly contemplated by Legislative Decree No. 152 of May 26th, 1997, to be given to the workers, and by enhancing certain legal protections in favour of the workers.

On the one side, the Transparency Act imposes on the employers and their consultants to **review their standard contracts** and supplement them with the additional information contemplated therein, with a view to overcoming the rather widespread practise of delivering a simple letter of employment to the newly hired employee frequently containing no more than generic references to the relevant provisions of the applicable collective bargaining agreement. Moreover, the Transparency Act imposes on the employer to **review and supplementing the information notice on the processing of personal data** to be submitted to their workers in case of use of automated decision-making or monitoring systems.

On the other side, upon certain conditions the Transparency Act allows employees to **combine more than one job** even if hired under a full-time employment contract. As a result, the template contracts used by the employers will now have to be reviewed even in this respect, detailing the cases in which according to the law the discharging of multiple jobs will not be permitted.

Finally, the Transparency Act contains a provision in matter of "***transition to more predictable, safe and stable forms of work***" envisaging new rights of the employees, even though at this stage the

scope of such new rights is not yet clearly defined. For sure this provision will further restrict the possibility to resort to forms of contracts other than open-ended employment contracts - including self-employment contracts and fixed-term employment contracts - further narrowing in such a fashion the verily poor level of flexibility of the Italian employment law system.

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1. SCOPE OF APPLICATION

The Transparency Act entered into force on **August 13th, 2022**.

Workers whose employment commenced on or before August 12th, 2022, may require their employer to update and supplement the information contained in their employment contract with that under §**2.** below. A failure of the employer to grant such a request in a sixty-day term as from the day on which it was submitted may result in the application of the administrative fine under §**2.2** below.

The Transparency Act applies to:	**The Transparency Act does not apply to:**
• employment contracts, including agricultural employment contracts, for both an indefinite and a fixed term, including *part-time* employment contracts • temporary employment contracts • job on call employment contracts • self-employment contracts characterised by a coordinated and continuous collaboration between the parties, though autonomously organised by the worker • occasional jobs • employment contracts with seafarers and fishery workers, without prejudice to the special rules applicable to this area • contracts for household employment	▪ self-employment contracts other than those characterised by a coordinated and continuous collaboration between the parties ▪ employment relationships characterised by a predetermined and actual working time of 3 hours per week or less on average over a reference period of 4 consecutive weeks ▪ agency contracts ▪ collaborations of the spouse and of relatives and relatives-in-law of the employer living with them

2. NEW INFORMATION OBLIGATIONS

2.1. Contents

According to Article 1 of Legislative Decree No. 152 of 26 May 1997 as amended by the Transparency Act, the employer must provide the employee with the following pieces of information:

2.1.1the identity of the parties, including that of other individuals or entities which may be deemed to be "*co-employers*";

2.1.2the place of employment. In the absence of a stable or of a principal place of employment, the employer must inform the employee that he has to discharge their duties in different places, or that is free to set their place of employment;

2.1.3the main office or domicile of the employer;

2.1.4the *status*, level and qualification of the employee, or the characteristics of the job or a job description;

2.1.5the date of commencement of the employment;

2.1.6the type of the employment relationship, specifying the expected duration thereof in the case of fixed-term employment contracts;

2.1.7in case of temporary workers supplied by a temporary work agency, the identity of the end user;

2.1.8the length of the probationary period, if any;

2.1.9the right to receive employer-provided training, if any;

2.1.10the duration of holiday leave and other paid leaves which the employee is entitled to or, if this is not available, the ways of determining and taking it;

2.1.11the procedure, form and terms of notice in the event of termination by the employer or employee;

2.1.12the initial amount of remuneration or otherwise the remuneration and its constituent elements, with an indication of the period and manner of payment;

2.1.13the scheduling of normal working hours and any conditions relating to overtime work and its remuneration, as well as any conditions for shift changes, if the employment contract provides for the organisation of working hours to be wholly or largely predictable;

2.1.14 If the employment relationship, characterised by largely or wholly unforeseeable organisational arrangements, does not provide for normal scheduled working hours, the employer shall inform the employee about:

(i) the variability of the work schedule, the minimum amount of guaranteed paid hours and remuneration for work done in addition to the guaranteed hours;

(ii) the reference hours and days on which the worker is required to work;

(iii) the minimum notice period to which the employee is entitled before starting work and, where permitted by the type of contract in use and agreed, the period within which the employer may cancel the assignment;

the collective agreement, including the company agreement, applied to the employment relationship, indicating the parties that signed it;

2.1.16bodies and institutions receiving social security and insurance contributions due by the employer and any form of social security protection provided by the employer;

2.1.17the further information set out in §**2.3.1** below.

