

Biz Buddy Article n. 4

TITLE: TERMINATION OF AN EMPLOYMENT AGREEMENT – FRIENDLY CLOSURE WITH LEAVE INCENTIVE

In our previous article we addressed some fundamental elements of dismissal for reasons due to economic crisis and / or corporate reorganization.

This time we want to deal with a different case of termination of the employment contract that is through the consensual agreement of the company and the worker.

We used to call this option as “**friendly closure with leave incentive**”

This option is a consensual way of termination of the employment relationship with which the company offers a certain amount of money to invite one or more workers to quit the job through an agreement.

The amount of money is usually paid as a lump sum, and it is given to the worker in addition to the items provided by the Law as mandatory (severance payment - so called TFR, holidays, permits, unpaid salary if any).

If the company has the will to close a several number of employment contracts, it usually launch a so-called "leave incentive program" with which the company notices all the employees the economic conditions of the incentive program if some of them accept to leave the company within a fixed date.

It happens quite frequently that, as a first trial, the company tries to proceed with this program to see if some employee accepts it. In this way company can avoid to get into a possible litigation where the conditions for an unilateral termination of the contract by company side seems not safe.

If an employee wants to accept such incentive proposal, he will probably start a negotiation on the incentive amount in order to try to get a higher value, so we recommend the companies to propose at first a low amount because it will for sure increase at the end of the negotiation.

If the will of both parties will meet, the company and the worker will get into a written agreement with the following essentials obligations: the company gives the agreed amount as incentive to quit the job and the worker gives up to any possible claim against the company linked to the work relationship. This kind of agreement has to be made in front of an union office because it's the only way to make the agreement become definitive. This is a fundamental status of such agreement because, in this way, it could never be appealed by the worker in the future.

From a fiscal point of view such amount, paid as leave incentive to the worker, is equal to the severance indemnity (TFR) so, instead of being subject to the ordinary personal income tax, the incentive is subject to separate taxation which is lower.

With this type of contract termination the workers don't have the right to get the NASPI indemnity. This is a very important point that requires further explanation.

NASPI (NUOVA ASSICURAZIONE SOCIALE PER L'IMPIEGO)

First of all let's see what it is the meaning of NASPI: it is an indemnity paid by INPS (Italian Pension Institute) when an employee loses his job. It has been introduced by Legislative Decree n. 22 of 2015, at article 1.

The payment is done by INPS monthly, for a period up to half of the weeks in which the worker paid pension contribution in the last 4 years.

How much the worker can get with NASPI?

In case the average salary is above the reference amount considered by the law (for 2019 this reference amount is 1,221.44 euro), the worker has the right to get the 75% of this reference amount, plus the 25% of the difference between his average monthly salary and the aforementioned amount established by law.

In any case, the amount paid by NASPI cannot be more than the amount fixed by the Law.

Why we talk about NASPI?

Because this indemnity is given only if the employment contract ends for reasons that don't depend from the will of the worker, so in case of friendly closure, which is a way to terminate the job freely decided by the worker, he will not get the right to receive the NASPI while in all the type of dismissals (individual and collective for subjective and objective reasons) the worker has the right to get the NASPI.

The right to get the NASPI occurs even if a dismissal procedure starts but it ends with a friendly closure, because in such case the decision to terminate the contract didn't come from the worker but from the company that opened a dismissal procedure.

In the contrary, as said, in case the contract ends because both parties agree to terminate it, such as the friendly closure, the worker does not get the right to receive NASPI payment.

Given that for the whole of 2020, and for the moment until March 31, 2021, companies cannot dismiss workers for reasons related to the economic situation and for organizational reasons, the "friendly closure with leave incentive" is a practical solution suitable for achieving the target of personnel reduction avoiding possible litigations with their employees.

Stay tuned for the next articles.