

**FOREIGN CITIZENS AND UNCERTAIN
EMPLOYMENT CONDITIONS:
A HANDBOOK ON THEIR RIGHTS**

ITALIAN/ENGLISH

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Abbreviations and Acronyms

In this handbook, the following abbreviations and acronyms have the following meanings:

EV = Entry Visa

RP = Residence Permit

RC = Residence Card

NHS = National Healthcare Service

CCNL = National Collective Employment Contract

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Credits

Un.It.I. of Friuli Venezia Giulia thanks Marco Paggi (A.S.G.I.), lawyer, Gabriele Fiorino (UILTuCS), and the staff of the Immigration Office of the Police Headquarters of Trieste as well as the staff the Labour Helpdesk of the Province of Trieste for their valuable advice and suggestions.

Latest update: 9 January 2007

Background

The wide range of employment contract types currently available in the Italian labour market – many of them were introduced with the “Biagi” Act (Legislative Decree n. 276 of 10 September 2003, and subsequent amendments and supplements) – may produce adverse effects on the lives of foreign citizens living or wishing to live in Italy. These different types of contracts, while allowing employers to save on labour costs, are also the source of an apparent “uncertainty” (insecurity and unsteadiness) in the living conditions of the workforce, which in turn are conditioned by the employment contract type. It must also be added that Italian citizens try to avoid such contracts – notoriously unfavourable, as they lead to uncertainty – which therefore tend to be offered to foreign workers.

Italian citizens working under these contracts “leading to uncertainty” are likely to see a decrease in their revenues and in their welfare benefits. However, the risk is much higher for foreign citizens, as their migration plans may be jeopardised or disrupted at the very outset, with serious personal social and economic consequences.

The Italian legislation on foreign citizens, known as “Bossi-Fini” Act (Legislative Decree n. 286 of 25 July 1998, amended by the Act n. 189 of 30 July 2002 and subsequent supplements), regulates and therefore allows subordinate employment (including seasonal employment) as well as self-employment. However, under the law, for entry and residence permit applications to be held eligible, foreign citizens must prove to have a revenue equal or exceeding the annual social unemployment benefits (usually granted with a job of at least 20 hours a week in line with the minimum wage under any CCNLs). For some self-employment entry and residence applications, foreign citizens must prove to have a revenue at least equal to the threshold for the exemption from health costs. Therefore, all “uncertain employment” contract types, not suitable to guarantee a minimum revenue for workers, may not be enough for foreign citizens, if this is their only source of revenue.

Finally, access to some fundamental rights (obviously also applicable to foreign citizens) – such as healthcare assistance under the national healthcare service or housing, such as the allocation of residential units in the public housing sector – often depends on one condition: to have a job, as defined in the legislation on foreign citizens. On top of that – due to cultural and linguistic differences and also due to the difficulties in the face of the Italian public administration – most foreign citizens are not very familiar with the law regulating their entry and residence in Italy, and therefore,

when foreign citizens are offered “uncertain employment” contracts, they are clearly faced with a very dangerous situation. And such situation is far from being an exception.

Against such background, this handbook – especially written for foreign citizens who work or wish to work in Italy – is aimed at informing them, and help them to overcome the interpretation problems of the Bossi-Fini Act that many of them are not familiar with, with a view to make them more aware and better equipped to access the labour market in full compliance with the requirements they need to meet under the law. This handbook, however, is not a legal or technical insight study on workers’ rights and obligations. Adding to that, in an area where definitions are never comprehensive and consistent, this handbook is based on some criteria aimed at identifying relevant issues, and it is meant to provide readers with useful tools to find references and master this complex matter. The main “uncertain employment” contracts valid in the Italian labour market are assessed, making a distinction between subordinate employment, on one hand, and parasubordinate and casual self-employment on the other; this handbook also includes descriptions of each contract, assessing the eligibility of foreign citizens – **only for the contract type under assessment** – to:

- a. obtain a work-entry visa and the first work-residence permit;
- b. extend the work-residence permit;
- c. convert a residence permit, legally issued for other reasons, into a work-residence permit;
- d. obtain a residence card;
- e. register in the national healthcare service;
- f. apply for public housing units.

