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The Concept of Occasional Work in the Italian Labour Law

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1. *Introduction*

The concept of occasionality in Italian labour law is present in several institutes[1]. One of those in which it has particular significance are the "prestazioni accessorie" under artt. 70 ff. of d.lgs. 276/2003, in which the occasionality is associated with the condition that the worker is at risk of social exclusion, to encourage the regular employment especially for the vulnerable persons[2].

[1] On labour law, see art. 14, par. 1, d.lgs. n. 81/2008 (as amended by d.lgs. n. 146/2021, converted by l. n. 215/2021), on the communication to the National Labour Inspectorate of the occasional self-employment; art. 1, par. 3, l. 3 April 2001 n. 142, on the worker member of cooperative companies with a non-occasional coordinated and continuous collaboration; art. 34, d.P.R. n. 818/1957, on the requirements to recognise unemployment benefits; or, again, art. 25, d.lgs. n. 36/2021, on sports work carried out through vouchers (later repealed by d.lgs. n. 163/2022).

[2] Cfr. PEDRAZZOLI, *Prestazioni occasionali di tipo accessorio rese da particolari soggetti*, in PEDRAZZOLI (eds.), *Il nuovo mercato del lavoro. Commentario al d.lgs. 10 settembre 2003, n. 276,* Zanichelli, 2004, p. 860 ff.; see *etiam* LO FARO, *Prestazioni occasionali di tipo accessorio rese da particolari soggetti*, in GRAGNOLI, PERULLI (eds.), *La riforma del mercato del lavoro e i nuovi modelli contrattuali. Commentario al decreto legislativo 10 settembre 2003, n. 276,* Cedam, 2004, p. 810 ff.; GHERA, *Diritto del lavoro. Appendice di aggiornamento al 31 dicembre 2003*, Cacucci, 2004; BORZAGA, *Le prestazioni occasionali all'indomani della l. n. 30 e del d.lgs. n. 276/2003*, in *RIDL*, 2004, 2, p. 291 ff.

Several changes were made to this institute: first, the annual limit of the remuneration that the worker may receive from all his clients was increased (from 3 to 5,000 euros, *ex* artt. 16 and 17, d.lgs. n. 251/2004); then, the following year, the limit of remuneration was set at 5,000 euros for each of the worker's clients (*ex* art. 1-*bis,* paragraph 1, lett. e, d.lgs. n. 35/2005, converted by l. n. 80/2005). After a short time, its use was expanded in all sectors for certain classes of workers (retained persons, part-time workers, etc.)[3]; finally, with the reforms of 2012-2013 (art. 1, par. 32, l. n. 92/2012 and art. 7, d.l. n. 76/2013) and the Jobs Act (artt. 48-50, d.lgs. n. 81/2015), the occasionality requirement was eliminated, and these rules were applied to all sectors and to any type of worker[4].

If, at first, the vouchers were little used, these reforms caused them to become particularly widespread, to the point of pointing out the risk of an excessive precarisation for the workers[5]. To prevent the institute from being cancelled through the referendum proposed by the CGIL, the 2017 reform once again changed its characteristics: a discipline based on the concept of occasionality was reintroduced, with a new (and very special) regulatory structure[6].

As anticipated, the concept of occasionality is also present in other institutes of Italian labour law. It is, for example, associated with the obligation

[3] See art. 22, d.l. n. 112/2008, converted by l. n. 133/2008, and the use for specific categories (students, retired persons, part-time workers., etc.) envisaged by art. 7-*ter*, par. 12, d.l. n. 5/2009.

[4] On this topic see Bellomo, *Le prestazioni di tipo accessorio tra occasionalità, atipicità e "rilevanza fattuale"*, in Aa.Vv., *Studi in onore di Tiziano Treu. Lavoro, istituzioni, cambiamento sociale,* Jovene, 2011; Lamberti, *Il lavoro occasionale accessorio*, in Cinelli, G. Ferraro, Mazzotta (eds.), *Il nuovo mercato del lavoro dalla riforma Fornero alla legge di stabilità 2013*, Giappichelli, 2013, p. 174 ff.; Pinto, *Il lavoro accessorio tra vecchi e nuovi problemi*, in *LD*, 2015, n. 4, p. 679 ff. and Cordella, *Libretto famiglia e contratto di prestazione occasionale: individuazione della fattispecie*, in *DRI*, 2018, p. 1163.

