WHEN IS A WORKER UNAUTHORISED?

1) What is undeclared employment?

Undeclared employment is when you carry out any type of working activity, in any field (unless it is a family business, voluntary work or a stage) and you don't have a contract of employment (or a contract for the supply of a service, for example if you have a "VAT registration number"). Therefore you don't have a pay bill (or you do not issue an invoice), you are paid in cash and you are considered unemployed by the authorities. Non-EEC workers having no permit of stay are a typical example of unauthorised workers, exactly because, as long as the present law is in force, it will not be possible - even if one is willing to - to employ them.

2) Are there different forms of unauthorised work?

Yes. There are various forms of unauthorised work. Leaving out illegal activities (because they are criminal or because, in order to be carried out, they require special authorisation, like the medical profession for example) there are different varieties of unauthorised work, which you may come across. There is the so-called "grey work", i.e. work which is formally regular, but which includes some elements of irregularity: different working hours (often you are made to work more hours than those permitted by law); a part of your payment is not registered on the pay bill (i.e. you receive a wage which is different from the contractual one, it can be higher or, often, also lower); you are taken on with a qualification (for example of simple worker or porter) which is different from the duties you really carry out (as a matter of fact you are a specialised worker or you work at the reception of a hotel).

3) Besides the consideration of pay, what else makes a job partially unauthorised?

A job can be defined as partially unauthorised if, for example, during the time one is employed some rules are infringed in the matter of social security or insurance payments, or also if union rights are not respected, notably those provided for by the National Collective Work Agreement (Ccnl) in the matter of maximum amount of overtime work, holidays, days off and sick leave. Another example is special considerations concerning expenses, allowance, travelling time (if you carry out your job around the town, for example).

4) What are circumvention practices in work ?

Circumvention work is a "new type" of unauthorised work, connected with the rise of atypical contracts. Employers make frequent use of contracts not in keeping with being a dependent worker, which allows them to avoid obligations and expenses (holidays, contributions, year-end bonuses, etc.). The most common of them is employment as a self-employed person, even if your working hours and duties are well defined by your employer. In practice you are a dependent worker – without knowing it – because, by definition, a self-employed person has no other obligation than the deadline within which he/she must provide his/her service.
The self-employed person has the withholding tax deducted from his/her salary, or is forced to take a VAT registration number and to pay for it out of his/her own pocket, as an independent professional

man/woman. This trick is used especially in the "new professions", those for which less regulations exist, notably in the field of services and mainly by small companies. Other common forms of disguised work can be found in cooperatives which, besides a fixed number of members, use a changeable number of people as "fill ins". It is very easy to find out whether your work is being declared or not, considering that also in the co-operatives a pay bill is necessary together with the money of your wage.
Another typical example of a circumvention contract is when one is hired with a “co.co.pro” (project contract of co-operation) to carry out a job which is typically part of the production cycle, with fixed working hours, without any autonomy and subject to the authority of one’s superiors. It is indeed a form of disguised dependent work, which allows the employer to “establish the payment” and, above all, to pay less social security contributions. The atypical worker has less rights and is not protected by the National Collective Work Agreement. Another typical example is the false associate member or the false part-time. Finally, there are the "extras" in tourism, which are theoretically called daily for extraordinary needs, while there are numerous "extras" working every day for 365 days a year.

WHAT CAN YOU DO IF YOU HAVE AN UNDECLARED EMPLOYMENT?

It often happens that you can be taken in and robbed because you don't know your rights. Laws are complicated but they do not tolerate ignorance, as if to say that even if you are right, but don't know it, it's your problem. **What can be done in these cases? You can always go to court, with the assistance of the trade unions, even if it requires a long time**. But to make things clear it is better to start from the beginning...

The actual Contract

The employment of a new worker must always be communicated to INPS and INAIL (and to the job centres, the former so-called "collocamento") within 5 days of the initiation of work, with very few exceptions (in the Building trade this information must be communicated the previous day). However, remember that unauthorised employment is valid anyway and it produces all its effects like, for example, seniority for the purpose of the calculation of payment. **If one is working in a company without a contract, according to the law, it's the employer who is outside the law, while the worker has the same rights as the other workers regularly employed, starting with holidays and payment during sick leave, up to protection from dismissal, etc**. Even if the contract hasn't been drawn up, it exists and has the same legal validity. The employer, on the other hand, is committing a series of crimes which go beyond the simple circumvention of the employment regulations: tax and social contribution evasion, to start with, up to, often, the non compliance with the safety and accident prevention regulations.