Finally, a word of caution. First of all, please note that the above six types of applications analysed in this handbook for each employment contract do not concern EVs and RPs issued for seasonal subordinate employment and for special reasons, i.e. those not included in the annual quota set in the Immigration Flows Decrees. The reason is that this is just a marginal area and also because these types of EVs and RPs do not allow foreign citizens – or at least with very few exceptions – to stay in the country of their choice all their lives, if so they wish.

Secondly, the “uncertain employment” issue has not been thoroughly regulated by the Home Minister and the Minister for Social Solidarity, which are directly responsible for immigration policies. Therefore, after the publication of this handbook, some major changes may be made to the

regulations in force, and that may also have an impact on the contents of this handbook. Readers are strongly advised to check updates on more readily available sources, such as the UIL website <http://www.uil.it>, where there's a constantly updated list of regulations. Finally, readers must also be aware that decentralised agencies of the Home Ministry (such as police headquarters or immigration helpdesks in the prefectures/decentralised governmental agencies) and regional or provincial labour agencies may not be consistent in their replies on “uncertain employment” matters, as this area is not regulated comprehensively.

Italian Labour Law concerning Foreign Citizens

The “Bossi-Fini” Act makes the following distinction in the employment activity of foreign citizens:

- a) *Subordinate employment* (also on a seasonal basis) and
- b) *Self-employment*.

In the Legislative Decree n. 286, *subordinate* employment is defined as the worker’s activity having the following features:

- the worker must comply with the subordination requirement in terms of organisation, hierarchy and rules as directed by his/her employer;
- the worker must devote his/her professional energy as directed by his/her employer in terms of time, location and execution of his/her professional tasks
- the worker must use the means and tools provided by his/her employer.

In Italy, subordinate employment basically takes the form of different employment contracts which are applicable to workers employed in a variety of economic sectors (metal & steel, textile, agriculture, construction, etc.), also known as CCNLs – national collective employment contracts – all having the three features indicated above.

On the other hand, in the Legislative Decree n. 286, *self-employment* is defined as all other types of employment not having the above features, and among them non-casual employment only ensure legal entry to foreign citizens. Therefore, self-employment includes:

- entrepreneurial activity (including companies, partnerships and sole-owner firms);
- freelance activity;
- parasubordinate employment or equivalent forms of employment;
- casual employment contracts.

In the Italian labour market, another important difference concerns:

- a) *steady or regular* employment and
- b) *uncertain* employment.

Steady or regular employment means subordinate employment: workers have guarantees in terms of duration, which may be indefinite or

fixed for a certain period of time – but always long term – and a minimum revenue. The most common form is the subordinate employment contract which may either have an indefinite or fixed duration and may also be either full-time (hours are set in the CNNL) or part-time (the number of hours is lower than the standard number set in the CNNL).

On the other hand, *uncertain* employment includes all those subordinate and parasubordinate employment, self-employment and casual employment contracts which – on the contrary – by their very nature do not guarantee workers a long-term duration and a minimum revenue.

This handbook is about uncertain employment types and contracts: in terms of both subordinate employment and self-employment, parasubordinate and casual employment.

