Transparency Act

New disclosure obligations for employers

August 2022

The Transposition of Directive (EU) 2019/1152

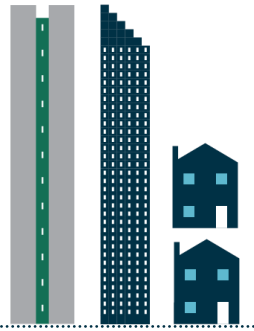
The so-called 'Transparency Act' implemented the Directive on 'transparent and predictable working conditions in the European Union'.

In the light of the new Act, the employer will have to communicate to the employee '*the essential elements and conditions of the employment relationship, as well as the relevant protections*'. This communication must be made **TRANSPARENTLY, CLEARLY, COMPLETELY, IN ACCORDANCE WITH THE ACCESSIBILITY STANDARDS** (also with reference to workers with disabilities), **and FREE OF CHARGE,** in paper or electronic format. This information must be stored and made accessible to the worker at any time.

This means that **it will no longer be permitted to make a generic reference to the collective bargaining agremeents**, as has been the case to date.

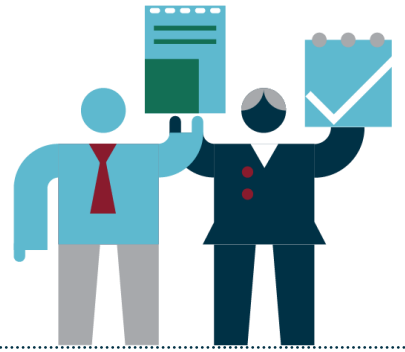
To which types of contracts does the Act apply?

- Employment contract (fixed-term, open-ended, part-time and full-time)
- Temporary employment contract
- Employment contract for employees of PAs and economic public bodies
- Intermittent work contract
- Relationship of hetero-organised collaboration ex art. 2 legislative decree 81/2015
- Co-ordinated and continuous collaboration relationship pursuant to art. 409 para. 1, no. 3 of the Code of Civil Procedure
- Occasional performance contract
- Labour relations with seafarers or fishery workers (without prejudice to the special rules applicable)
- Labour relations with domestic workers (subject to the application of arts. 10 and 11)



The Act does not apply to:

- Self-employed persons who cannot be classified as coordinated and continuous collaborators pursuant to art. 409 para. 1, no. 3 of the Code of Civil Procedure.
- Employment relationships characterised by a predetermined and actual working time of 3 hours per week or less on average over a reference period of 4 consecutive weeks. The exclusion does not apply to employment relationships for which no guaranteed amount of paid work has been established prior to the commencement of work.
- Agency and commercial representation relationships.
- Collaborations performed by the spouse, relatives and relatives-in-law.
- Employees of public administrations serving abroad.
- Labour relations of personnel referred to in art. 3 of legislative decree 165/2001 (minimum requirements concerning working conditions).



What are the essential elements that the employer must communicate?

- The identities of the parties to the employment relationship including those of the co-employers, if any.
- The place of work; in the absence of a fixed or predominant place of work, the employer informs the employee that they are employed at different places, or are free to determine their place of work.
- The registered office or domicile of the employer.
- The classification, level and qualification assigned to the employee or, alternatively, the characteristics or summary description of the job.
- The date of commencement of employment.
- The bodies and institutions receiving social security and insurance contributions from the employer and any form of social security protection provided by the employer.

What are the essential elements that the employer must communicate?

- The type of employment relationship, specifying in the case of fixed-term relationships the date of termination or the duration.
- In the case of workers hired through an employment agency, the identity of the user undertakings, when and as soon as known.
- The length of the probationary period, if any.
- The right to receive employer-provided training, if any.
- The duration of holiday leave and other paid leave to which the employee is entitled or, if this cannot be indicated at the time the information is provided, the manner in which it is to be determined and taken.
- The procedure, form and terms of notice in the event of termination by the employer or employee.

What are the essential elements that the employer must communicate?

- The initial remuneration or the remuneration and its constituent elements, with an indication of the frequency and method of payment.
- The scheduling of normal working hours and any conditions relating to overtime work and its remuneration, as well as any conditions for shift changes, if the employment contract provides for the organisation of working hours to be wholly or largely predictable.
- The collective bargaining agreement, including any shop-floor agreement, applied to the employment relationship, with an indication of the parties that signed it.

What are the essential elements that the employer must communicate?

- If the employment relationship, characterised by largely or wholly unforeseeable organisational arrangements, does not provide for normal scheduled working hours, the employer must inform the employee of:

  - the variability of the work schedule, the minimum amount of guaranteed paid hours and remuneration for work performed in addition to the guaranteed hours;
  - the reference hours and days on which the worker is required to work;
  - the minimum notice period to which the employee is entitled before starting work and, where permitted by the type of contract in use and agreed, the period within which the employer may cancel the assignment.

What happens to previous and subsequent contracts?

NEW CONTRACTS

The information referred to in the Act must be provided for all new hires made from 13 August 2022.

PRE-EXISTING CONTRACTS

For existing contracts, the employer, at the written request of the employee, is obliged to provide, supplement, update the information within 60 days from the date of request.

By express regulatory provision, the disclosure obligations under the Transparency Act apply to all employment relationships already existing as at 1 August 2022.