Possible actions to obtain what is due to you

It is evident that there is a clear difference between having a theoretical right and its enforcement, since it's the employers who are in the strong position. If one asks for his rights to be respected, the risk of being dismissed is likely to be high. It will not be difficult to replace this worker "considering that outside there are a lot of people waiting for that job". Maybe would it be better to keep silent and put up with it? Certainly that would be the advice of your employer! But not ours, not that of the trade unions and of organised workers. But what can you do then?

1) The best solution would be to convince your employer that dismissing you would cost him much more than making your situation legal, maybe with the help of the union representative in the company – if there is one – and in any case with the assistance of the trade union of your town (in every town there is a Cgil "Camera del Lavoro" where you can find help).

2) You can ask for your position to be made legal, knowing very well that your employer will dismiss you immediately, and then turn to the trade union and the judge to be reinstated in your post or, as normally happens, to get as much compensation as possible.

The result you can obtain depends also on the number of employees of the company, because one of the main laws in these matters, the Statute of workers, applies only to companies with more than 15 employees.

How can you sue?

The relationship that you and your colleagues manage to establish with your employer is important, but there are some cases, like when one is dismissed, in which it is indispensable to turn to a judge. Naturally, to begin a court case you need a lawyer. You can choose one personally or you can turn to a trade union, which already follow hundreds of cases every year with the help of specialised lawyers.

How does the case take place? What is an attempt at settlement?

Before turning to a judge you can make an attempt at settlement, with or without the intervention of a lawyer, at a special commission which is present at the "Direzione Provinciale del Lavoro", or at a dispute settlement centre called "conciliazione sindacale", which has been specially created in compliance with the National Collective Work Agreements (Ccnl), with the purpose of reducing the court dispute.

Settlement is almost always advisable because it involves less time, otherwise it is necessary to turn to a judge. Obviously it often happens that the employer refuses to present himself at the trade union's convocation, or proposes derisory sums to finish the proceedings. In the latter case it is up to you to decide, on the ground of the settlement proposal made by your employer and of all your personal valuations (in any case always ask the advice of the trade union which is helping you. They have much more experience than you in these matters!).

There exists a new special case of settlement which is called "monocratic", recently introduced by the reform of the inspection services of 2004. On this subject see the following chapter.

If the settlement is not established (because your employer didn't present himself or because the mediation has been rejected) your lawyer must submit an appeal to the judge which contains a detailed account of the facts, lists the evidence and the witnesses in your favour (**you must take note of the fact that you cannot add other details later**). At the end of the following hearings the judge will hear the parties and make his/her sentence.

According to the Procedural code the court case can only last two months, but the average duration often goes beyond one and a half / two years.

If you win you can ask to be paid immediately, even if your employer appeals. If he is not prepared to pay, his belongings can be distrained.

In the trial, evidence is fundamental so the more you can provide the better it is.

What can you do to be ready for a possible court case?

If you are in unauthorised employment and you want to protect yourself, there are a few tips you can follow:

1) keep a note of all the hours you do, overtime included;

2) try to make copies of all the evidence of the hours of work, of daily signatures, of the schedule of holidays, etc., which demonstrate the times of your presence in the work place;

3) keep a note of the sums you receive in payment; if they pay you by cheque write down its number, or even better – if you can – make a photocopy of all;

4) when you talk with your employer try to be always together with a colleague so that he can witness what happened;

5) ask the addresses of colleagues so that you can contact them without going through the company, even if they have left it;

6) if you have breakfast in the bar in front of your work place or if you have constant contact with the people who work nearby (all the people - the barman and the neighbours – who can confirm that you enter and exit from your work place) then take note also of their names and addresses, they could be other useful witnesses;

7) Try to sue your employer together with other colleagues: a collective denunciation certainly has more weight.

All the above will help you to make the correct “calculations” (that is how much your employer owes you) and obviously to win your case.

For any further information you can go to the closest office of Cgil (see also our website www.cgil.it) or call the phone number **848 – 854388** – cost of one local call – every working day from 2 pm to 6 pm

THE NEW REFORM ON LABOUR INSPECTION SERVICES

The past Government did very little if anything at all to fight concealed labour and, quite to the contrary, even encouraged it, weakening the various inspection systems by INPS (the Department of Health and Social Security), INAIL (Workers' Compensation Authority) and the Ministry of Labour. Alongside the numerous cuts in personnel and resources, a vast "counter-reform" was launched as regards the repression of illicit labour (legislative decree n°. 124 of 2004).

