

THE PROTECTION OF WORKERS VICTIMS OF GENDER-BASED VIOLENCE: THE ITALIAN CASE

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1 INTRODUCTION

In Italy the violence against women is widespread. According to the latest data of the Italian National Statistics Institute (2015), every three days in our Country a woman is killed by her partner, her ex, or a family member, and 6 million 788 thousand women have suffered in their lifetime some kind of physical or sexual violence.

In 2015 during the International Day for the Elimination of Violence against Women, the UN admonished Italy, requesting it to do more.

In particular, the UN considers positive the laws to contrast the phenomenon (in particular the law against the femicide, l. n. 119/2013), but calls on Italy to do more to reach equality in the labor market.

Infact the reduction of violence against women, for empirical evidence, passes through economic mechanisms: when the women's autonomy is strengthened and the inequalities are reduced, the risk for women to suffer violence are reduced.

The gender-based violence for the world of work is not only a matter of human rights, but there are also costs for the Companies, measurable in terms of absenteeism, turnover, job performance and lower production and for the worker, high stress, loss of motivation, a increased of accident.

In Italy the anti-violence number of the Ministerial Department for Gender Equality has received calls from 8,197 women, of whom 2,402 are female employees.

In light of the problem, the Italian legislator has introduced a special protection in the labor market for gender violence victims, in the latest reform, known as the Jobs Act.

2 THE PROTECTION OF WORKERS GENDER-BASED VIOLENCE VICTIMS

To protect the women workers, who are victims of gender violence, the Italian legislator has introduced a particular leave.

In Italy, It's the first time that a rule concerning labor law makes explicit reference to violence gender-based.

This special protection is contained in art. 24 of the Decree n. 80 of 2015 dedicated to the work-life balance, and that entered into force on 25 June 2015.

The norm is inserted in the decree on work-life balance because violence against women not only affects their personal health, but can also affect the regulatory environment, where a female worker might need to reorganize their lives with an appropriate conciliation.

The beneficiaries are the private and public employee included in care programs, relating to gender violence referred to in D.L. n. 93/2013, with amendments, in L n. 119/2013.

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The inclusion in the described care programs must be duly certified by the social services of the municipality of residence or by the anti-violence centers.

The period of leave is totally paid, and It isn't necessarily continuous, but can also be enjoyed on an hourly or daily basis, for no more than three months, within period of three years. The three years start with the certified protection, and not from the beginning of the period of enjoyed leave.

The specific mode of use will instead be regulated by national collective bargaining. If collective bargaining has not intervened to regulate this form of enjoyment, the employee can however choose between the daily or hourly use.

A worker who intends to take the leave must give notice to the employer at least seven days before the start of leave (except in cases of objective impossibility).

The female workers who are victims of gender violence are also entitled to the transformation from full-time work to part-time employment, vertical or horizontal, but It's possible only where there is availability in the workforce.

The collective bargaining has started to act in this field. A first good practice is represented by the recent corporate contract Comifar Distribution , signed on September 2015. The agreement provides the preservation of the workplace for three year. So it is added one year to those already provided by article 157 of the national collective agreement of Tertiary Distribution and Services, concerning the two-year unpaid leave for serious family reasons.

An other agreement, signed by Arval, provides for its female workers victims of gender-based violence an further month compared to what is already required by law.²

The recent interest in the protection of workers who are victims of violence gender-based has also been expressed by the three main Italian trade unions (CGIL, CISL and UIL) who have signed framework agreement on harassment and violence in the workplace with one of the most rappresentative association of employers (Confindustria) on January 25, 2016.

This agreement has adopted over the relevant European framework agreement. In this case however the objective of protection concerns the victims of harassment and violence in the places of work, both men and women.

The leave, as we have seen, it applies only to female workers. Some maintain that is a possible profile discriminatory, but in my opinion could be framed as a legitimate "affirmative action" in protection of an obviously more vulnerable person (we saw the serious data on the subject).

Among other things the parties undertake to identify the most appropriate structures to ensure assistance of the victims, from the psychological and legal point of view.

3 COMPARATIVE PROFILE

A previous Spanish measure, contained in the law of 28 December 2004, n. 1, entitled "Protective measures against gender violence", inspired the Italian legislator. So It's interesting to do a comparison between italian and spanish measure.

² Arval is part of the BNP Paribas group, specializing in the rental and fleet management. The collective agreement can be consulted on www.fisasc.it.

First of all should be specified that in Spain the victim status of violence gender-based is attested by a court order.

Only in exceptional cases, the victim status of gender-based violence can be recognized through a “informe” of the Public Prosecutor. This measure has adopted as a result of the presence of sufficient evidence regarding the fact that the woman might be a victim of gender-based violence.

However in Spain for this leave was only considered domestic violence. Moreover the fact, that women should solicit the court order (the complaint) to gain access to the rights recognized in the workplace, has been criticized (ARMENDI SANCHEZ, 2005, p. 60).

The literature wonders why the legislator has not deemed that the information on the existence of a situation of gender-based violence may also come from entities and bodies of assistance, both public and private, to whom is entrusted the protection of victims (as it happens in Italy).

The Spanish leave lasts six months. This period may be further extended, pursuant to the decision of the judge, for additional periods of three months, for a maximum of eighteen months, in the event that the term of protection requires a longer period than initially decided.

The legislator could have foreseen the possibility of extend the leave in the case of situations duly certified by the competent bodies. In any case Spanish law to counteract the negative effects of the leave on business organization, allows the employer to to replace the worker who is absent for leave related to gender-based violence with another employed on fixed-term contracts. This substitution is incentivized with tax break.

In Italy the regulatory incentive would have little relevance in that you can take out fixed-term contracts of up to 36 months without causal; a interest could instead have the tax incentive.

In Spain the law also provides that absences related to the victim status of gender violence can not be a justified reason for dismissal.

4 CONCLUSION

The leave for victims of gender-based violence is an important tool for the protection of a working group particularly vulnerable. In reference to Italian case, it is important that is adopted a formal list of suitable facilities to assist these victims (for example if the same victim suffered further violence during the leave).

It also considers it appropriate that in specific and certificated cases it can be possible to obtain an extension of leave, similarly to what happens in Spain.

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However is fundamental acting in a preventive perspective to address the problem of gender-based violence, and so improving the work-life balance and rebalance the parental care.

In fact, as indicated by the UN, the gender gap is the root causes of gender-based violence.

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