[5] As is well known, the discipline was repealed (art. 1 d.l. n. 25/2017, converted by l. n. 49/2017) due to the CGIL's referendum request, deemed admissible by the C. Cost. in the judgment C. cost. 27 January 2017, n. 28, in *FI,* 2017, n. 3, I, p. 790 ff.; on the subject see A. Zoppoli, *L'eloquente (ancorché circoscritta) vicenda referendaria su responsabilità negli appalti e lavoro accessorio*, in Staiano, A. Zoppoli, L. Zoppoli (eds.), *Il diritto del lavoro alla prova dei referendum*, ESI, 2018, p. 135 ff.; see *etiam* Zilli, *Prestazioni di lavoro accessorio e organizzazione*, in *ADL*, 2017, 1, p. 86.

[6] See F. Marinelli, *Il lavoro occasionale in Italia: Evoluzione, disciplina e potenzialità della fattispecie lavoristica*, Giappichelli, 2019; Garofalo, *La nuova frontiera del lavoro: autonomo-agile-occasionale*, ADAPT University Press, 2018, p. 596 ff., p. 632 ff. and p. 637 ff.; Massi, *Disciplina delle prestazioni occasionali*, in *DPL*, 2017, 29, p. 1813.

to give prior notice of the start of self-employment (d.lgs. 146/2021): since the occasional works are often performed in the black economy, to avoid risks to the health and safety of self-employed workers, the legislator has envisaged that the start of their work must be declared in advance to the public authority (INL).

The concept of occasional work is also used in tax and social security law. According to art. 67, par. 1, n. l of the Presidential Decree 917/1986 in tax law, the occasional work is used when the work is *not* habitual[7]. In social security law, on the other hand, work is occasional if the remuneration does not exceed 5,000 euros: in such cases the worker is not obliged to register with the so-called "Gestione separata INPS"[8]. However, according to the interpretation of the case law's majority, the current social security rules[9] oblige any person who performs professional activity on a habitual basis to register with the "Gestione separata INPS" even if his annual remuneration is less than € 5,000. To ascertain the occasional nature of the activity, several parameters have therefore been taken into account: the choice of enrolment in a register, tax declarations, the opening of a VAT number, the existence of a material organisation supporting the activity[10].

Apart from cases where it was provided for by law, the concept of occasionality was also examined as a means of qualifying employment relationships as subordinate or autonomous by scholars and case law[11]. Since our interest here is to understand its meaning to verify what protections can be recognised against the risk of the precariousness for the workers, before considering the main institutes in which occasionality determines problems of precariousness (art. 54 *bis* d.l. n. 50/2017 and art. 2222 cod. civ.), it is helpful

[7] The rule provides that the wages from occasional self-employment services are included in the tax category known as "redditi diversi" and are subject to taxation according to the ordinary rules.

[8] CASILLO, *Profili previdenziali del lavoro autonomo occasionale*, in CORDELLA, *Occasionalità e rapporti di lavoro: politiche del diritto e modelli comparati*, Editoriale Scientifica, 2023, forthcoming.

[9] Art. 2, par. 26, l. n. 335/1995, as interpreted by art. 18, par. 12, d.l. 98/2011 conv. with l. n. 111/2011.

[10] See, most recently, Corte Cass., sez. lav., 6 September 2023, n. 26018; sez. VI, 22 March 2022, n. 9344; 25 May 2021, n. 14390, point 12; 10 May 2021, n. 12358; in the same sense, in tax jurisprudence, see Cass. civ., sez. trib., 2 July 2014, n. 15031.

[11] On that debate see F. FERRARO, *Studio sulla collaborazione coordinata*, Giappichelli, 2023, p. 383 ff.; see, in the same sense, BAVARO, *Sul concetto giuridico di "tempo del lavoro" (a proposito di ciclo-fattorini)*, in *Labor*, 2020, n. 6, p. 676.

to also examine these orientations by scholars and case law. First, it is necessary to check whether the thesis that occasionality is the opposite of continuous work can be considered valid[12].