Reform on labour inspection services

The new laws as regards the reform on labour inspection services are mainly characterised by the following:

- *Control over all inspection services* (excluding the health services) is assigned to the Ministry of Labour and the local Labour Offices, *in a centralistic and hierarchic manner*, thereby reducing the independence of the social security bodies, particularly INPS and INAIL, to the minimum;
- *The "prevention and promotion" tasks are assigned to the inspectors, who should make sure that the law is applied correctly,.* That is, the inspectors can offer advisory services in favour of the enterprises that they should inspect;
- Any questions whatsoever in matters of social security (that is, contributions to be paid in for pension and insurance purposes) that workers and enterprises may have will be sent to the local Labour Office, who will also respond to issues relating to other bodies;
- With the new regulations, the ascertainment reports (appropriate forms where all the details are recorded by an inspector when he enters a company - a little like a policeman does with fines) can be used as possible direct proof and, therefore, *it will no longer be necessary to repeat the ascertainments.* Before, on the other hand, the inspector could call a worker to hear him again, perhaps into his office, and this was *extremely useful, particularly* if it was the first time the illegal worker was bearing witness "under pressure" in the presence of his employer;
- *A new* **monocratic** *system of conciliation is set up.* The conciliation is referred to as monocratic, because the presence of the trade union is not compulsory, and therefore, only the Ministry officer is present with the worker and employer. The monocratic seat, as with all other seats of conciliation (including unions, in which, however, the worker must be assisted), *could be a place of settlement and waiver* (that is, once the settlement has been reached, any other claim is waived).

What should we know?

It is important to know that:

- The new conciliation system, set up by law and with less protection towards the worker, *does not exclude the possibility of accessing other commissions* as provided by article 410 of the Italian Code of Civil Procedures and the National Collective Labour Agreements. That is, the worker can always refuse and say that he prefers to reach a conciliation agreement through the "old systems" of the local Labour Offices or of the CCNL (National Collective Labour Agreements), *at which the assistance of the trade unions and workers' representatives is compulsory*;

- The new law also envisages the possibility of accessing this form of conciliation *without a preventive inspection,* but *only* by order of the worker (this is reiterated, because it is very important!): without the worker's consent, a "preventive" monocratic conciliation cannot be reached (that is without the inspector's visit to the company);

- During an inspection, the inspector *may suggest that the employer and worker reach a monocratic conciliation agreement.* In this case, the worker will be called to the local Labour Office to attempt a settlement on what he is still entitled to receive from the employer. In the telegram of notification to attend, the local Labour Office *must inform the worker that he can seek assistance from his trusted trade union* (seeing as the presence of the trade union is no longer compulsory);

- The inspector visiting a company can now – in the event of money being due to the worker (unpaid overtime, non-observance of the minimum contractual wage, etc.) – serve an injunction against which the *employer can suggest monocratic conciliation*. The injunction is a writ of execution: that is, after a certain period of time, the employer must have either reached a conciliation with the worker or has to give the worker the amount indicated in the injunction (in these cases, the worker, who has perhaps considered leaving could benefit from refusing to reach a conciliation agreement and wait a little longer to "collect" what he is entitled to!);

- In any case, once 30 days have elapsed (or no conciliation agreement has been reached) from an injunction served on the basis of the nature of the labour relations (for example, you have been employed as a collaborator, but the inspector has recognised that you were really an employee), the company is free to appeal to a new regional committee for labour relations. Basically there is only one difference between the old and new systems: with the INPS commissions, representatives of all the main trade unions were present, whereas with the new system only *one representative* of the employer and one of the most representative trade union can be integrated within 30 days (and for each single recourse relating to the type of labour contract).

What should be done if an inspector comes to the company or - even without visiting - I get called for the purpose of a monocratic conciliation?

We feel it is helpful to let you know that:

- You can contact (and we recommend you do so) the disputes offices at the CGIL trade union in your area (see internet site www.cgil.it);

- By law you can follow the "indications" given below:

Case 1: during an inspection, you have given your consent to a monocratic conciliation agreement and – at the time in which you contact the CGIL disputes office – you have not yet received formal notification to appear before the local Labour Office. What should you do?

In this case, you can immediately formalize the *acknowledgement of a proxy for legal representation and protection* at the nearest disputes office. The Cgil trade union will therefore inform the pertaining local Labour Office of the proxy and commencement of conciliation procedures according to the contractual regulations and/or pursuant to article 410 of the Italian Code of Civil Procedures, *inviting* the local Labour Office to *defer monocratic conciliation* (so that no compromise is reached that is detrimental to the worker).

