

**“Reconciliation” and “Administration”: the work-life balance
for women working in italian public administration***

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1. Introduction: “Reconciliation” as a challenge for the public sector in the 21st century.

Reconciling work, family and private life is a great challenge for working women in the 21st century.

Before examining the ways in which legislation has made this possible in the Italian system, it is appropriate to recall briefly that the concept of reconciliation has been defined by jurisprudence as the “combined exercise of fundamental rights such as safeguarding family life, protecting working women and guaranteeing gender equality”⁵⁶².

A working life that also includes time devoted to caring, that is, time during which people can express what Massimo D’Antona⁵⁶³ identified as the «right to be useful», which depends on the «guarantee that society will offer adequate job opportunities allowing each person to make an active contribution, even outside the world of production and trade». «For the State it involves the fulfilment of new tasks, such as the organisation and promotion of types of employment that, while not involving production, allow people to have significant experiences and build up social relationships through work».

Debate regarding this topic has become increasingly lively⁵⁶⁴, assisted by fertile terrain at a supranational level, which ever more frequently has resorted to soft law intervention⁵⁶⁵.

This is probably because people are becoming increasingly aware of the “social value of motherhood (or even “diverse” fatherhood), seen as a unique *magistra vitae*, due to its capacity to instil the ethics of results better than any other experience”⁵⁶⁶.

Great interest in these issues is currently being shown in Italy, especially concerning a particular

⁵⁶² Calafà L., *Paternità, lavoro e conciliazione condivisa nel diritto europeo*, in Calafà L. (ed.), *Paternità e lavoro*, Il Mulino, 2007; and earlier Calafà L., *Congedi e rapporto di lavoro*, Cedam, 2004; Santucci R., *Flexicurity e conciliazione tra tempi di vita e tempi di lavoro*, in DLM, 2007, p. 581.

⁵⁶³ D’Antona M., *La grande sfida delle trasformazioni del lavoro: ricentrare le tutele sulle esigenze del lavoratore come soggetto*, in F. Amato (ed.) *I destini del lavoro. Autonomie e subordinazione nella società post-fordista*, 1998, Milano, Angeli, 138-152, now in Caruso B., Sciarra S. (eds.), *Opere*, p. 249 ff., 2000, Giuffrè.

⁵⁶⁴ For the debate started by Spanish jurisprudence, see the analysis by Lopez J., *Famiglia e condivisione dei ruoli in Spagna*, LD, 2001, p. 163 ff. Lopez J, Chacartegui Javea C., *Las políticas de empleo comunitarias sobre inserción de la mujer en el mercado de trabajo*, in REDT, 2000, n. 99, pp. 5 ff. In Italy it has been said that “conciliation policies for working parents have become one of the key issues around which social reform in the 21st century rotates”; see at least A. Donà, *Donne e lavoro quali i risultati delle politiche di conciliazione in Italia*, Riv. It. Pol. Pubbl, 2009, p. 109.

⁵⁶⁵ Cf. the common principles concerning flexicurity adopted by the Council, especially that of 6 December 2007, doc. 16201/07, which states that “Flexicurity should support gender equality, by promoting equal access to quality employment for women and men and offering measures to reconcile work, family and private life”; the communication from The Commission “A better work-life balance: stronger support for reconciling professional, private and family life”, COM(2008) 635 final, 3.10.2008; The Commission’s programme for 2006-2010 on gender equality, COM(2006) 92 final, 1.3.2006, which includes a chapter entitled “Enhancing reconciliation of work, private and family life”; The Commission’s report “Equality between women and men – 2009”, COM(2009) 77 final, 27.2.2009, which states that “Policies for promoting women’s participation in the labour market must therefore have an integrated approach, including strategies for eliminating gender stereotypes and measures for improving the work-life balance of both women and men”. See *Il quadro europeo degli strumenti di incentivo alla conciliazione tra vita familiare e vita lavorativa*, DRI, 2007, n. 2, p. 580.

⁵⁶⁶ Kostoris F., *Le politiche per la donna nel mercato del lavoro italiano*, in Kostoris, Servidori, Bettoni (eds.) *Occupazione femminile: una leva per la competitività*; dossier adapt 3 March 2008, n.2, to be found at <http://www.csmb.unimore.it/on-line/Home/NewsletterBollettinoAdapt/IDossierdiAdapt.html>.

employer: public administration⁵⁶⁷.

It has, among other things, been observed that “If Italian society succeeded, after centuries of obscurantism, in recognising the aptitude for *problem-solving* that every mother has to develop to raise her children, men would understand that fatherhood is a unique, unmissable opportunity for them to learn what the system does not usually teach: not just the feel-good factor of «collaborating» or «sympathising» with their partners, or even tasting joys that are unknown in our national tradition, but to learn the ethics of results from the unique experience of bringing up babies and children.”⁵⁶⁸.

It therefore seems appropriate to establish how our system has made it possible for women to exercise their right to reconcile work, family and private life in the sphere of Italian public administration.

Great reforms⁵⁶⁹ regarding this topic have been announced by the Italian Minister for Public Administration.