2. *The continuity/occasionality dichotomy*

In the past, the concept of occasionality was contrasted with that of continuity for purposes of qualifying the relationship. Since it was believed that the occasional work could only be self-employment, the dichotomy occasionality/continuity confirmed that the subordinate work was only continuous work[13].

After the amendments to the art. 409 cod. proc. civ.*,* the self-employment was also considered to be continuous, but Italian labour law scholars continued to uphold the dichotomy between continuity and occasionality[14]. Even when, thanks to the art. 409 cod. proc. civ., it was given greater depth to the continuity, and there was no longer any need to explain its characteristics based on the occasionality, the lack of specific studies on the latter concept meant that it continued to be understood as the opposite of continuity[15].

[12] A legal definition of the continuity work's concept is, for example, proposed in the well-known judgment on riders App. Torino, 4 February 2019, in *RIDL*, 2019, 2, 340, on which, among many comments, see CARABELLI, SPINELLI, *La Corte d'Appello di Torino ribalta il verdetto di primo grado: i riders sono collaboratori etero-organizzati*, in *RGL*, 2019, 1, 95 ff., or RECCHIA, *Contrordine! I riders sono collaboratori eterorganizzati*, in *LG*, 2019, 403 ff.; see also the case law examined in VULLO, *"Parasubordinazione" e rito del lavoro: l'art. 409, comma 1, n. 3, c.p.c. nella dottrina e nella giurisprudenza*, in *Studium iuris*, 2021, 3, p. 317 ff.

[13] See BAVARO, *Tesi sullo statuto giuridico del tempo nel rapporto di lavoro subordinato*, in VENEZIANI, BAVARO, *Le dimensioni giuridiche dei tempi del lavoro*, Cacucci, 2009, p. 15 ff, where it is pointed out that before the introduction of co.co.co. the jurisprudence used the concept of "continuity" to qualify subordinate employment in art. 2094 cod. civ.; on this topic, in a critical sense, see SPAGNUOLO VIGORITA, *Riflessioni in tema di continuità, impresa, rapporti di lavoro,* in *RDC,* 1969, 1, p. 545 ff. See also GAETA*, Tempo e subordinazione: guida alla lettura dei classici*, in *LD*, 1998, p. 35; GAETA, LOFFREDO, *Tempi e subordinazioni*, in VENEZIANI e BAVARO (eds.), *Le dimensioni giuridiche dei tempi del lavoro*, Cacucci, 2009, p. 29 ff.; GRAGNOLI, *Tempo e contratto di lavoro subordinato*, in *RGL*, 2007, 1, p. 439 ff.

[14] BALLESTRERO, *L'ambigua nozione di lavoro parasubordinato*, in *LD*, 1987, p. 60 ff.; SANTORO PASSARELLI, *Il lavoro parasubordinato*, Giuffré, 1979, p. 59 ff.; ICHINO, *Il contratto di lavoro*, Giuffré, 2000, p. 297 ff.

[15] See, for example, BORZAGA, *Le prestazioni occasionali* all'*indomani della l. n. 30 e del d.lgs. n. 276/2003*, in *RIDL*, 2004, 1, p. 285 ff. In the same sense also A. AVIO, *Omogeneità di trattamento*

3. *The technical meaning of continuous work*

The continuity undoubtedly exists in the subordinate employment[16]. In this case, there is the interest of the creditor in getting from the debtor the availability to perform the service continuously in the form required by him[17]. In other words, the continuous work is considered to enable the worker to perform his obligation even if his work does not achieve a specific result, since the continuous work in the subordinate employment – as the Italian scholars pointed out – can be broken down into an unlimited manner over time without the creditor's interest in receiving it being lost[18].

If, therefore, the technical continuity is a characteristic of the subordinate employment, it is more difficult to say whether it is also an element that must always be excluded in self-employment.

In this regard, it has been said that the self-employment envisaged by art. 2222 cod. civ. is incompatible with the continuity as a creditor's interest

e incoerenze previdenziali, in *LD*, 2005, p. 131; LUNARDON, *Lavoro a progetto e lavoro occasionale*, in AA.VV., *Commentario al D. Lgs. 10 settembre 2003, n. 276*, 4, Ipsoa, 2004, p. 28 ff. and MISCIONE, *Il collaboratore a progetto*, in *Lav. Giur.*, 2003, 9, p. 16.

