



From September 15 at 8.00 to October 15 at 24.00, 2012 the procedure for transforming undeclared work into regular employment for foreigners will be available. The discipline of the new regularization is contained in Article 5 of the Legislative Decree no. 109 of 16 July 2012 and the related ministerial decree implementing the Art. 5 (Transitional Provisions) of Legislative Decree no. 109 of 2012.

*(La traduzione non ha carattere di ufficialità)*

### **Art. 5 of Legislative Decree no. 109 of 2012**

1. The Italian employers or nationals of a Member State of the European Union, or the foreign employers in possession of a residence permit under Article 9 of the legislative decree 25 July 1998, n. 286, as amended and supplemented, which, at the date of entry into force of this Decree have been illegally employing for at least three months, and continue to employ at the date of submission of the declaration referred to in this paragraph, foreign workers in the national territory uninterruptedly since at least the date of December 31, 2011, or earlier, may declare to the one-stop-shop for immigration the existence of an employment relationship under Article 22 of Legislative Decree 286 of 1998 and subsequent amendments and additions. The declaration can be submitted from September 15 to October 15, 2012 through the procedures

established by non-regulatory Decree of the Minister of Interior, in consultation with the Minister of Labour and Social Affairs, the Minister for International Cooperation and Integration and the Ministry of Economy and Finance to be adopted within twenty days after the entry into force of this decree. In any case, the presence in the country by December 31, 2011 shall be attested by documents from public bodies.

2. Are excluded from the procedure referred to in this article part-time work relations, the foregoing is without prejudice to paragraph 8 on domestic work and family support.

3. Are not admitted to the procedure laid down in this Article employers who have been convicted in the last five years, even if the judgment is not final, including those adopted as a result of the application of the sanction requested under Article 444 of the Code of Criminal Procedure, for:

a) aiding and abetting illegal immigration to Italy and illegal immigration from Italy to other countries or crimes involving the recruitment of people for prostitution or the exploitation of the prostitution or of minors for illegal activities;

b) illicit brokering and labor exploitation under Article 603-bis of the Penal Code;

c) crimes referred to in Article 22, paragraph 12, of the legislative decree 25 July 1998, n. 286, and subsequent amendments and additions.

4. Is not admitted, also, to the procedure referred to in this Article, the employer who, following the fulfillment of the procedures for entry of foreign nationals on grounds of dependent employment or the procedures for transforming undeclared work into regular employment has not provide for the subscription of the contract of stay at the one-stop-shop or the subsequent employment of the foreign worker, except in cases of force majeure not attributable to the employer.

5. The declaration referred to in paragraph 1 is submitted upon payment, in the modality provided by the interministerial decree referred to in paragraph 1 of this Article, at a flat rate of €

1,000 for each worker. The contribution is not tax-deductible. The regularization of the sums owed by the employer at salary, contributory and tax level equal to at least six months is documented at the conclusion of the contract of stay according to the procedures provided by the ministerial decree referred to in paragraph 1. The foregoing is without prejudice to the obligation to adjust the amounts due for the entire period in case of labor relations for more than six months.

6. From the date of entry into force of this decree until the conclusion of the proceedings referred to in paragraph 1 of this Article shall be suspended criminal and administrative proceedings against the employer and the employee for violations of the rules concerning:

a) entry and residence in the country, with the exception of those referred to in Article 12 of the Legislative Decree 25 July 1998, n. 286, and subsequent amendments and additions;

b) hereof and in any case of employment of workers, even if it is of a financial, tax, social security or welfare.

7. With the decree referred to in paragraph 1 are set the income levels required for the employer in order to regularize the employment relationship.

8. In the declaration referred to in paragraph 1 is set the agreed remuneration which cannot be less than what is provided under the present collective national contract of reference and, in case of domestic work, the working hours cannot be less than what provided under Article 30 - bis, paragraph 3, letter c) of the Regulation referred to the Decree of the President of the Republic August 31, 1999, n. 394.