In this area, in fact, the intention to provide incentives for female employment has been loudly proclaimed but, as so often happens, the announcements have not really found a practical application.

It has been said that there is a great distance between laws concerning gender equality and what actually happens in the labour market. It has been defined as a “split between the grammar and practice of equal opportunities”⁵⁷⁰.

It could be maintained that there is an imbalance between the drafting of reforms at a macro level and their implementation at a micro level.

In this investigation existing legislation (regulation at a macro level) has been separated from collective bargaining, with particular reference to supplementary decentralised bargaining (implementation at a micro level).

The terms macro and micro were taken from Donata Gottardi who, in an essay published in 2001⁵⁷¹, suggested abandoning references to national/company levels in favour of terms that would clearly highlight measures regarding context and procedure (macro level) and those aiming to provide working women with practical, or even individual, solutions (micro level).

The attempt was to understand the effectiveness of implementation of measures aiming to permit real reconciliation between work and non-work commitments.

⁵⁶⁷ A lively debate has arisen regarding ethical behaviour in public administration; in the relevant literature see at least Mattarella B.G., *Il diritto dell'onestà, etica pubblica e pubblici funzionari*, in Il Mulino, 2007, pp. 35 ff.; and Ibidem, *Le regole dell'onestà*, 2007, Il Mulino.

⁵⁶⁸ Kostoris op. cit.

⁵⁶⁹ See the reforms signed by Minister Brunetta, which aim to improve public administration in Italy, at <http://www.innovazione.gov.it/ministro/salastampa/notizie/6757.htm>

⁵⁷⁰ Kostoris op. cit.

⁵⁷¹ Gottardi, *Lavoro di cura spunti di riflessione*, in LD, 2001, p.135.

Before illustrating the results of the analysis, a premise is necessary.

Public administration is a special kind of employer because, although a contracts system was introduced in Italy in 1997/98⁵⁷², the terrain on which it works is dominated by the idea that its activity is to pursue the public interest with which it is entrusted.

Any decisions concerning employment relationships are the same as those made by a private employer; any decisions concerning the organisation of the administration, on the other hand, focus on the public interest.

This clarification is necessary if we consider that working hours in public administration are in some cases based on meeting the requirements of the public⁵⁷³ (the end users) and that they therefore do not always tally with the availability of female employees.

The real problem in enabling women to reconcile work and non-work life in Italian public administration lies in the unavailability of working hours that have to be based on user requirements.

According to Art. 2, par. 1, letter e, of Legislative Decree 165/2001, which provides for the harmonisation of working hours and user requirements, the public employer is free to support the process of work/life reconciliation to the advantage of women but finds itself limited by the purpose of its work, which consists of promoting the welfare of the community as a whole.

Here we have a conflict between two values of equal constitutional dignity: the efficient running of public administration (Art. 97 of the Italian Constitution) and looking after a family (Arts. 31⁵⁷⁴ and 37 of the Constitution).

We therefore have a *balancing test* based on the fact that the employer, who should take measures to favour reconciliation, is under a constraint to pursue the purpose underlying its activity.

This has to be the leitmotif of the whole analysis, as it provides the key to understanding many of the measures introduced, above all at a territorial level.

After this necessary premise, let us analyse measures in the field of public employment that can be considered to have been adopted to favour reconciliation.

The paper is divided into two parts.

⁵⁷² There is a vast amount of literature on the subject. However, a fundamental text to grasp the reasoning behind the privatisation of employment in public administration is D'Antona Massimo, *La contrattualizzazione del rapporto di lavoro con la pubblica amministrazione*, in Caruso and Sciarra (eds.), *Opere*, vol. IV, 1998, now in 2000, Giuffrè, p. 221 ff.; and ibidem, *Lavoro pubblico e diritto del lavoro: la seconda privatizzazione del pubblico impiego nelle "leggi Bassanini"*, in Caruso and Sciarra (eds.), *Opere*, vol. IV, 1998, now in 2000, Giuffrè, p. 233 ff.

⁵⁷³ On this topic, see Carabelli U., Leccese V., *L'attuazione delle direttive sull'orario di lavoro tra vincoli comunitari e costituzionali*, in WP. C.S.D.L.E. "Massimo D'Antona", IT, n. 38/20004, at www.lex.unict.it/eurolabor/ricerca/presentazione; Scarponi S., Pizzoferrato A., *La disciplina in materia di orario di lavoro*, in Carinci F. D'Antona M. (eds.), *Il lavoro alle dipendenze delle amministrazioni pubbliche*, 2000, Giuffrè, p. 1754; Forte P., *Commento sub art. 3*, in NLCC, 1999, p. 1090; Boscati A., *La disciplina dell'orario nelle amministrazioni pubbliche tra legge e contrattazione collettiva*, in Carinci F. (ed.), *Orario di lavoro, legge e contrattazione collettiva*, 2001, Giuffrè, p. 240.

⁵⁷⁴ The Italian Republic provides tax concessions and other benefits for the forming of families and the relative tasks involved, especially for large families. It safeguards motherhood, infancy and childhood by providing the necessary measures (Art. 31) Working conditions must be such as to allow women to perform their essential role within the family and ensure special, adequate protection for mothers and children. (Art. 37 I par. II cpv).

