



Labour Law Hits

*Transparency Decree: automated
decision-making and monitoring systems*

When there is an obligation to provide information

The so-called «Transparency Decree» (Legislative Decree no. 104/2022) has introduced important innovations regarding information obligations from the employer to employees when the employer uses **automated decision-making or monitoring systems**.

- The obligation to provide information is referred, but not limited, to **working activity managed by digital platforms**.
- The obligation to provide information also concerns **ordinary employment relationships** when the employer **uses IT tools for the management and the control of the employment relationship**.

The information is therefore necessary when using tools that:

a) involve data collection and processing (e.g. by algorithm or artificial intelligence)

and are able to **generate automated decisions**, also through **an only accessory human intervention**, which could affect the employment relationship (e.g. automated screening of curricula, use of software for psycho-aptitude tests);

b) carry out **surveillance** or allow to **estimate the working activity** or to **verify the performance and the fulfillment of the employees' contractual obligations** (e.g. tablets, digital devices and wearables, gps and geolocators, facial recognition systems, rating and ranking systems, etc.).

Important obligations also on the privacy side

Since it may not be easy to identify the surveillance tools - which are often part of the equipment commonly used by companies - that have to be included among those for which the obligation of information has been introduced, it is important to conduct a deep analysis in order to evaluate every specific situation.

However, the limits established by **Section 4 of the Workers' Statute** regarding the lawfulness of the controls and the possible need for a Trade Union agreement or an inspection authorization remain in force, and it must be assessed whether the information is sufficient or whether a Trade Union agreement or authorization is needed.



Certainly, the Legislative Decree also has **an impact on data protection requirements**, in fact, **it is necessary to:**

1. Carry out **a mapping** of all systems falling within the scope of the obligation to provide information, disclosing in relation to them at least the following:

- a) Aim, purposes of the processing and aspects to which the processing relates to,
- b) Categories of personal data processed,
- c) How controls are performed and their impact on the relationship,
- d) Logic and functioning, and parameters used for the functioning, control measures and security measures implemented,
- e) Security level and the metrics and parameters used to verify the security measures taken;

2. Include the aforementioned **information within the documentation provided to the employee**, e.g., by drafting an annex to the privacy notice detailing such information in relation to each instrument, as well as providing this information to the trade union representatives (or, in their absence, to the territorial trade union associations that are comparatively more representative at a national level);
3. Update the **authorisations** for the processing of personal data with **specific instructions** (in particular, with regard to security measures);
4. Carry out a **risk analysis and data protection impact assessment (DPIA)** in relation to each of such processing operations;
5. Update the record of processing activities.

Conclusion

The «Transparency Decree» has introduced new obligations which will be placed under the attention of both the **Labour Inspectorate** and the **Authority for the protection of personal data**, which have also recently concluded a memorandum of understanding to encourage the institutional cooperation. Penalties for failure, delay, incomplete or incorrect fulfilment of such obligations may lead to the application of economical (but not only) **administrative fines** whose amount depends on the kind of the violation.



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