1. On-Call Employment Contract

On-call employment concerns a specific employment contract, having either an indefinite or fixed duration; the employer may require workers to perform their jobs in specific periods only, when, for instance, there's an increase of the workload and the employer temporarily needs an extra number of workers. Therefore, workers are paid exclusively on the basis of the actual number of working days and receive a monthly allowance for their availability, as they wait to be called. Therefore, as workers do not know when they will work, they can't predict how much they will be paid; the employer is not obliged to guarantee workers a minimum number of working days.

a. *Eligibility to obtain a subordinate employment EV and the 1st subordinate employment RP*: **UNCERTAIN** (no specific rules exist on this type of contract and there's no evidence of foreign citizens applying for EVs on the basis of such contract).

b. *Eligibility to extend subordinate employment RP*: **DEPENDING ON THE CASE** (employers must guarantee foreign workers, adding working days and availability allowance, a revenue at least equal to the annual social benefits, i.e. € 4.962,36, at 2006 prices).

c. *Eligibility to convert a RP legally issued for other reasons into a subordinate employment RP*: **DEPENDING ON THE CASE** (the requirement described in b. must be complied with).

d. *Eligibility to obtain a RC*: **DEPENDING ON THE CASE** (foreign citizens must have a subordinate employment RP that may be extended indefinitely; this requirement is met if the contract has an indefinite duration and if the requirement described in b. is complied with).

e. *Eligibility to register in the NHS*: **DEPENDING ON THE CASE** (foreign citizens must have a subordinate employment RP; this requirement is met if the requirement described in b. is complied with).

f. *Eligibility to apply for public housing units*: **DEPENDING ON THE CASE** (foreign citizens must have a subordinate employment RP valid for at least two years; this requirement is met if requirements described in d. are complied with.).

2. Job-Sharing Contract

Job-Sharing concerns a specific subordinate employment contract, having either an indefinite or fixed duration, whereby two workers have one job. Workers agree on the weekly number of hours shared between them (changes in hours sharing may be made at any time by mutual agreement) and they notify their arrangement to their employer, they have a joint obligation to guarantee the performance of their professional tasks to their employer. If one of them resigns or is dismissed, the contract terminates, except that – by agreement with the employer – the other worker may decide to continue alone, either part-time or full time, taking over the whole professional performance.

a. *Eligibility to obtain a subordinate employment EV and the 1st subordinate employment RP*: **UNCERTAIN** (no specific rules exist on this type of contract and there's no evidence of foreign citizens applying for EVs on the basis of such contract).

b. *Eligibility to extend subordinate employment RP*: **DEPENDING ON THE CASE** (foreign citizens must be guaranteed at least 20 hours a week with a revenue at least equal to the annual social benefits, i.e. € 4.962,36, at 2006 prices).

c. *Eligibility to convert a RP legally issued for other reasons into a subordinate employment RP*: **DEPENDING ON THE CASE** (the requirement described in b. must be complied with).

d. *Eligibility to obtain a RC*: **DEPENDING ON THE CASE** (foreign citizens must have a subordinate employment RP that may be extended indefinitely; this requirement is met if the contract has an indefinite duration and if the requirement described in b. is complied with).

e. *Eligibility to register in the NHS*: **DEPENDING ON THE CASE** (foreign citizens must have a subordinate employment RP; this requirement is met if the requirement described in b. is complied with).

f. *Eligibility to apply for public housing units*: **DEPENDING ON THE CASE** (foreign citizens must have a subordinate employment RP valid for at least two years; this requirement is met if requirements described in d. are complied with).

3. Seconded Employment Contract

Seconded Employment concerns a specific subordinate employment contract between employer (employee leasing agency) and worker, who is seconded to carry out his/her professional tasks for a beneficiary (also defined as “user”) which has signed a trade contract with the leasing agency. Usually, user requires the provision of staff from the leasing agency to meet a temporary need for workers without hiring new staff. The contract between worker and leasing agency may either have a fixed duration (equal to the duration between the leasing agency and the user) or an indefinite duration (the contract is valid also after the expiry/termination of the contract between the leasing agency and users, and the leasing agency will second the worker to a different user). Under indefinite duration contracts, the leasing agency pays an availability allowance to the workers who temporarily are not seconded.

