



# New information obligations and smart working rules in Italy

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Legislative Decree No. 48/2023 (the Labour Decree) came into force on 5 May, and was converted into law on 3 July. It significantly revised several labour law institutions of relevance to companies, and introduced a package of measures to support employee incomes.

Aside from new guidelines for the use of fixed-term contracts, access to redundancy funds, and health and safety requirements, the law has also impacted transparency obligations and smart working for vulnerable employees.

## **New transparency requirements**

Among these was a key change in employer obligations under Legislative Decree 104/2022 (the Transparency Decree), which will significantly reduce the bureaucratic burden on employers to include detailed information at the recruitment stage (though will involve an adjustment of employment contract models).

The Transparency Decree was introduced last year under Italy's obligations to transpose EU Directive No 1152/2019 on transparent and predictable working conditions.

Under the previous regulation, the employer was obliged to communicate accurate and detailed information to the employee at the start of the employment relationship.

Individual employment contracts had to include provisions on the probationary period, employee training, leave and holidays, remuneration and how it is calculated and paid, working hours, procedure/form/notice periods in the event of dismissal, and recipients of social security and welfare contributions.

Pursuant to the Labour Decree, with a view to simplification, employers need only include a reference to the relevant provisions of the law or collective bargaining agreement to fulfil disclosure requirements.

## Smart working

The new decree also regulates certain transitional aspects introduced during covid-19, relating to “smart working” for employees (i) considered “vulnerable” (ie, with specific pathologies defined by the Ministry of Health that make them more susceptible to infection), and (ii) for parents with a child under 14.

First, employees in the public and private sectors considered extremely vulnerable have the right to be assigned by their employer to smart working. This right had been due to expire on 30 June, but has been extended until 30 September.

As part of this, should their roles be incompatible with remote work, said employees also have the right to carry out alternative, similar duties to those than for which they were hired (ie, the right to smart working is not conditional on the employee’s ability to carry out their role remotely).

In addition, the right to smart working is extended from 30 June to 31 December, even in the absence of individual agreements with the employer:

- for employees in the private sector who have at least one child under the age of 14, provided no other parent in the household who is a beneficiary of income support instruments, in the event of suspension or cessation of the employment, and that there is no unemployed parent.
- for vulnerable employees in the private sector, provided that the job is compatible with smart working.

The regulatory framework is clearly complex for both employers and employees. The agreements between the parties and the subjective conditions of the employee will be decisive.

In addition to the different situations just described, it is also worth highlighting a cross-cutting rule applicable to all employers who decide to grant one or more employees the option to work remotely. In these cases, the provisions of Legislative Decree 105/2022 apply.

Legislative Decree 105/2022 establishes a priority right of access in requesting and obtaining smart working in favour of employees with children up to 12 years of age, but the age limit does not apply to children with severe disabilities.

For the sake of clarity, as a general rule, it should be borne in mind that - beyond the subjective situations identified above and in any case for everyone from 1 January 2024 - employees, in order to work in smart working mode, will have to have sign an individual agreement with the company in accordance with the modalities set out in Law 81/2017.

It is a stratification of rules, constraints, and procedures that risks caging the potential innovative nature of smart working (ie, that of using objectives and results as the main measure of work evaluation instead of the now obsolete working time).

For this very reason, to draft an individual smart working agreement, employers must take into account:

- Any trade union agreement governing smart working guidelines.
- Characteristics of workers: ordinary, vulnerable, or parents of under 14s.
- Right of precedence, considering the subjective characteristics of the workers.

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