2.2. Ways of communication and conservation

The employer must provide the information under §**2.1** above to the employee at the time of the **entering into of the employment relationship between the parties and before the employee begins to discharge their activities**. Such obligation may be fulfilled by delivering to the employee either: **(i)** the individual employment contract; or **(ii)** copy of the mandatory communication of the entering into of the employment relationship submitted to the Italian Labour Authorities.

In any case, if not contemplated in such documents the above information must be provided in writing to the employee **within 7 days** of the commencement of work.

Only the information referred to in §§**2.1.7**, **2.1.9**, **2.1.10**, **2.1.11**, **2.1.15** and **2.1.16** above may be provided **within one month** of the commencement of work.

In case of changes of the information under §**2.1** above - not due to laws, regulations or the applicable collective bargaining agreement - the employer must notify the employee in writing no later than the first day on which the change is effective.

A failure of the employer to comply with the above information obligations may be subject to an **administrative fine ranging from € 250 to € 1,500 for each employee concerned**.

The above information must be retained by the employer and made accessible to employees. In addition, the employer must **retain proof of their transmission or receipt** for a five-year term following the termination of the employment relationship. The Italian Labour Inspectorate, with Circular Letter No. 4/2022, clarified that also a failure of the employer to comply with such provision may be subject to the above administrative fine.

The new piece of legislation removed the possibility for the employer to provide certain information to the employees by referring to the provisions of the applicable collective bargaining agreement.

However, the Italian Labour Inspectorate, with Circular Letter No. 4/2022, looks to mitigate this provision, allowing the reference to the applicable collective bargaining agreement provided that such collective bargaining agreement is made available to the employee.

2.3. Additional information obligations

2.3.1. Use of automated decision-making and monitoring systems

If the employer uses automated decision-making and monitoring systems, the employer must provide the following additional information to the employees and trade unions[1], prior to the commencement of work:

2.3.1.1 aspects of the employment relationship that are affected by the use of automated systems;

2.3.1.2 the purposes, logic and functioning of such systems;

2.3.1.3 the main data categories and parameters used to programme or train automated systems, including performance evaluation mechanisms;

2.3.1.4 the control measures taken for automated decisions, any correction processes and the

[1] Moreover, the Ministry of Labour and Social Policies and the Italian Labour Inspectorate may require to be transmitted and to be given access to such information and data.

person responsible for the quality management system; and

2.3.1.5 the level of accuracy, robustness and cybersecurity of such automat-ed systems and the metrics used to measure them, as well as the po-tential discriminatory impact of these metrics.

The worker, also with the assistance of the trade unions, has the right to have access to the data collected by the employer and to request further information. In this case, the employer has a 30-day term to respond to the employee.

A failure of the employer to comply with the above obligations is subject to an administrative fine up to € 5,000 per month.

The employer must also comply with a number of additional formalities and requirements in matter of data protection[2] .

2.3.2. Work abroad

An employer posting an employee abroad must inform them of any changes to the information under §**2.1** above as well as provide them, in writing and prior to their departure, the following additional information:

2.3.2.1 the country or countries where the duties will have to be discharged and the expected duration of the secondment;

2.3.2.2 the currency in which the remuneration will be paid;

2.3.2.3 any additional benefits assigned to the employee;

2.3.2.4 the conditions of their repatriation, if any;

2.3.2.5 the remuneration which the employee is entitled to according to the applicable law of the host Member State;

2.3.2.6 any specific allowances for secondment and the arrangements for the reimbursement of travel, board and lodging expenses;

2.3.2.7 the address of the institutional website of the host Member State where the posting information is published.

The information referred to in §§ **2.3.2.1** to **2.3.2.4** must be communicated, in writing and prior to departure, also to those employees who are sent on a mission abroad for a period longer than 4 consecutive weeks.

2.3.3. Job on call and temporary work

Job on call employment contracts, which have to be in writing, must also contain the following additional information:

2.3.3.1 the variable nature of the work schedule, duration and hypotheses, whether objective or subjective, allowing the contract to be concluded;

2.3.3.2 the place and modalities of any availability guaranteed by the employ-ee;

2.3.3.3 the economic and regulatory treatment due to the worker for the work performed, with an indication of the amount of any guaranteed paid hours to the worker and of the remuneration due for work performed in addition

[2] *i.e.,* supplementing the information on the processing of personal data, carrying out an analysis of the risks associated with the processing, assessing their impact and, if necessary, consulting the Privacy Guarantor in advance.

to the guaranteed hours as well as the relevant availability allowance, if any;

2.3.3.4 the forms and modalities by which the employer is entitled to request the performance of work and the related notice of call of the worker, as well as the manner in which the performance is to be recorded;

2.3.3.5 the timing and method of payment of the remuneration and standby duty allowance;

2.3.3.6 the security measures necessary in relation to the type of activity covered by the contract; and

2.3.3.7 any predetermined time slots and days on which the employee is re-quired to work.