- a. *Eligibility to obtain a subordinate employment EV and the 1st subordinate employment RP*: **UNCERTAIN** (no specific rules exist on this type of contract. In case of registered nurses seconded in public and private healthcare organisations, who obtain a work-EV outside the quotas established in the Flows Decrees, the leasing agency may require an authorisation to hire them only upon presentation of a copy of the contract signed with the user).
- b. *Eligibility to extend subordinate employment RP*: **DEPENDING ON THE CASE** (the leasing agency must guarantee foreign workers, adding working days and availability allowance, a revenue at least equal to the annual social benefits, i.e. € 4.962,36, at 2006 prices).
- c. *Eligibility to convert a RP legally issued for other reasons into a subordinate employment RP*: **DEPENDING ON THE CASE** (the requirement described in b. must be complied with).
- d. *Eligibility to obtain a RC*: **DEPENDING ON THE CASE** (foreign citizens must have a subordinate employment RP that may be extended indefinitely; this requirement is met if the contract has an indefinite duration and if the requirement described in b. is complied with).
- e. *Eligibility to register in the NHS*: **DEPENDING ON THE CASE** (foreign citizens must have a subordinate employment RP; this requirement is met if the requirement described in b. is complied with).
- f. *Eligibility to apply for public housing units*: **DEPENDING ON THE CASE** (foreign citizens must have a subordinate employment RP valid for

at least two years; this requirement is met if requirements described in d. are complied with).

4. Training Scheme Contracts

There are 3 different types of *training scheme contracts*, these are special subordinate employment contracts between employer and employee (trainee); to qualify, workers must be – depending on the type of training – above 15 and under 29 years of age. Training scheme contracts have a so-called mixed object, i.e. the consideration between employer and employee include both the professional performance and the training that the employer must provide to the trainee. On a weekly basis, a number of hours is devoted to the professional tasks, and a number of hours is devoted to both theoretical and practical training. All hours are paid. However, the employer may pay a salary which is two levels lower than the actual tasks the trainee is carrying out. The salary paid is lower than the standard equivalent of a subordinate employment contract, and therefore the employer saves significantly on labour costs. At the end of the training period (which may vary depending on the type of training, but it cannot exceed 6 years), save as the employer may terminate the contract, this contract turns into a standard subordinate employment contract having an indefinite duration.

- a. *Eligibility to obtain a subordinate employment EV and the 1st subordinate employment RP*: **UNCERTAIN** (no specific rules exist on this type of contract and there's no evidence of foreign citizens applying for EVs on the basis of such contract).
- b. *Eligibility to extend subordinate employment RP*: **YES**.
- c. *Eligibility to convert a RP legally issued for other reasons into a subordinate employment RP*: **YES**.
- d. *Eligibility to obtain a RC*: **NO** (foreign citizens cannot obtain a subordinate employment RP that may be extended indefinitely, as the training period is time-limited).
- e. *Eligibility to register in the NHS*: **YES**.
- f. *Eligibility to apply for public housing units*: **NO** (trainees/foreign citizens cannot obtain a subordinate employment RP valid for at least two years, as the training period is time-limited).

5. Insertion Contract

The *insertion* contract is a special subordinate employment contract having a fixed duration and aiming at providing access or new access to the labour market for special categories of workers, on the basis of an individual “project” designed to adapt the worker’s skills to specific working environments. Such categories are: a) people above 18 and under 29 years of age; b) long-term unemployed workers between 29 and 32 years of age; c) unemployed workers above 50 years of age; d) workers wishing to start working again and not working for at least two years; e) women of any age living in Italy in areas where women employment rate is at least 20% lower than the men employment rate, or where women unemployment rate exceeds men unemployment rate by 10%; f) people with serious physical or mental or psychological disabilities. Employers may pay a salary which is two levels lower than the standard subordinate contract level, thus saving significantly on labour costs. The insertion contract must have a duration between 9 months and 18 months, or 36 in certain cases, and cannot be extended.