[16] The continuity in question is the technical one, on which see *ex plurimis* ICHINO, *Il lavoro subordinato: definizione e inquadramento. Artt. 2094-2095*, Giuffré, 1992, p. 28 ff. Since to perform a job, the debtor must always perform several actions, each activity is executable through *material* continuity, understood as a plurality of actions functionally connected to achieve the desired result. This is a *natural* feature of the category of obligations to do, which allows them to be distinguished from obligations to give (in this sense, already, ICHINO, *Il lavoro subordinato*, cit., p. 27.

[17] In the perspective of understanding continuing performance as an index of the worker's availability, see ICHINO, *Il tempo della prestazione nei rapporti di lavoro*, cit., p. 28 ff.; in the same sense, previously, see OPPO, *I contratti di durata*, in *RDCom*, 1943, 1, p. 143 ff. (now in *Obbligazioni e negozio giuridico, Scritti giuridici*, Cedam, 1992, p. 248 ff.), and DEVOTO, *L'obbligazione ad esecuzione continuata*, Cedam, 1943. It is a matter, in these cases, of a "temporal" availability, distinct from the availability - which we could define as "contents" availability –, which concerns the worker's adherence to receiving directives on the modalities of performance; in the sense of valorising the character of direction as the only possibility of concrete expression of subordination see SPAGNUOLO VIGORITA, *Riflessioni in tema di continuità, impresa*, cit., p. 574. In a partially different sense, concerning art. 409 cod. proc. civ. and its capacity to include continuity as an expression of the creditor's interest and not, as is the case in subordinate employment, as an "intrinsic feature of the service", see recently MARTELLONI, *Lavoro coordinato e subordinazione*, Bup, 2012, p. 88.

[18] Recently, on the subject, see PROIA, *Tempo e qualificazione del rapporto di lavoro*, in *L&LI,* 2022, 8, 1, p. 56.

in getting the worker's energies for an extended period of time[19]. The continuity in self-employment acquires a value only if it is understood as the time necessary to perform the work, i.e. only if it has a "preparatory" purpose, which does not affect the creditor's interest in getting the result; in practice, the preparatory continuity is an element external to the cause of the contract and is a time that the creditor is forced to "suffer": the latter wants to get the result and conclude the relationship, but must wait for the period agreed upon in the contract, which the debtor uses to perform the work[20].

With the amendment of art. 409 cod. proc. civ. and the introduction of the coordinated and continuous collaborations (henceforth "co.co.co."), the continuous work became, *de jure,* autonomous. This called into question the certainty with which, until then, the continuity had been excluded from the autonomous work[21]. Without being able to deal in depth with the scope of application of the rule, it suffices to say that the art. 409 cod. proc. civ., by also admitting in the self-employment continuous relationships, has blurred the boundary with the subordinate employment[22].

In fact, it was possible to consider that the continuous activities may also be self-employment[23] when the other two characteristics required by art. 409 cod. proc. civ. are present, i.e. that the worker makes use of his collaborators and/or that the creditor "only" exercises the power to "coordinate" and not also that of "directing" the worker's activity. It has thus

[19] In fact, it has been said that the legislator, when regulating art. 2222 cod. civ., was only thinking of "occasional" self-employment (PESSI, *Contributo allo studio della fattispecie lavoro subordinato*, Giuffrè, 1989, p. 61); see also BAVARO, *Tesi sullo statuto giuridico del tempo*, cit., p. 15 ff. and the bibliography cited *supra*, in note 25.

[20] OPPO, *I contratti di durata*, p. 155 ff.; other typical contracts belong to this category, in addition to the work contract, such as the contract of tender or transport, in which instantaneous performance is envisaged, although performance requires a specific duration.

[21] In this sense see BORZAGA, *Le prestazioni occasionali all'indomani della l. n. 30 e del d.lgs. n. 276/2003*, in *RIDL*, 2004, p. 279.