Automated decision-making or monitoring systems: additional information

The employer will also be obliged to inform the employee of the use of automated decision-making or monitoring systems designed to provide relevant information in relation to:

- recruitment or assignment
- management or termination of employment
- assignment of tasks and duties
- indications affecting surveillance
- performance assessment
- fulfilment of contractual obligations.

This is without prejudice to the provisions of art. 4 of the Workers Statute on the subject of remote control.

This supplements the existing provisions of the GDPR.

Automated decision-making or monitoring systems: additional information

In particular, in addition to the information already mentioned, the employer is obliged to inform the workers (as well as the RSA/RSU [union representatives]/Territorial Union representations), prior to the commencement of work, of:

- the aspects of the employment relationship affected by the use of automated systems;
- the aims and purposes of the automated system;
- the logic and operation of automated systems;
- the main data categories and parameters used to programme automated systems;
- the control measures taken for automated decisions, any correction processes and the quality management system manager;
- the level of accuracy, robustness and cybersecurity of automated systems and the metrics used to measure these, as well as the potentially discriminatory impacts of these metrics.

Automated decision-making or monitoring systems: additional information

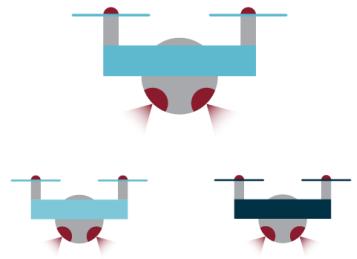
- Workers (personally or through their representatives) have a right of access to the information collected through these systems, as well as the right to request further information about their obligations under this Act. The employer is obliged to transmit the requested data and information in writing within 30 days from the request.
- The employer or principal is obliged to supplement the information notice with instructions to the worker on data security and the updating of the processing log concerning the aforementioned activities, including surveillance and monitoring activities.
- Workers must be informed in writing, at least 24 hours in advance, of any changes to the information that will lead to a change in the conditions of work.

Automated decision-making or monitoring systems: additional information

The aforementioned information must be communicated by the employer to the employee (as well as to the RSA/RSU, or, failing that, to the territorial representations) in such a way as to be:

- Transparent
- Of common use
- In structured format
- Readable even by electronic devices.

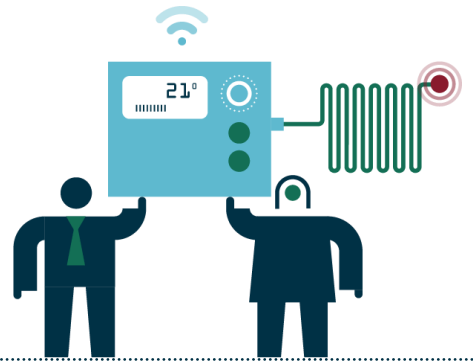
This obligation is also incumbent on principals of coordinated and continuous collaborations, as well as hetero-organised collaborations (but not for principals in relation to occasional services).



Performance abroad: additional information

An employer posting a worker to an EU or non-EU State in the context of a transnational provision of services is required to provide the worker, in writing and prior to departure, information regarding any changes to the elements of the employment relationship as well as the following information:

- the country or countries where the work is to be performed and the expected duration;
- the currency in which remuneration will be paid;
- any additional services in cash or in kind inherent to the tasks performed;
- the conditions governing repatriation, where applicable;
- any remuneration to which the worker is entitled according to the applicable law of the hosting State.



Sanctions

- The sanction mechanism starts with the worker reporting to the Labour Inspectorate any 'failure, delay, incomplete or incorrect fulfilment of information obligations'.
- This is followed by the inspection staff's verification of the actual existence of the infringement.

Sanctions

In case of violation of general information duties

Administrative sanction from € 250 to € 1,500 for each worker concerned.

For the specific violation of the information duties concerning automated decision making or monitoring systems

Administrative penalty from:

- € 100 to € 750 for each month of violation (if the sanction concerns up to 5 workers)
- € 400 to € 1,500 (if the sanction concerns more than 5 workers)
- € 1,000 to € 5,000 (if the violation concerns more than 10 workers)

However, data protection sanctions remain applicable.

In case of violation of Unions' information rights

Administrative fine of € 400 to € 1,500 for each month in which the violation occurs.

The safeguards provided

In the event of a breach of the obligations set out in the Act, the employee may:

Promote an attempt at **conciliation**

Make recourse to the **Conciliation and Arbitration Board**

Address the **Arbitration Chambers**

However, this is without prejudice to the possibility of recourse to judicial and administrative authorities, in addition to the specific procedures laid down by collective bargaining agreements.

Contacts

Stefano Lava
Partner, Head of Employment
Italy

T +39 02 5413 1782
stefano.lava@osborneclarke.com

Stefano is the Head of the Italian Employment. He assists Italian and international clients in the management of issues such as individual and collective dismissals, international secondments, employment contracts (relating to subordinate and independent employment relationships), outsourcing processes, the employment aspects of corporate transactions and the restructuring and reorganisation of companies, dealing with labour and trade union aspects.

Gianluigi Marino
Partner, Head of Digitalisation
Italy

T +39 02 5413 1769
gianluigi.marino@osborneclarke.com

Gianluigi is the Head of Digitalisation in Italy, Head of the Italian Tech, Media and Comms team and Data Protection practice. His legal experience includes privacy, intellectual property and technology law, both contentious and non-contentious. He assists clients through the digital transformation of business processes and the mitigation of risks associated with information security and information management.

Thank you

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