

Occasional self-employment: the new obligation of prior communication in the conversion law of the Tax-Labor decree (D.L. no. 146/2021).

With the conversion into law of the Tax-Labor decree (D.L. no. 146/2021), the legislator has brought attention to a poorly regulated type of relationship: occasional self-employment.

Occasional self-employment

Occasional self-employment includes those collaborations that are not either subordinate employment relationships, or self-employment relationships or coordinated and continuous collaboration (co.co.co.). In other words, this relationships find a legal definition by subtraction with respect to self-employment in the strict sense as governed by article 2222 of the Civil Code and following articles: it is a work activity without subordination constraints, outside the coordination of the client and without functional involvement in its organization, just like in proper self-employment, from which it is distinguished only by the fact that it is carried out occasionally.

The term occasional can be described as the absence of prevalence and habituality of the service and, as mentioned, it is the element that distinguishes the case from the self-employed activities carried out (even if not exclusively), which are framed in the exercise of an art or a profession.

It is important to underline that the law does not identify any limit of income, or duration of the relationship, beyond which the collaboration can no longer be considered occasional becoming habitual and lasting, however it is necessary to find the presence of an interest of the parties that runs out upon achievement of the established result and work.

The occasional nature will therefore be excluded when the relationship is characterized by a lasting interest of the contractor and/or the client, which consists, respectively, in carrying out or receiving one or more services, either continuously or periodically.

In this case, it will be an improper use of occasional self-employment, aimed at disguising alternatively

a self-employment relationship relevant for the purposes of applying VAT, or a subordinate employment relationship.

In addition, the simplicity of use and forms (written form is not required for this type of relationship) have led to the use of such kind of relationship, especially in particular economic sectors, to conceal subordinate work and consequent related reduction in labor costs.

From a tax point of view, the compensation - excluding any reimbursement of expenses - received by the occasional self-employed collaborator, on the basis of art. 67 of the T.U.I.R., fall into the category of so-called other income, that is to say, "income consequent to self-employment activities not exercised habitually or from obligations to do, not do or allow".

The companies or self-employed workers, as clients, act as withholding tax agent and disburse the withholding tax of 20% on behalf of the taxpayer upon payment of the compensation, pursuant to D.P.R. no. 600/73. Moreover, the obligations of the client also include that of certifying fees and withholding taxes in the following fiscal year, by issuing the so-called Single Certification.

With regard to social security contribution regime, with effect from 1st January 2004, registration by the occasional self-employee in the so-called INPS Separate Management is mandatory only and if the compensation received exceeds the annual amount of Euro 5,000, taking into account all the clients.

The contribution obligation, according to the rates set annually for the INPS Separate Management, is charged for 2/3 to the client and 1/3 to the contractor. The part of the contribution payable by the contractor will be paid by the client, who acts as withholding agent.

Occasional self-employees are not subject to the INAIL welfare regulations.



The innovations introduced by the conversion in law of the Tax-Labor decree

The conversion law of D.L. no. 146/2021 has made changes, among others, to art. 14 of D.L. no. 81/2008, introducing a new obligation for those who make use of occasional independent collaborators.

This is a prior communication from the client, which - from an operational standpoint - has the characteristics identified by art. 15, paragraph 3, of D.L. no. 81/2015 on the use of on-call workers.

The obligation therefore takes the form of a communication to be sent to the competent Labor Inspectorate, at the start of the occasional service, through the website servizi.lavoro.gov.it, via certified e-mail, via sms or app (and only in residual cases by fax).

The law then provides, in the event of omission of the communication described or in case of delay, the application of a pecuniary administrative sanction ranging from Euro 500 to 2,500 (without admitting the formal notice procedure pursuant to art.13 D.L. no. 124/2004).

The innovations are expressly aimed at allowing monitoring and countering forms of evasion in the use of the contractual type of occasional self-employment and, as anticipated, are included among the changes to art. 14 of D.L. no. 81/2008 dedicated to the suspension of company activity in the presence of serious violations regarding the protection of health and safety at work and, mainly, when there is the presence of workers employed without prior communication, to an extent equal to or greater than 10% of the total number of regularly employed persons.

With the introduction of the aforementioned amendments, the causes that determine the suspension of the activity also include the presence of workers classified as occasional self-employed collaborators in the absence of the conditions required by the law, which therefore underlie subordinate employment relationships in fraud of current legislation.

It is not excluded, and certainly desirable, that the National Labor Inspectorate, which already with circular no. 3/2021 has made some clarifications on certain aspects of the renewed article 14, return to the subject, providing further details, not only on the practical methods of fulfilling the obligation of communication described so far, but also on the interpretation and application of the sanction envisaged for the irregular use of occasional collaborators on the one hand and for the omitted or delayed communication of the use of occasional self-employment on the other.

This article is written for informational purposes. This is not an exhaustive legal opinion on occasional self-employment and applicable legislation. For any further information and specific insights, please contact:

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