

LP ADVISORY

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IN THIS EDITION

1. Fraudulent use of extracurricular internships
2. Educational internships of non-EU workers with residence permits for study purposes

1

Fraudulent use of extracurricular internships

To all the customers

Article 1, paragraphs 720 to 726 of Law 234/2021 introduced a series of provisions aimed at tackling the fraudulent use of internships.

More specifically, paragraph 723 of the aforementioned law reiterates that an internship does not constitute an employment relationship and cannot be used as a substitute for a subordinate employment. On the other hand, the host party shall be fined Euro 50 for each intern involved and for each day of internship fraudulently carried out.

A fraudulent internship involves several implications of criminal, civil and social nature.

The offence is of a permanent nature, punished with a fine, and is therefore subject to the mandatory prescription pursuant aimed at terminating the existing relationship in breach of the principles governing its lawful management.

On the other hand, from a civil point of view, the recognition of an employment relationship is left to the trainee's choice, since paragraph 723 allows for the possibility, at the trainee's own request, of recognising the existence of an employment relationship based on the judicial pronouncement.

Finally, regarding social security profiles, and consequent recovery of social security contributions related to the internship which simulated an actual employment relationship, it has been clarified that these cannot be considered conditional upon the worker's choice to take the matter to court to obtain the recognition of the employment relationship with the host.

Based on the foregoing, the Italian National Labour Inspectorate (INL) concluded that the case of fraudulent internships lies outside the scope of the Italian Labour Relations Committee (*Comitato per i rapporti di lavoro*), understood as a means of administrative appeal against investigations carried out by the INL or by social security and insurance institutions with regard to the existence or classification of employment relationships.

The rationale behind this choice takes account of the fact that the different qualification of the fraudulent internship as a subordinate relationship is directly sanctioned by a criminal law, as a result of which the inspection officials proceed with the drafting of the specific measure of mandatory prescription, leading, if the offender complies and pays the penalty, to the extinction of the offence by administrative means.

Therefore, even in the presence of a possible related tax claim, INL decided to exclude the administrative jurisdiction of the Labour Relations Committee, in order to avoid undue and inappropriate overlapping of jurisdiction with the criminal authority.

2 Educational internships of non-EU workers with residence permits for study purposes

To all the customers

The Italian National Labour Inspectorate, in its note no. 320 of 14 February 2023, ruled on the use of a residence permit for study or professional training in connection with work activities carried out as part of an internship.

The national and regional regulations on internships also apply, for the principle of equal treatment, to non-EU citizens, allowing the latter to take advantage of pathways aimed at job placement.

However, a distinction must be made between:

- an internship to be started with a person regularly residing in Italy¹, e.g., with a residence permit issued for study purposes and to whom the current regional regulations shall apply in full or, failing that, the regulations contained in Ministerial Decree no. 142 of 25 March 1998;

¹ Article 2, Ministerial Decree of 22 March 2006

- internship to be established with a person located abroad².

About the hypothesis that the foreign citizen is already present on Italian territory with a valid residence permit (for study or professional training), the latter may carry out:

- all curricular internship activities provided for in the course of study or professional training for which the residence permit was issued;
- a non-curricular internship, in compliance with the conditions laid down by regional legislation, in line with the completion of the course of study or professional training underlying the issuance of the residence permit, to the exclusion, for this hypothesis - which does not constitute an employment relationship - of the limits within which the performance of subordinate work activities is permitted pursuant to article 14, paragraph 4, Presidential Decree 394/1999.

The firm remains at your disposal for any further clarifications or needs.

Milan, 4th April 2023



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² To which article 40, paragraph 9, letter a) of Presidential Decree 394/1999 shall apply