[22] It was pointed out that co.co.s caused a decrease in the use of subordinate labour: see PROIA, *Metodo tipologico, contratto di lavoro subordinato e categorie definitorie*, in *ADL*, 1, 2002, p. 103; a different point of view, based on the problem of the "escape" from subordinate employment, was by ICHINO, *La fuga dal diritto del lavoro*, in *DD*, 1990, p. 69 ff.; MARTELLONI, *Lavoro coordinato e subordinazione*, cit., p. 88.

[23] Among the many, in the sense indicated in the text, see PESSI, *Contributo allo studio*, cit., pp. 200-202; in the opposite sense, see ICHINO, *Il lavoro subordinato*, cit., p. 83, who considers technical continuity to be present only in subordinate employment.

followed that continuity, as the creditor's lasting interest in acquiring the worker's working energies, cannot be the distinguishing element between self-employment and subordinative work and, consequently, that the dichotomy continuity/occasionality has been increasingly less represented for the purpose of discerning the correct qualification to be given to employment relationships[24].

4. *The relation between continuous and occasional work*

The little capacity of the aforementioned dichotomy in ascertaining whether a relationship is subordinate or self-employed is confirmed by the case law and the legislative choices that indicate the occasionality as a concept compatible with the subordinate employment.

Although with very different meanings, such that the terms "temporariness", "exceptionality", etc. overlap[25], the occasionality has been associated with the work of "short duration"[26]. The performance by the worker of

[24] In the same sense, F. FERRARO, *Studio sulla collaborazione coordinata*, Giappichelli, 2023, p. 385; see also CORDELLA, *Spunti operativi (e non solo)*, cit., p. 344. With reference to project work, the notion of "occasional services" and that of "continuous services", see GHERA, *Sul lavoro a progetto*, in AA.VV., *Diritto del lavoro. The New Problems. L'omaggio dell'accademia a Mattia Persiani*, Cedam, 2005, p. 1319 ff.; PAPALEONI, *Il lavoro a progetto o occasionale*, in AA.VV., *Diritto del lavoro. The New Problems,* cit., p. 1370 ff.; SANTORO PASSARELLI, *La nuova figura del lavoro a progetto*, in AA.VV., *Diritto del lavoro. The New Problems*, cit., p. 1427; PINTO, *Le "collaborazioni coordinate e continuative" e il lavoro a progetto*, in AA.VV., *Lavoro e diritti dopo il decreto legislativo 276/2003*, Cacucci, 2003, p. 323; BIAGI, *Le proposte legislative in materia di lavoro parasubordinato: tipizzazione di un tertium genus o codificazione di uno Statuto dei lavori?*, in *LD*, 1999, 4, p. 11.

[25] The occasional nature of the activity has been used as an index in the investigation of the right qualification of labour relationships. Nevertheless, this use of occasionality has never led to a clear definition of its content, with a series of terms overlapping one another and making the concept increasingly close to a general clause. Recently, references to occasionality stand out (see C. Cost., 20 June 2022, n. 155), exceptionality (see Trib. Milano, sez. lav., 26 October 2022, n. 2207; App. Roma, sez. lav, 30 June 2022, n. 2643), to sporadic nature (see App. Sassari sez. lav., 25 January 2023, n. 22), or to the non-accustomed nature of the services (C. Cost., 24 November 2022, n. 234, point 7.2). See C. Cost. 30 November 2022 n. 234; Cass. 9 July 2021, n. 19586; App. Turin, 4 February 2019, in *RIDL*, 2019, 2, 340; Cass. 11 October 2018, n. 25304; 17 March 2016, n. 5303; 19 April 2002, n. 5698; 6 May 1985, n. 2842.

[26] Cfr. Cass. 28 July 1995, n. 8260, in *Giust. Civ.*, 1996, I, p. 2356 ff.; 15 June 1999, n. 5960; 6 July 2001, n. 9152, in *RDL*, 2002, n. 2, II, p. 272 ff.; 4 September 2003, n. 12926; 8 August 2008, nos. 21482 and 21483; 12 February 2012, n. 1987; in doctrine *ex plurimis* BAVARO, *Sul*

minor activities for the same creditor has been considered by case law to be compatible with the concept of continuity. In the same sense the legislator, as early as the first regulation of fixed-term work in l. n. 230/62, established a simplified regime – with regard to the exemption from the obligation of the written form[27] – for the fixed-term contracts of short duration (less than twelve days): it thus confirmed both that the occasional work relationships can be subordinate employment, and the occasionality can have the meaning of work of a modest entity[28].

