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FLASH REPORT

Country:	Italy
Title:	The Budget Act for 2019 on maternity, paternity leave and smart working
Date:	22 March 2019
Expert:	Simonetta Renga
Context	
Issue at stake:	Maternity and paternity leaves – conciliation measures
Grounds of discrimination:	Gender
Field of application:	Pregnancy and maternity, other field
Source:	Legislation
Applicable law:	Art. 1 of Budget Act of 30 December 2018 N. 145

Content

Law: The Budget Act for 2019 provided for some changes as regards the protection of motherhood and fatherhood and introduced priority criteria to be admitted to perform smart working. Smart working has been promoted by Act N. 81/2017 with the aim of improving productivity for enterprises and conciliation between working and private life. It is a new working method, focused on results, regardless of where, how, and sometimes also when, the work is performed. Smart working is mainly regulated by an individual and voluntary agreement between the employer and the worker.

Under Art. 1 para 354 of Act N. 145/2018 the compulsory paternity leave to be taken within the first five months after the child's birth, which was set at four days for 2018, will be raised to five days in 2019. The additional one day optional leave fathers are entitled to, instead of the mother and within the period mentioned above, has been confirmed by the same provision. Both measures are still temporary.

Art. 1 para 485 modified Art. 16 of Decree N. 151/2001 on the Protection of Motherhood and Fatherhood stating the workers' right to postpone the whole period of the compulsory maternity leave after the birth of the child, on condition that both the specialist of the National Health Service and the doctor in charge of health surveillance in the enterprise certify that this choice is not detrimental to the health of the mother or of the child.

Under para 486 of Art. 1 both public and private employers who sign smart working agreements must assure priority in this form of flexibilization to working mothers within three years after the end of the compulsory maternity leave and to working parents of seriously disabled persons (responding to requirements of Act N. 104/92).

Key points of analysis: The continuation of the measure regarding compulsory paternity leave for 2019 shows a sustained attention to the sharing of care duties among parents, as this measure has not only been confirmed but also extended, with one more day of leave. Nevertheless, a real change of direction in this sense would require both a

remarkable increase in the length of the period of leave and its confirmation as a permanent measure, in accordance with the developments ongoing at EU level.

Decree N. 151/2001 on the Protection of Motherhood and Fatherhood (Art. 20) already provided the possibility to ask for postponing the beginning of the compulsory maternity leave by one month, which is normally to be taken from two months before the expected date of delivery until three months after the birth. No particular debate on a further postponement of the five months compulsory maternity leave was to be recorded before the amendment provided by the Budget Act for 2019. Although this measure is likely to be appreciated by working mothers, and has been prudently accompanied by a thorough medical evaluation, it also raised some critics as regards the risk of exposing women, most of all precarious workers, to possible pressures to keep on working until the birth of the child. Actually, a careful monitoring on its implementation, at least for the first years, would be advisable.

As regards smart working, which has recently been ruled by Act N. 81/2017, scholars already highlighted some critical aspects, including the respect of the principle of equality. In fact, only two categories, that is working mothers within three years after the end of the compulsory maternity leave and working parents of seriously disabled persons in line with requirements of Act N. 104/92) are entitled to priority by Art. 1 para 486 in order to respond to their specific needs for work-life conciliation. Other categories, such as for instance working fathers or disabled workers who have the same or similar need for conciliation protected by other pieces of legislation, are not entitled to the same priority. Some collective agreements on smart working, signed before the Budget Act came into force, already provided for wider priority criteria, including seriously ill workers, workers who have ill relatives to take care of, fathers, parents of children until they are eight years old. Yet, this extension does not overcome all risks of infringement of the principle of equality as collective agreements do not cover all workers. Moreover, in case not all requests for smart working arrangements can be accepted by the employer for organizational reasons, legislative criteria are likely to be interpreted as prevailing ones.

Internet link source:

Act N. 145 of 30 December 2018, published on OJ N. 302 of 31 December 2018, ordinary supplement n. 62,

http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2018-12-31&atto.codiceRedazionale=18G00172&queryString=%3FmeseProvvedimento%3D%26formType%3Dricerca_semplice%26numeroArticolo%3D%26numeroProvvedimento%3D145%26testo%3D%26annoProvvedimento%3D2018%26giornoProvvedimento%3D¤tPage=1, accessed 7 March 2019;

Decree N. 151 of 26 March 2001, published on OJ n. 96 of 26 April 2001, ordinary supplement n. 93 ,

http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2001-04-26&atto.codiceRedazionale=001G0200&queryString=%3FmeseProvvedimento%3D%26formType%3Dricerca_semplice%26numeroArticolo%3D%26numeroProvvedimento%3D151%26testo%3D%26annoProvvedimento%3D2001%26giornoProvvedimento%3D¤tPage=1, accessed 7 March 2019;

Act 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&queryString=%3FmeseProvvedimento%3D%26formType%3Dricerca_semplice%26numeroArticolo%3D%26numeroProvvedimento%3D81%26testo%3D%26annoProvvedimento%3D2017%26giornoProvvedimento%3D¤tPage=1, accessed 7 March 2019.