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EDITORIAL

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SMART WORKING
WORK - FOR NOW - IS NOT SMART

May 2017: the Senate approved the smart working bill.

Perhaps we will smile in a few years when we read about the complex story of Italian law which only addressed the theme of a flexible employment structure in 2017 – a never-ending topic of debate and editorials but that, at the same time, has been managed practically (and sometimes creatively) by companies.

For now, the text in question is still a bill, but it is easy to immediately clarify that the Legislator did not want – and couldn't have done otherwise – to identify a further standardisation or typification of the employment relationship but a particular way of performing the job.

The Legislator introduced a mature and modern method, adopting the shared needs of companies and workers with a legislation that purports to increase the competitivity of companies by increasing individual productivity, facilitating the conciliation of personal and professional life – the so-called "work life balance" – as well as promoting flexible work such as methods for executing the employment relationship – also with the use of technological tools – without time or workplace constraints.

It has been a long run, driven not only by the demands of an evolving market, but also by facts: many companies have always developed forms of smart working ante litteram and many, including large companies, have already reacted by creating their own rules:
- some by simply dematerialising the workplace,
- others by demolishing the relationship between place and time.

Smart working is only one of the themes being looked at by the Government as part of a more ambitious project, as proposed by the Jobs Act, and that engages it in the difficult mission of "balancing work and life". An improbable task in a legislation filled with restrictions and procedures that are difficult to implement and that actually limit the service well beyond "time and place" where it is performed.

So, what is smart working? It can be qualified as a method for performing a "presumptuous" service for a definite term, which leaves all the temporal elements to be defined by the parties – including the duration – while accepting the right of withdrawal with thirty days' notice (ninety days' notice, instead, in case of a disabled worker), unless there is a justified reason (for which is provided the "ante tempus" withdrawal or withdrawal without notice in case of a fixed-term or open-ended agreement).

We have said that the legislation intervenes on the two pillars of the service, although certainly without upsetting the classical system of the legislation on working times or on the location where the service is provided.

In fact, there are still maximum daily and weekly working time limits deriving from law or collective bargaining agreements, but the perimeter within which they must move can change.

In other words, smart working can be carried out in working hours different from those observed in the company by the remaining employees, with daily distribution of the working time agreed between the parties, taking into account the organisational and productive needs, as well as the personal needs of the worker.

Notwithstanding the respect of the worker's rest times, this obviously has to be identified within the agreement together with the technical and organisational measures necessary to ensure the disconnection from the technical working tools made available by the employer to perform the job.
The legislation finally cancels the horrible term "telework" – used by Italians with a fallacious Latin memory – thus conceiving agility as a plurality of places where the job can be performed.

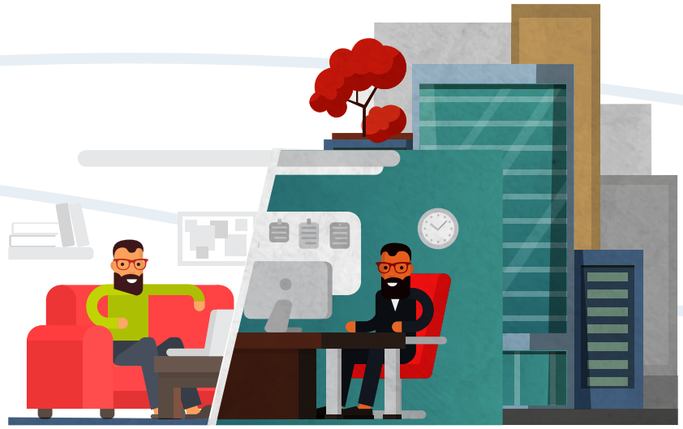
And in fact, the choice of the place where the job is performed in "smart working" mode (which should be different from the employee's home) is determined by needs connected to production or by the worker's need to balance their personal and professional life. Confirmation of this is given by the coverage against accidents in the workplace extended also to events occurring on the normal journey between the place of residence and the one chosen to perform the job outside the premises of the company.

This awareness has led the legislator to insert a specific article in the bill relating to the exercising of this power, pursuant to article 4 of the Workers' Statute. The recent reform has removed the general prohibition for controlling the work at a distance, to the point where it can be argued that smart working would have been difficult to perform in accordance with the previous legislation on controls, provided that workers are informed on the methods of how to use the tools and to carry out the controls, and that the provisions of the Privacy Code are complied with.
But even after a distracted revision of the legislation the question quickly emerges on who are the actual recipients of the legislation.

While it is true that some companies had anticipated the possibility to dematerialise and make flexible the service, it is also true that the obligation to make a quantitative service is reserved – unless otherwise agreed – for office workers as well as manual workers, on the understanding that the latter, due to the manual character of the work performed, find it difficult to perform their work outside the company premises in smart working mode.

Managers and executives, on the other hand, have always been able to agree with the employer on the methods to perform the service without the need to typify the behaviour in written agreements governing the rights and duties of the parties, or the role played within the company, or the qualitative (and non-qualitative) evaluation of the service performed by them.

To date, in the light of what has emerged here, there is nothing more to do but wait for the publication in the Official Gazette of the law on smart working, and also, above all, the subsequent interpretations that the doctrine and jurisprudence will provide based on the practical and certainly imaginative applications that companies will put in place, in particular, for aspects such as:
- responsibility on the safety and good functioning of the technological tools assigned to smart workers;
- the right to permanent learning, in "formal, non-formal or informal" mode of flexible workers;
- identification of the conduct that leads to the application of disciplinary measures;
- guarantee of the health and safety of the worker who performs the service in smart working mode and statement to be provided to the employee and to the Representative for Workers' Safety containing the risks – general and specific – associated with the special way of performing the employment relationship;
- cooperation of the employee in the implementation of the prevention measures prepared by the employer in order to deal with the risk associated with performing the service outside the company;
that from their simple reading show – also to those not assigned to the work – numerous doubts in terms of interpretation and application.



SMART WORKING

WHAT IS IT?
A special way of performing a job.

MAIN GOALS

- *To increase competitivity of companies by increasing individual productivity.*
- *To facilitate work-life balance also through the use of technological tools.*