- a. *Eligibility to obtain a subordinate employment EV and the 1st subordinate employment RP: UNCERTAIN* (no specific rules exist on this type of contract and there’s no evidence of foreign citizens applying for EVs on the basis of such contract).
- b. *Eligibility to extend subordinate employment RP: YES.*
- c. *Eligibility to convert a RP legally issued for other reasons into a subordinate employment RP: YES.*
- d. *Eligibility to obtain a RC: NO* (foreign citizens cannot obtain a subordinate employment RP that may be extended indefinitely, as the insertion contract is time-limited).
- e. *Eligibility to register in the NHS: YES.*
- f. *Eligibility to apply for public housing units: NO* (foreign citizens cannot obtain subordinate employment RPs valid for at least two years; as the insertion contract is time-limited).

6. Professional Contribution Partnership Contract

The *professional contribution partnership contract* is a parasubordinate self-employment contract, having either an indefinite or fixed duration. Under such contract, the entrepreneur (employer) transfers part of his/her company profits to workers (associates) in consideration for work. Workers carry out their tasks with a limited independence and are not certain to receive a revenue: if no profits are made, workers do not receive any payment. Workers, unless otherwise agreed, also bear losses to the extent they receive profits. At practical level, this is a parasubordinate activity.

a. *Eligibility to obtain a subordinate employment EV and the 1st subordinate employment RP*: **DEPENDING ON THE CASE** (the entrepreneur must guarantee foreign workers a revenue at least equal to the threshold for the exemption of healthcare costs, i.e. € 8.263,31, at 2006 prices).

b. *Eligibility to extend self-employment RP*: **DEPENDING ON THE CASE** (the entrepreneur must guarantee foreign workers a revenue at least equal to the annual social benefits, i.e. € 4.962,36, at 2006 prices).

c. *Eligibility to convert a RP legally issued for other reasons into a self-employment RP*: **DEPENDING ON THE CASE** (the requirement described in a. must be complied with).

d. *Eligibility to obtain a RC*: **DEPENDING ON THE CASE** (foreign citizens must have a self-employment RP that may be extended indefinitely; this requirement is met if the contract has an indefinite duration and if the requirement described in b. is complied with).

e. *Eligibility to register in the NHS*: **DEPENDING ON THE CASE** (foreign citizens must have a self-employment RP valid for at least two years; this condition is fulfilled if the contract has an indefinite duration and the requirement described in a. is complied with).

f. *Eligibility to apply for public housing units*: **DEPENDING ON THE CASE** (foreign citizens must have a self-employment RP valid for at least two years; this condition is fulfilled if the contract has an indefinite duration and the requirement described in a. is complied with).

7. Cooperation Contract on a Project-Basis

The *cooperation contract on a project-basis* is a contract covering a cooperation on a regular basis for the implementation of a project (or part of a project). Therefore, it's a parasubordinate self-employment contract having a fixed duration, i.e. its duration is the same as the project. The parties are: the principal (employer) and the agent (worker) who is appointed to perform a job under the coordination and the organisation of the employer, with the aim of implementing the project (or part of the project), as defined by the employer and therefore some continuity is required. The worker must carry out his/her tasks, organising the work independently, payment is not by the hour, the worker does not have his/her organisation and he/she is not subject to the subordination requirement. Under this contract, the employer must pay welfare benefits for workers, but to a lesser extent than the amount due under subordinate employment contracts.