9. The One-stop shop for immigration, once verified the admissibility of the declaration and given the opinion of the police on the lack of grounds for refusal to access to procedures or to the issuing of a residence permit, as well as the opinion of the competent territorial direction of work with regard to economic employer's suitability and to the fairness of the conditions of employment applied, shall summon the parties to stipulate the contract of stay and to apply for the residence permit for work, upon certification of payment of the lump sum and regulation referred to in paragraph 5. The mere existence of clerical errors do not constitute a reason for inadmissibility with regard to the declaration of emergence. Failure to provide any of the parties

without justification involves the dismissal of the case. Concurrently with the signing of the contract of stay, the employer must make the mandatory reporting of employment to the Job Centre or, in case of domestic employment, to the INPS. Remains applied the provision referring to the obligation subject to the applicant requesting the residence permit

10. Where the declaration of emergence referring to the abovementioned Article is not submitted or there is the dismissal or the rejection of the declaration, the suspension referred to in paragraph 6 ceases, respectively, on the date of expiry of the deadline for the submission or on the date of the filing or rejection of the declaration itself. The criminal and administrative burdens at the expense of the employer are filed in the event that the negative outcome of the procedure is derived from reason independent of the will or behavior of the employer.

11. In the arrears of the definition of the procedure referred to in this Article, the foreigner cannot be expelled, except in cases provided for in paragraph 13. The signing of the contract of stay, together with the mandatory reporting of employment referred to in paragraph 9 and the issuance of the residence permit entail, respectively, for the employer and the worker, the extinction of crimes and administrative offenses related to violations referred to in paragraph 6.

12. The contract of stay concluded on the basis of a declaration of emergence filled with data that are untrue is deemed invalid in accordance with Article 1344 of the Civil Code. In this case, the residence permit issued is revoked pursuant to Article 5, paragraph 5, of the legislative decree 25 July 1998, n. 286, and subsequent amendments and additions.

13. Cannot be admitted to the procedure provided for in the aforementioned Article, foreign workers:

a) who have been issued a deportation order pursuant to Article 13, paragraphs 1 and 2, letter c) of the legislative decree July 25, 1998, n. 286, and Article 3 of Law-Decree of 27 July 2005, n. 144, ratified with amendments by Law 31 July 2005, n. 155, and subsequent amendments and additions;

b) who have been reported, even on the basis of international agreements or conventions in force in Italy, not to be admitted into the territory of the State;

c) who have been convicted, even if the sentence is not final including that delivered after the application of the penalty required under Article 444 of the Code of Criminal Procedure, for any of the offenses referred to in Article 380 of the same code;

d) who are still considered a threat to or for the safety of the State or of one of the countries with which Italy has signed agreements for the abolition of controls at internal borders and the free movement of persons. In the dangerousness' assessment of the foreigner is taken into account also any convictions, even if the sentence is not final, including those given in response to application of the penalty required under Article 444 of the Code of Criminal Procedure, for any of the offenses provided for in Article 381 of the same code.

14. By decree of the Minister of the Interior in consultation with the Minister of Labour and Social Affairs, the Minister for International Cooperation and Integration and the Ministry of Economy and Finance, are determined the procedures to pay the contribution lump sum referred to in paragraph 5 of this Article, taking into account the provisions pursuant to paragraph 17.

15. Unless the fact constitutes a more serious crime, anyone who declare false statements or certifications, or contributes to the fact, under the procedure of emergence provided for in this Article, is punished pursuant to Article 76 of the decree of the President of the Republic December 28, 2000, n. 445. If the fact is committed through forgery or alteration of documents, or with the use of one of these documents, the penalty of imprisonment from one to six years is applied. The penalty's length increases if the act is committed by a public official.

16. Pursuant to the effects resulting from the implementation of this Article, the level of funding for the National Health Service concurrently funded by the state is increased by € 43 million for 2012 and € 130 million from the year 2013. By decree of the Minister of Labour and Social Policy, in consultation with the Minister of Economy and Finance, after consultation with the Permanent Conference for relations between the State, the regions and the autonomous provinces of Trento and Bolzano, the above amounts are allocated to the regions according to the number of non-EU workers emerged under this article.

17. The net costs arising from this article, amounting to 43.55 million euro for the year 2012, 169 million euro for the year 2013, € 270 million for 2014 and € 219 million from 2015, it shall,

as to 43.55 million euro for the year 2012 out of the major revenue assigned to the state budget by the decree referred to in paragraph 14 and, as a 169 million euro for the year 2013, 270 million for 2014 and € 219 million from the year 2015, by a corresponding reduction of state transfers to INPS in respect of advances budget to cover the total amount of funding of the Agency, as a result major contribution revenue arising from the provisions of this article.