In case of temporary work, it is upon the temporary work agency to provide the temporary workers with the information concerning their employment as well as the foreseeable starting date of the mission. Such information must be provided in writing within the time limits contemplated under §**2.2** above, *i.e.*, before the temporary worker being sent on mission to the end user.

3. MINIMUM REQUIREMENTS CONCERNING THE WORKING CONDITIONS

3.1. Probationary period

The **maximum duration** of the probationary period set by the law is **six months**. However, the applicable collective bargaining agreements may set a shorter term.

In case of fixed-term employment contracts the duration of the probationary period must be proportionate to that of the employment contract and must be set taking into consideration the tasks assigned to the employee concerned. Moreover, in case of renewal of the fixed-term employment contract concerning the discharging of the same duties a new probationary period may not be applied.

In the **event of illness, accident, compulsory maternity or paternity leave**, the probationary period is extended accordingly.

3.2. Multiple employments

Without prejudice to the obligation of loyalty under Article 2105 of the Italian Civil Code, the employee may not be prevented from discharging other work activities at times that are outside the agreed work schedule, nor may they be treated less favourably for that reason.

This provision does not apply if the discharging of other working activities may:

- cause a detriment to health and safety;
- jeopardize the integrity of the public service; and
- conflicts with the main one, even if the employee did not breach the obligation loyalty contemplated under Article 2105 of the Italian Civil Code.

Therefore, those employment contracts which contemplate an exclusivity clause in favour of the employer will have to be amended. Moreover, when hiring a new employee, the employer will have to verify whether the relevant candidate already discharge other working activities in favour of other employers and, if so, whether or not the above exceptions apply.

3.3. Minimum predictability of work

Where, due to the nature of the employment, the organisation of the working activity is wholly or largely unpredictable, the employer may not force the employee to discharge their

duties, unless both the following conditions are met:

- the working activities is to be discharged within predetermined hours and days (see §**2.1.14 (ii)** above);

- the employee is informed by the employer with reasonable notice (see §**2.1.14 (iii)** above).

In the absence of even one of the conditions above, the employee has the right to refuse to discharge its duties without suffering any prejudice, including those of a disciplinary nature.

Those employers which have set a minimum number of paid hours, based on the criteria contemplated by the applicable collective bargaining agreements, including those at a company level, must communicate to the employees:

- the number of such hours on a weekly basis;

- the wage supplements payable for hours worked in addition to the guaranteed minimum paid hours.

If the employer cancels a previously scheduled assignment or work without a reasonable period of notice, then it must pay the employee the remuneration initially agreed or a sum by way of compensation for the non-performance of the work, the amount of which may in no case be less than 50% of the remuneration initially agreed for the cancelled work.

3.4. Transition to more predictable, safe and stable forms of work

An employee who has been employed for at least 6 months with the same employer and has completed any probationary period may request to be granted a form of employment with more predictable, safe and stable conditions of work, if available.

In the event of a negative response, the employee may submit a new request after at least 6 months since the previous one.

The employer must then provide a written answer explaining the reasons grounding the employer's determination.

3.5. Compulsory training

If the law, the individual employment contract or the collective agreement requires the employer to provide workers with training for the discharging of their activities, this training - which must be provided free of charge to all employees - must be considered as working time and, where possible, must be carried out during the working time.

4. PROTECTION

- Any **conduct of a retaliatory nature or anyhow damaging** those employees/representatives claiming a breach of the Transparency Act and of Legislative Decree No. 152 of 26 May 1997 may be subject to an **administrative fine of up to €10,000**;

- Employees having been dismissed or having been subjected to measures equivalent to dismissal are entitled to require the employer to disclose the reasons grounding such measures. In this case, the employer has a 7-day term to answer to the employee.

- Moreover, **the burden of the proof** of the non-retaliatory nature of the measure taken against the employee is **on the employer**.

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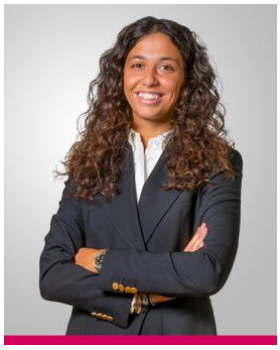

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