- a. *Eligibility to obtain a self-employment EV and the 1st self-employment RP*: **UNCERTAIN** (this contract is not included in the first Flows Decrees of 2006 among those covering self-employment, therefore many police headquarters do not issue provisional authorisations and EVs to foreign citizens wishing to enter Italy to work under this kind of contract).
- b. *Eligibility to extend self-employment RP*: **DEPENDING ON THE CASE** (the employer must guarantee foreign workers a revenue at least equal to the annual social benefits, i.e. € 4.962,36, at 2006 prices).
- c. *Eligibility to convert a RP legally issued for other reasons into a self-employment RP*: **UNCERTAIN** (this contract is not included in the first Flows Decrees of 2006 among those covering self-employment, therefore many police headquarters do not convert the RP to foreign citizens wishing to work in Italy under this contract).
- d. *Eligibility to obtain a RC*: **NO** (foreign citizens cannot have a self-employment RP that may be extended indefinitely, as this contract is time-limited).
- e. *Eligibility to register in the NHS*: **UNCERTAIN** (foreign citizens must have a self-employment RP; this condition is fulfilled if these citizens have a self-employment EV).
- f. *Eligibility to apply for public housing units*: **NO** (foreign citizens cannot have self-employment RPs valid for at least two years, as this contract is time-limited).

8. Casual Employment Contract

Casual employment is a self-employment contract having a fixed duration. The parties are: the contractor (employer) and the provider (employee) who's appointed to carry out job, on an irregular basis, as a result of the employer's occasional needs, within a limit of 30 days in a calendar year and a minimum revenue of € 5.000,00 in the same year. The employee carries out his/her task independently (i.e. not subject to the subordination criteria), his/her sole obligation is the compliance with the deadline. Under this contract, the employer has to pay welfare benefits for the employees, but to a lesser extent than the amount due under subordinate employment contracts. Upon expiration, the parties may subscribe another contract of the same type in the same calendar year.

- a. *Eligibility to obtain a self-employment EV and the 1st self-employment RP*: **NO** (under the law, EVs cannot be obtained on the basis of casual self-employment).
- b. *Eligibility to extend self-employment RP*: **NO** (under the law, casual self-employment alone is not enough to obtain legal residence in Italy).
- c. *Eligibility to convert a RP legally issued for other reasons into a self-employment RP*: **NO** (see point b.).
- d. *Eligibility to obtain a RC*: **NO** (foreign citizens are not eligible to obtain self-employment RPs with this contract only).
- e. *Eligibility to register in the NHS*: **NO** (see point d.).
- f. *Eligibility to apply for public housing units*: **NO** (see point d.).

9. Incidental Employment Contracts or Job-Vouchers

Incidental Employment or *Job-Vouchers* are casual self-employment contracts, having a fixed duration, provided by categories at risk of social exclusion, or categories that have never accessed or are at risk of being excluded from the labour market. The parties are: the beneficiary (employer) and the provider (worker) belonging to the following categories: a) unemployed workers for over one year; b) housewives, students and retired people; c) disabled people or people in rehabilitation centres; d) foreign citizens, legally resident in Italy, being unemployed for six months. The job may be domestic work, including child care and assistance to elderly people; gardening work, cleaning and maintenance of buildings or historic sites; implementation of social, sports, cultural or charitable events; cooperation with public bodies and volunteers' associations for emergency or charitable work. Candidates may apply to public job centres or employment agencies. When the job is carried out, the beneficiary provides workers with job-vouchers, having a nominal value of € 7,50 each. When workers hand in such vouchers to the Labour Ministry offices, he/she will receive € 5,80 for each voucher. The beneficiary will pay € 1,50 for welfare benefits and accident insurance for each worker.

Note: The Labour Ministry has not yet issued the implementing regulations for this kind of employment.

- a. *Eligibility to obtain a self-employment EV and the 1st self-employment RP:* **NO** (under the law, EVs cannot be obtained on the basis of casual self-employment).
- b. *Eligibility to extend self-employment RP:* **NO** (under the law, casual self-employment alone is not enough to obtain legal residence in Italy).
- c. *Eligibility to convert a RP legally issued for other reasons into a self-employment RP:* **NO** (see point b.).
- d. *Eligibility to obtain a RC:* **NO** (foreign citizens are not eligible to obtain self-employment RPs with this contract only).
- e. *Eligibility to register in the NHS:* **NO** (see point d.).
- f. *Eligibility to apply for public housing units:* **NO** (see point d.).