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ABOLITION OF VOUCHERS: REASONS, ALTERNATIVES, COSTS, PROSPECTS

With the abolition of ancillary work, the Government has side-stepped the obstacle of the referendum. What problems and alternatives are there for companies?

With the publishing of Italian Leg. Decree no. 25 of 17 March 2017 in the Official Gazette, the Executive has repealed Chapter VI of Leg. Decree no. 81/2015, cancelling with immediate effect the entire regulatory system relating to ancillary casual work, better known as "voucher-based" work; a unique contractual form that is difficult to position in the national regulatory spectrum, with elements of self-employment and employment, introduced to combat the use of illegal jobs, heavily criticised for a long time – rightly or wrongly, or better, in the opinion of the writer, rightly and wrongly – and already mourned by many at the dawn of its repeal.

The history of the "voucher" in Italy is short but troubled. Introduced in 2003 by the so-called "Biagi Law" (Leg. Decree no. 276/2003), the original wording of the regulation provided for its application only for short jobs performed by students or retirees, or by those in some specifically identified areas (e.g. domestic work, gardening activities, private lessons, etc.), for salaries contained within a limit of €5,000 per annum.
Apart from the obligation to give prior notification of the establishment of the employment relationship, nothing was said about prior notification of the actual working periods. Therefore, it is easy to imagine how the institution was widely abused, allowing principals to act with virtual impunity, in case of inspections, simply by presenting the vouchers purchased and communicating the start date of the working relationship often performed "illegally" with only a minimum part paid regularly by a voucher.

The so-called Fornero reform of 2012 introduced some important changes in the regulations of the relationship, however, it did not implement measures to stop the phenomenon of unreported workers.

In October 2016, with Leg. Decree no. 185/2016 (the so-called Jobs Act Corrective), the legislator finally introduced the obligation of prior notification of the actual working periods through the Cliclavoro portal. This was a suitable solution to cancel any excuse for the principals and to prevent possible abuse, which arrived too late to erase the stigma of many people, who saw this contractual form – not wrongly – as a tool to legally exploit segments of the population with less bargaining power, in particular, young people, the elderly and people without fixed employment.

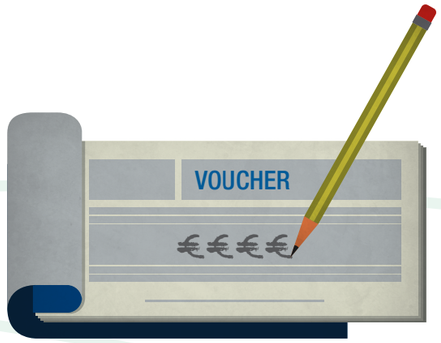
The voucher system was finally abolished with Legislative Decree no. 25/2017, hastily established by decree in anticipation of the referendum for its abolition, promoted by the CGIL and already set by the Council of Ministries for 28 May 2017.

While we can now say the issue of the referendum has passed peacefully, however, there remains the problem of how to manage workers who up to now were employed legitimately using the voucher tool.

To meet the needs of sporadic and short-term work, we can currently consider three different solutions:

1) "Normal" employment, temporary and part time.
This solution is, at least in abstract, the one that most protects the employer, since there are no restrictions of age or duties for the worker nor the obligation to state the reasons for the fixing of the term. However, there remains the problem of the maximum limit of workers who can be legally employed for a fixed term by the same company (20% of the workforce as at 1 January of the year of employment, or as otherwise stipulated by collective bargaining agreements).

This problem was made worse by the rigidity of the contractual form, which provides fixed times and cannot be modified unilaterally by the employer, except with the provision of so-called "elastic" clauses – specifically paid – and of various national collective agreements, which provide for minimum weekly working hours under which part-time employment is not allowed.



THE VOUCHER SYSTEM

2003 – LEG. DECREE 276/2003 (BIAGI LAW)
INTRODUCES
THE "VOUCHER" SYSTEM
only for short-term jobs
salary ≤ € 5,000 per year
NO prior notification for the actual working period
↓
POSSIBLE ABUSE

2012 – L. 92/2012 (FORNERO LAW)
INTRODUCES
AMENDMENTS TO THE "VOUCHER" SYSTEM
but unresolved problems remain

2016 – LEG. DECREE 185/2016
INTRODUCES
COMPULSORY PRIOR COMMUNICATION OF ACTUAL WORKING PERIOD
through the Cliclavoro portal

2017 – LEG. DECREE 25/2017
REPEALS
THE "VOUCHER" SYSTEM
with immediate effect

2018 ?

2) Administration of work.
Through the institution of the administration, the Employment Agency is owner of the employment relationship with the worker, made available to a user to perform certain activities. Apart from the dubious benefit of non-ownership of the employment relationship, there are still the same identical obstacles already seen with employees, aggravated by the fees to be paid to the employment agency for its services.

3) Intermittent work.
This a contractual form suitable for sporadic and occasional use of the employment relationship. It requires the job to be performed by an employee who is "on-call", subject to notification of the working periods through the Cliclavoro portal.

While this institution appears to be the most suitable, among those examined, to meet the requirements similar to those which up to now were covered by ancillary work, it should be noted, however, that the current regulatory framework allows it to be used only for workers under 24 years or above 55, or to perform discontinuous or intermittent jobs according to the needs identified by collective bargaining agreements signed by associations of employers and work providers comparatively most representative on a national or regional level, thus significantly restricting the field of application.

It should be noted that the aforesaid contractual forms are nothing more than subspecies of the broader genus of employment work; resulting in the full application of the various institutions (holidays, leave, additional monthly payments, sickness, maternity leave, etc.) provided by law and collective bargaining. All three also require the employer to act as withholding agent. All things considered, this problem is not very important for principals who have their own business structure, but weighs heavily on private individuals who until now legitimately used vouchers for short-term jobs of cleaning, babysitting, gardening, tutoring, etc.

Another problem is the costs for the principal. Before, the face value of the voucher was equal to the cost, however, now it will obviously be necessary to add the incidence of additional monthly payments, severance pay, holiday pay, etc. to the employee's salary, as well as INPS and INAIL contributions – charges that can be estimated, with reasonable approximately, at 70% of the normal salary.

The solution currently being studied by the government to fill this regulatory gap seems to involve the extension of intermittent work to any age bracket, regardless of the job. Apart from the obvious increase in costs, this solution however seems reasonable and balanced for companies, which in this way could meet the legitimate needs, although completely sporadic, without having to resort to ill-fitting contractual forms for their needs. This problem however remains painfully open for private individuals who, without their own business structure and heavily affected by the increased costs, seem destined to remain excluded, for structural and economic reasons, from the range of application of this type of contract.