CAMMINO DIRITTO
Rivista di informazione giuridica

FLEXIBLE FORMS OF WORK: ON-CALL EMPLOYMENT

Regulations and practical aspects concerning on-call employment (also called sporadic work or on-call contract), based on Legislative Decree n. 81 of the 15th June 2015, which refers to work contract reorganization.

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CIVILE - LAVORO
Articolo divulgativo - ISSN 2421-7123

Pubblicato, Lunedì 16 Maggio 2016

Cammino Diritto
ISSN 2421-7123

In the first years of the last decade, the Italian legislator introduced some flexible contractual forms in order to support socio-economic changes, increase productivity levels and fight against unemployment, especially among the weakest market groups (women, youngsters and the elderly).

On-call employment **(also called sporadic work or on-call contract) was born from the Biagi law (Legislative Decree n. 276/2003), following the British example with the aim to fight against the growing occupational concerns.**

Indeed, using this particular contractual instrument, the employee can turn to the employer and require their job performance "when needed", changing their request on the basis of their needs.

The dependent nature of the contract is proved by the fact that the job performance organization and management are fully decided by the employer.

Additionally, the legitimacy of jurisprudence has shown in many occasions that the performance still has a dependent nature when its discontinuous, intermittent and occasional features are related to tasks that include the coordination with other employees and the worker's submittal to the employer's specific guidelines (Court of Appeal sentence n. 58/2009), just like it happens in the case of on-call employment.

The law considers two different forms of sporadic work.

On one hand, it is possible to have a contract with the availability requirement between the parties: the employee has to be available for the employer whenever they are needed; in these cases, a monthly benefit is given to the worker.

On the other hand, if an on-call contract without the availability requirement is chosen, the employee is free to decline the offered performance.

The current on-call employment regulation can be found in articles n.13-18 of Legislative Decree n.81/2015 implementing the Italian "Jobs Act", which confirms what has been decided by the Biagi law.

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Indeed, the abovementioned Legislative Decree deals with the work contract reorganization and keeps the sporadic job's original structure unaltered, introducing very few important modifications.

Article n.13 defines the sporadic work contract as "*the contract, even a fixed-term one, thanks to which a worker can make themselves available for an employer who can use their job performance in a sporadic or intermittent way, based on the needs coming from collective agreements*, even with the possibility of carrying out performances in established periods during the week, month or year. *If a collective agreement is missing, the sporadic work is used by following the decree of the Ministry of Labour and social policies*".

The contract in question can be signed in order to be used with people younger than 24, as long as the job performances are carried out within their 25th year, i.e. with workers older than 25.

The sporadic work contract is effective for every worker with the same employer, for no more than 400 days of actual work in three years in a row, with the exception of the tourism, retail and catering, show, and fashion industries (this contractual typology is mostly used in those sectors). In case this lapse of time exceeds, the business relationship becomes a full-time and open-ended one.

When the job performance is not used, the sporadic worker does not receive any compensation or normative service, unless they guaranteed their availability. Only in the latter case is the worker entitled to an availability benefit, as stated by article n.16 of the cited decree.

***On-call employment* cannot be used by public administration employees and its use is also forbidden in the following situations foreseen by article n.4 of the same decree:**

1. **For the substitution of workers that exercise the strike right;**
2. **In production unities in which collective layoffs took place during the previous six months, following articles n.4 and 24 of the 23rd July 1991 law, n.223, which concerned workers assigned to the same jobs mentioned by the sporadic work contract, i.e. in production unities in which a work suspension or a time reduction under unemployment insurance regime occurred;**

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3. **For employers who have not implemented the risks assessment related to the health and safety safeguard regulation.**

As far as the formal requirements are concerned, the sporadic work contract has to be signed in the written form in order to be a proof of the following elements:

- **Duration and objective or subjective events that allow the stipulation of the contract, following article n.13;**
- **Availability and notification place and modality, where the former can be granted by the employee, while the latter cannot be less than a business day;**
- **Worker's compensation and normative service for the given performance and related availability benefit, where necessary;**
- **Forms and modalities thanks to which the employer is entitled to request performance execution and detection;**
- **Salary payment and availability benefit time and modality;**
- **Necessary security measures for the deduction of a type of activity in the contract.**

In the case of a long-lasting collaboration, the employer has to annually inform the nursing homes (RSA) and the labour unions (RSU) about the pace of sporadic work contracts.

As for the *availability monthly benefit* – to which article n.16 of the abovementioned Legislative Decree refers – its measure is hourly-wage divisible, is defined by collective contracts and is not less than the sum fixed by the decree of the Ministry of Labour and social policies, with the participation of the national most representative labour unions.

It is clear that in the case of disease or any other event that does not temporarily allow the employee to be available, the worker has to inform the employer as soon as possible, specifying the duration of their unavailability, during which they do not receive the availability benefit.

If the worker does not communicate their unavailability immediately, they will lose their benefit for fifteen days, unless another possibility exists in the individual contract.

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The unjustified refusal of the call can lead to a layoff. Consequently, the availability benefit sum will have to be handed back.

The availability benefit is not considered in the calculation of the end of collaboration compensation (TFR), Christmas bonus and other emoluments.

The Supreme Court of Appeal, referring to the worker's availability and using a recent arrest as a proof, has specified that *"considering the employer's unilateral power to define the temporal modalities of the agreed performance, the employee's availability must have an adequate reward, even if it cannot be compared to an actual job, and, for this reason, the employer must consider many significant circumstances such as: the possibility of attending other activities; the expected or respected notice time before the 'demanded' job; the potential work quantity defined in a fixed measure; the worker's convenience to arrange the performance modality from time to time"*. (Civil Cassation, work sector, 05/11/2014, n. 23600).

As it happens in other flexible forms of work, in this case the legislator reaffirms the *non-discrimination principle*, with a variation concerning the economic and normative service.

The sporadic worker should not receive more disadvantageous economic and normative service than an equal worker; indeed, their work periods and tasks have to be taken into account. The sporadic worker's economic, normative and social security service is divided by considering the actual work performance that has been conducted, the global compensation sum and its single parts, vacations, disease and injury, parental and maternal leave regulations.

Last but not least, besides the mandatory hiring notification, the employer has to make an administrative notification before calling the worker. Indeed, referring to what is said by the ministerial decree (M.D. 27/03/2013, which became law on the 3.7.2013), the employer has to communicate the duration of a job performance, or a performance cycle whose duration is less than 30 days, before its start, using the "*sporadic- UNI*" new form that has to be filled exclusively via computer.

The abovementioned form can be sent:

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ISSN 2421-7123

via e-mail to the certified email address (PEC);

- **through the web service available on www.cliclavoro.gov.it;**
- **by SMS containing at least the worker's fiscal code: however, this modality is available only for performances that have to be conducted within 12 hours from the communication;**
- **through FAX, which has to be sent to the Local Work Direction (DTL) in charge, but only in case of web service malfunctioning; in that case the employer, or their consultant, has to save the system malfunctioning notice as a proof. The Fax communication is effective if the abovementioned conditions are respected, even if the reception was not possible due to DTL faults (exhibiting the communication receipt).**