If one considers the term 'occasional' carefully, however, one discovers that its assimilation to the concept of modest work activity is a simplification that clashes with the lexical meaning of the word 'occasional' and thus complicates its legal application. For this reason, it is not possible to share that position which, recently, to distinguish the relationships carried out through digital platforms pursuant to Article 47 *bis*, d.lgs. no. 81/2015, from the "continuous" ones referred to in Article 2(1), d.lgs. no. 81/2015, pointed out that the former are occasional relationships, and the latter are not. This thesis would reintroduce the dichotomy already pointed out, between occasionality and continuity, to which, however, it seems sufficiently clear that no qualifying meaning can be attributed.

5. *Occasionality as frequency* within the *relationship*…

To understand the legal space of the occasionality in the labour relationships, it may then be useful to refer to the doctrinal and jurisprudential elaboration on the "time" of work; in particular it would be helpful to consider the "frequency" with which the same parties perform a plurality of relationships[29], since, even from a lexical point of view, the occasional nature

concetto giuridico di "tempo del lavoro" (a proposito di ciclo-fattorini), in *Labor*, 2020, n. 6, p. 676; CATAUDELLA, *Prestazioni occasionali*, in *ADL*, 2006, p. 786.

[27] Art. 19(4), d.lgs. 81/15. In the same sense, with respect to the previous regime of d.lgs. 368/01, see CATAUDELLA, *Prestazioni occasionali*, cit., p. 786.

[28] See art. 1(4) of l. n. 230 of 18 April 1962, according to which "The writing is not, however, necessary when the duration of the *purely occasional* employment relationship does not exceed twelve working days" (italics mine), according to a formulation also reproduced by the subsequent regulation of d.lgs. n. 368/2001 and abandoned, concerning the occasionality, only with the recent regulation provided by d.lgs. n. 81/2015.

[29] Recently BAVARO, *Sul concetto giuridico di «tempo del lavoro»*, cit., p. 673, recalled Lotmar's

of services seems to position itself well within the functional area of the "frequency" of performance of a work activity.

Reasoning along these lines, it must first be considered that, by understanding the frequency as an "internal" characteristic of "the relationship", one enters the merits of the labour protections relating to "the employment relationship" and not also those relating to the labour market. The frequency within the relationship concerns, for example, the legal and/or collective rules by which, to preserve the psycho-physical integrity of the workers, the limits are set to the worker's work commitment (e.g. regulations on working hours, breaks, rest periods, etc.); or it is the way to determine the performance quantitatively[30]: in fact, with the conclusion of the employment contract, the times of performance of activities are defined, and the parties choose how often the work is to be performed[31].

These examples considering the frequency with which work is performed 'within' the same employment relationship show that this type of frequency does not help to define the concept of the occasional nature of work that interests us. For our purposes it is of interest to consider occasionality as a tool for combating job insecurity, while the occasional frequency with which, depending on the type of service[32] or the type of contract provided for by law[33], the parties consensually decide how often the work is performed, has a mere 'descriptive' meaning, devoid of relevance for the attribution of greater protection against the risk of job insecurity to occasional workers.

6. *…and as frequency* of the *relationships*

Having said that on the frequency *within* the relationship, a different matter concerns the cases in which the occasional works are performed

distinction between the temporality of the performance (Arbeitszeit) and the temporality of the relationship (Vertragszeit), where the former concerns the duration of the performance and the latter the duration of the relationship.

[30] Bavaro, *Sul concetto giuridico di «tempo del lavoro»*, cit., p. 672.

[31] It may be the case that the power to determine the frequency lies with the creditor (as in intermittent work) or also with the debtor, subject to the productive interest (as in the self-employment contract *ex* art. 2222 cod. civ.)

[32] E.g. the activities indicated in r.d.l. n. 2657 of 6 December 1923.

