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NEWS REPORT

Country:	Italy
Title:	New rules on self-employment and smart working
Date:	3 July 2017
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Context:	Sex
Issue at stake:	Protection of the motherhood and fatherhood of self-employed workers – the introduction of smart working
Ground of discrimination:	Sex
Source:	Legislation
Field:	Pregnancy and maternity, parental leave, self-employment
Applicable law:	Law N. 81 of 22 May 2017, published on OJ N. 135 of 13 June 2017

Content

The Decree Law N. 81/2017 on Self-employment and Smart Working was issued on 22 May 2017.

The first 14 articles apply to all 'autonomous' (i.e. self-employed) workers, including professionals (but not to entrepreneurs and small entrepreneurs). The new provisions aim to strengthen the rights and the welfare of people in this category for which the Government has also been requested to reduce the requirements in order to have access to maternity rights. Some improvements involve the protection of motherhood and fatherhood for those workers who are registered in the so-called *gestione separata*, which is a compulsory pension scheme covering, quasi-independent workers and similar categories (including professionals in those categories which do not have their own pension schemes).

Under Article 8 paragraph 7 of the Law, autonomous workers will be entitled to six months of paid parental leave, which may be taken until the child has reached the age of 3 years. Moreover, Article 13 recognises an allowance for maternity leave irrespective of the actual absence from work, additionally to what is already provided for professionals. These provisions are also enforceable in cases of adoption or foster care.

Article 14 states that in case of pregnancy, autonomous workers engaged in a continuous business activity will have the right to suspend their working relationship with their customer for a maximum period of 150 days until their child reaches the age of one year. During this period, the worker can be substituted by a colleague or by a business partner if they have one. However, the customer reserves the right to object to this.

Articles 18 to 23 provide for the so-called smart-working ruling, which involves the working activity being performed in a more flexible way in terms of both location and working hours.

The Decree, which applies to both the private and public sectors, actually sets out a very soft framework aimed at boosting the widespread adoption of smart working. The implementation of the flexibility of working relationships will rely almost entirely on an individual agreement with an employer with regard to central issues such as the duration of this working method, the employer's management style, the performance of the employee whilst working outside the office, agreements on rest periods and the possible use of technological devices for teleworking.

The explicit goals of the new provisions are that of increasing productivity and furthering a reconciliation of work with family life.

Key points of analysis: Both changes could help to reconcile work and family life, as the first change further improves the maternal and paternal rights of autonomous workers, and the second change provides for a more flexible working relationship, which can be particularly family friendly, as it does not require the worker to be present in the office for part of his working time.

The extension of parental leave to self-employed working fathers, is an important step forward. However, the right to suspend the working relationship in case of pregnancy, and the right of substitution cannot be enforced exactly as in the working relationship. In fact, the customer can refuse the postponement or the substitution.

As regards the second part of Law N. 81/2017, we can see that, although recent experimental smart-working initiatives carried out by multinational companies gave good results in terms of productivity and work-life balance, the pattern chosen by our legislators gives rise to some doubts. With no limits on total working time, and the arrangements being mainly governed by an individual agreement, there seems to be a risk that such a soft piece of legislation will not prevent smart working from producing an effect opposite to that of achieving a work-life balance for workers in less secure positions (of whom women still make up the majority).

Link to internet source:

Law N. 81 of 22 May 2017, published on OJ N. 135 of 13 June 2017, <http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2017-06-13&atto.codiceRedazionale=17G00096¤tPage=1>, accessed 14 June 2017.