Case 2: you have already received notification to appear before the local Labour Office for monocratic conciliation. What should you do?

First of all you can formalize the *acknowledgement of a proxy for legal representation and protection* at the nearest disputes office, therefore *you can ask the Cgil to inform the inspector that you have agreed to turn to other conciliation commissions of an identical legal value, and/or making the term envisaged by the regulation elapse without appearing*, thereby executing the conciliation at the trade union seat immediately afterwards, in the form and terms provided by the various National Collective Labour Contracts, within the times required to correctly calculate what is due.

Case 3: you have already reached a monocratic conciliation agreement, feeling that you have been economically cheated (severance pay, overtime, or other). What should you do?

Even in this case, you can contact the Disputes Office and the Trade Unions and, with the assistance of a CGIL representative, *you can proceed with a careful assessment and calculation of "how much" and "how" the conciliation, that was probably unassisted, took place,* with particular attention *to the inderogability of rights* that are not applicable (social security contributions, etc.). In this case, you should be aware – and behave with particular care – that the only form of legal assistance pivots around the behaviour in good or bad faith, deceit, default by the inspector or officer of the local Labour Office who chaired and co-ordinated the settlement . Or for formal technical vices.

Case 4: the worker is "urgently invited" to agree on preventive monocratic conciliation (started by the officer/inspector of the local Labour Office, that is, without a visit to the company; it is important to remember that this can only take place upon request by the worker involved or the representing trade union organisations. What should you do?

You can always seek assistance from the CGIL at the monocratic conciliation, in order to make sure that the settlement is correct and be counselled as to the possible legal action that can be taken as opposed to conciliation.

Let us not forget that:

1- *Incorrect or diverse qualification of the labour relations is not subject to waiver or settlement (if you are not a collaborator or freelance worker, but declares as such, you must appear before a judge to have the case acknowledged, being aware that it is the actual characteristics of the job that has been carried out that influence the type of contract*!);

2- The law (and the constitution) qualify some rights as inapplicable, that is rights that cannot be waived, even if you agreed to do without. Among these inderogable rights are social security contributions, severance pay (TFR), holidays and rest periods.

For further userful information, to know what the Cgil offers to combat concealed labour, you can download guides in several languages from the internet site: www.nolavoronero.it

HOW TO READ ONE'S PAY-PACKET

Just because we receive a pay-packet each month, it does not mean that the employer is not being "crafty". Let us take a close look at each item of the pay-packet to see if we are receiving what we are entitled to.
The document that the employer has to give you each month shows the elements that relate to his obligations, as follows:

1) Pay
That is, how much the worker receives each month. This is made up of a **permanent** and a **variable** part. The permanent part of the pay consists of the **basic wage, minimum union scales or minimum contractual rates**. It substantially corresponds to the minimum economic level established for each category in the National Collective Labour Contract (CCNL). ***To know which CCNL you pertain to, please consult Cgil's Internet site www.cgil.it or ask for information from your nearest Labour Exchange.***
In addition to this is the "**superminimum"**, which is an amount given to the worker in addition to the basic wage and the cost-of-living allowance.
The variable part, on the other hand, consists of elements that vary for each month of the year, such as the **overtime**, **family allowance** and **bonuses**, generally calculated as a percentage of the minimum wage or at a set amount. The thirteenth month's wage and sometimes the fourteenth month's wage are also included in the variable part. The increase due to overtime hours, likewise various bonuses, are shown in the CCNL that has been applied to the sector in which you are working. Remember that untaken holidays are also paid.

2) Taxes
As to IRPEF (individual income tax) paid to the State, this amount is calculated by means of a series of income grades and associated percentages (**rates**) on the amount of the gross wage, deducting social security contributions and family allowances.

3) Social security contributions
Another element in the pay-packet relates to the deductions for retirement purposes. For workers of private companies, artisans and tradespeople, the body that deals with retirement pay is the INPS, to whom the employer must pay a monthly amount for each employee that is taken from the pay-packet. The contributions are paid at a fixed percentage according to the worker's earnings. Therefore, if less is paid than expected, it means that your employer is paying less social security contributions.

Another body to whom contributions are paid is INAIL, whose rates, paid by the employer, are calculated on the basis of the effective occupational hazard and risk. The purpose of INAIL is to provide protection and assistance against injuries to the worker. Therefore, it is very important.

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