[33] E.g. intermittent work.

"outside" a contract regulating their frequency; that is when the creditor decides to regulate several relationships with the same worker using individual "contratti d'opera" *ex* art. 2222 cod. civ. or "contratti di prestazioni occasionali" under art. 54 *bis* d.l. 50/17.

In such cases, although there is a formal compliance with the labour law, the occasionality can acquire the significance of a parameter of legality when judging the degree of frequency *of* the relationships and thus a functional significance in the fight against the precariousness, thanks to its capacity to combat the phenomenon of substituting the precarious relationships with the stable ones.

In these terms, the lawful use of the occasional work includes cases in which the creditor requires the performance of an activity for an "interest that has arisen over and above that which" can be planned, or in which, because there are sudden peaks of labour (e.g. in the catering or tourism sectors), there is a difficulty in planning the work requirement resulting from the "type of activity".

The two conditions mentioned are not easy to identify in practice and the boundaries with the cases in which permanent labour needs are satisfied through occasional contracts often overlap; the complexity of the analysis requires one to consider that the need for work, although connected to an unforeseen need, is repeated over time with a particular frequency and that, in such cases, in addition to being complex to understand whether or not they are permanent needs, it is necessary to assess the right balance between the opposing interests: on the one hand, the creditor's interest in using simplified and cheaper contractual schemes, such as occasional self-employment or the "contratto di prestazioni occasionali" under art. 54 *bis*, and, on the other hand, the employee's interest in job stability. In this regard, it is certainly no coincidence that the instances of simplification that took root during the season of flexibility, starting in the late 1990s, caused legislative attention to be paid to work carried out on an occasional basis and also caused the need to introduce, firstly, occasional work, with d.lgs. n. 276/2003, and then – arriving at the present day – the arrangement with the twofold guise of art. 54 *bis* d.lgs. n. 50/2017, through the "contratto di prestazioni occasionali" and the "Libretto famiglia"[34].

[34] On which see CORDELLA, *Libretto famiglia e contratto di prestazione occasionale: individuazione della fattispecie*, cit., p. 1158 ff. The rule was subsequently revised in relation to its scope of application by art. 1, paras. 342 and 343, of l. n. 197 of 29 December 2022 – by which, among

There is no need now to describe the regulatory framework that the legislator has decided to give to the institute over the course of twenty years of application[35]; instead, it is interesting to point out that this discipline is the one that, by establishing rules for monitoring the regularity of occasional work, best represents the balance mention. Compared to self-employment under art. 2222 cod. civ., in fact, the vouchers – especially considering the current art. 54 *bis* cited above – make it possible to combat the risk of a frequency of use contrary to the parameter of occasionality, thanks to the more precise definition of the concept permitted by the constraints of its regulation (see *infra* in the text)[36] . In the case of self-employment, although the recent introduction of the obligation to communicate the start of activity has accentuated the control on the frequency of relationships maintained between the same subjects, the absence of definitive measures on the application limits of the case has ended up opening the "vase of evils"; in other words, in self-employment, even if creditors are obliged to pay more attention to the occasional nature of their relationships with their workers, they cannot refer to a concept of occasionality that is well defined in its application boundaries.

7. *Occasionality within and outside the so-called vouchers*

At this point, it is necessary to clarify how to define the concept of occasionality used by the above-mentioned Art. 54 *bis*.

other changes, the economic limit in the case of occasional services of several workers in favour of the same client was raised to € 10,000, the ban on the use of occasional services only for companies with more than ten employees was relaxed, and a specific and more detailed procedure for the acquisition of work vouchers for the agricultural sector was introduced; on these changes see BELLOMO, *Il lavoro occasionale tra mercato, tutele e nuove tecnologie. Brevi note sulle attuali criticità e sulle prospettive di (ulteriore) riforma della disciplina*, in *Federalismi.it*, 2023, 4 – and, most recently, with art. 37 d.l. n. 48 of 4 May 2023, converted with amendments into l. n. 85 of 2 July 2023, which, in the wake of the previous year's amendments, further extended the scope of vouchers, allowing their purchase up to € 15,000 in the spa and tourism sectors.

