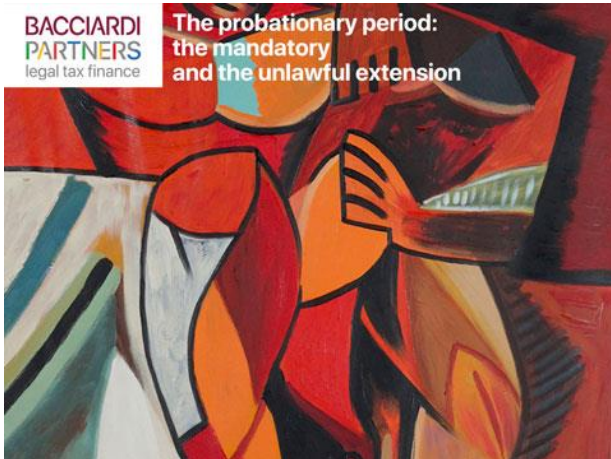




News – April 14, 2023

THE PROBATIONARY PERIOD: the mandatory and the unlawful extension



The probationary period is an ancillary clause of the employment contract that expresses a "resolutive" condition and subordinates the employment to its successful completion.

Duration of the probationary period

The duration of this period may be freely determined by the parties, but it cannot exceed the maximum terms provided by the collective bargaining agreements, parameterized according to the employee's level and classification.

Mandatory extension of the probationary period

The employee has the right to carry out the entire probationary period in order to fully demonstrate his abilities and skills, just as the employer is obliged to extend the duration of this period in the event that the employee has been absent for a period of illness or injury.

Unlawful extension of the probationary period

Outside of the aforementioned case, even if the duration of the probationary period is less than the maximum provided for by the collective bargaining agreements, the employer cannot extend the initially established duration: the extension would be unlawful and the employment relationship would be formally stabilized upon the completion of the

original term. Not even a trade union agreement could remedy such unlawfulness.

The above, essentially, for two reasons.

The first reason is that the will of the employee, who agrees to extend the duration of the probationary agreement after the original employment contract has been entered into, cannot be considered freely formed under Article 1427 of the Italian Civil Code: in fact, the employee may have no alternative to accepting such an extension in the hope of arriving, albeit later than originally feared, at the stabilization of the contract.

The second reason consists in the application of the general labor law principle according to which waivers and settlements must relate to rights that have been already accrued and are part of the employee's assets and not to future rights whose existence or accrual is still uncertain. An extension of the duration of the probationary period would therefore be contrary to the aforementioned labor law principle.

Consequences of the unlawful extension

Any extension that is not stipulated for the worker's injury or illness must be considered null and void: the worker may therefore challenge it within 10 years of its stipulation, even in the case of a trade union-agreed extension. Indeed, it should be noted that an employer's termination formally communicated for failure to pass the probationary period unlawfully extended beyond the term originally stipulated configures a case of unlawful dismissal.

Our professionals of the [Employment Law](#) department can provide you with strategic advice in the human resource contracting and in the legal management of the relationships with employees, trade unions and industry associations.