[35] On which, apart from what was said at the beginning, see the bibliography cited in footnote 4.

[36] Even if it is clear that today there is a problem of excessive bureaucratisation due to the administrative procedures to which principals who use the institute are forced, which also ends up impeding its diffusion: see, in this sense, D'AVINO, *La tenuta della "burocratizzazione" digitale di Presto e libretti famiglia*, in CORDELLA, *Occasionalità e rapporti di lavoro: politiche del diritto e modelli comparati*, Editoriale Scientifica, 2023, p. 89 ff.

The two institutes introduced with this regulation – but this was also the case for the previous disciplines – serve to simplify the management of relationships intended to satisfy unforeseeable interests of creditors. Their use has been envisaged with "qualitative" limits – think of the prohibitions for workers employed in the previous six months[37] or for companies with more than ten employees[38] –, but above all "quantitative and economic ones", designed to limit the spread of the case and prevent it from generating precariousness.

The link between occasionality, as a measure of the frequency of labour relationships between the same parties, and the economic limits is provided specifically in subparagraph 1 lett. c) of art. 54*bis*, which lays down for the maximum remuneration payable to the same worker in the annual amount of EUR 2,500; being an economic parameter applicable to relations established between the same parties, it is useful to delimit the hypotheses falling within the concept of occasionality.

Although this limit may be considered the measure by which occasionality is manifested in quantitative terms in the voucher regulation, it is less certain that this meaning of occasionality extends to occasional self-employment and, therefore, that also for relationships are performed by means of contracts of labour under art. 2222 cod. civ. occasionality is measurable by means of the aforementioned limit. Admitting this hypothesis is indeed unjustified (as well as unreasonable[39]) especially in cases where there is no connection with the performance of works under art. 54 *bis*. In fact, this would mean that, in the absence of any rules allowing it, only work contracts under art. 2222 cod. civ. that do not generate the exceeding of the remuneration of art. 54 *bis,* paragraph 1, lett. c), would be occasional, on the basis of an interpretation of the limit so broad as to infringe the legislative power to establish the interests to be pursued and the regime of the individual labour cases.

More congenial is instead that the economic limit could be applied for activities performed with one or more contracts both, established under art. 54 *bis* cited above and self-employment. Since occasionality finds a certain

[37] Art. 54 a (5) cited above.

[38] As recently established by art. 1, par. 342, lett. d.) of l. n. 197 of 29 December 2022, which amended the original prohibition laid down in art. 54 *bis* cited above only for companies with more than five permanent employees.

[39] *Ibid*, pp. 347-348.

parameter in the limit of art. 54 *bis* (c), it could be prohibited that, in the same year, the creditor could employ the worker under a self-employment contract, if the economic limit was exceeded for activities performed under art. 54 *bis*[40]. The verification of the limit of the remuneration paid/received should include remuneration deriving from one or more self-employment contracts for which the previous/successive performance of the activities referred to in article 54 *bis* gives rise to the presumption of an intention to use occasional employment contracts, even when this is not possible.

From a practical point of view, this interpretation would have an important implication too. By understanding the maximum remuneration as an "economic measure" of the occasional employment even when different cases are used, the sanction regime of art. 54 *bis* cited would be extended outside the scope of the provision. This limit would have the function to preserve, in an anti-fraud key, the occasional work and to consent, therefore, the application of the sanction of the transformation of the relationship in a permanent contract provided for by paragraph 20 of art. 54 *bis* cit. (also) when the parties try to escape its overcoming by means of the "contratto d'opera".

[40] CORDELLA, *Spunti operativi*, cit., p. 343 ff.

Abstract

The article reconstructs the meaning that the occasionality's concept acquires in Italian labour law, on the assumption that its better definition can contribute to combating precarious employment. In this sense, it first criticises the thesis that considers occasional work as work other than continuous work. Then the meaning of occasional work is reconstructed within the category of the frequency with which different work relationships take place between the same parties. Finally, its applicability is assessed within the framework of the discipline of the relationships provided for by Art. 54 *bis* d.l. n. 50/2017 and occasional self-employment under art. 2222 of the Civil Code.

Keywords

Occasional work, Precarity, Continuity of work, Self-employment.