The first is devoted to centrally-adopted legislative measures that we could define as macro implementation of reconciliation policies.

The second part, on the other hand, focuses on measures that can be defined as micro implementation at a peripheral level, above all by the bargaining partners, in the context of supplementary decentralised bargaining.

2. “Macro” implementation of policies favouring the work-life balance in public administration.

As regards the first area of interest, macro implementation, it seems appropriate to observe first of all that public employment is by no means immune to phenomena of segregation and, at times, episodes of discrimination.

Statistical data⁵⁷⁵ shows that in this context as well “glass ceilings” (an invisible barrier excluding women from upward mobility) and “sticky floors” (which trap women in unskilled, low-wage, low-mobility jobs involving the simplest administrative tasks) are quite common.

The number of women in high-ranking positions is still low or quite insignificant⁵⁷⁶.

The percentage of women who succeed in reaching the highest management positions remains much lower than that of their male colleagues.

While it is true that women’s decisions regarding their profession are conditioned by their role within the family, the impact of the organisational context of public administration on the gap unfavourable to women is also undeniable⁵⁷⁷.

Over the years legislation has introduced general measures that can be used to implement reconciliation policies in public administration.

In turn, the social partners have introduced a number of national measures which, however, are mostly limited to entrusting decentralised collective bargaining with the task of dealing with working hours and equal opportunities.

In an attempt to identify the macro measures taken in public administration to support reconciliation, the following observations can be made:

a) Part-time employment in the public sector undoubtedly plays an important role in eliminating the gap separating men and women due to the difficulty of effectively reconciling work and non-work commitments. However, as will be pointed out later, this statement should not make us

⁵⁷⁵ See Tables in the Appendix to Dossier n. 2/2008 *Le politiche per la donna nel mercato del lavoro italiano*, in Kostoris, Servidori, Bettoni (eds.) *Occupazione femminile: una leva per la competitività*, op. cit.

⁵⁷⁶ See also the data in the summary report presented in 2007 by the Presidency of the Council of Ministers, Departments for Public Administration and Equal Opportunities, “*Misure per attuare parità e pari opportunità tra uomini e donne nelle amministrazioni pubbliche*” at http://www.innovazionepa.it/dipartimento/docs_pdf/Rapporto_2007.pdf

⁵⁷⁷ De Cristofaro M. L., *Azioni positive per valorizzare il lavoro femminile nelle pubbliche amministrazioni*, in Various Authors, *Le azioni positive nelle pubbliche amministrazioni*, Edis – Calabria, Opuscoli, 1994, p. 21; on this topic, see also Scarponi S., *La disciplina in tema di parità e di pari opportunità*, in Carinci F. D’Antona M. (eds.), *Il lavoro alle dipendenze delle amministrazioni pubbliche*, 2000, Giuffrè, p.1769 ff.; Saracini P., *Divieti di discriminazione e pari opportunità*, in Carinci F. Zoppoli L., (eds.), *Il lavoro nelle pubbliche amministrazioni*, 2004, Utet, p. 548 ff.

forget that part-time employment is a dangerous solution which may transform into a way of implementing discriminatory policies.

Here there has been a reversal in the regulatory trend. For a length of time, part-time employment was a right public sector employees were entitled to. In 2008, Law 133 transformed this right into a mere option⁵⁷⁸ for the public employer, who is no longer obliged to grant part-time employment to a female employee requesting it.

The bargaining partners have, however, proved to be more effective in promoting the possibility of reconciling work and family life: following the direction taken by the old regulations, they have succeeded in maintaining the worker's right to recognition of her entitlement to part-time employment.

The trade unions then padded out the law, most significantly establishing that in exchange for a limitation in the percentage of requests for part-time employment that an administration can accept (25% of the full-timers), preference must be given to "parents of minors in relation to their number"⁵⁷⁹. Bargaining at an autonomous local level was even better: besides the same preference⁵⁸⁰, it introduced the possibility of recourse to part-time jobs for those in posts of organisational responsibility⁵⁸¹, that is, lower management.

If the glass ceiling keeps women out of top management posts, the same cannot be said for lower management⁵⁸² or executive positions in the public sector, posts of prestige and merit.

Therefore the possibility of being able to count on working hours flexibility or part-time may allow women who aspire to such posts to access them more easily and achieve a modulation in working hours that allows them to reconcile work and family commitments.

The real problem is the possibility of working part-time for those in top management posts.

The unavailability of more flexible working hours at the highest administrative levels automatically limits the number of women in prestigious positions in public administration.

⁵⁷⁸ According to Law L. 133/2008, in fact, "The transformation of an employment relationship from full-time to part-time may be granted by the administration within sixty days of the request, which shall indicate the subordinate or autonomous work the employee intends to carry out. Within the above-mentioned time, the administration will deny the transformation of the relationship if the autonomous or subordinate working activity implies a conflict of interest with the specific service provided by the employee, that is, if the transformation should, in relation to the responsibilities and organisational position of the employee, adversely affect the functionality of said administration. [...]". Of the various comments, see Caruso B., *La flessibilità (ma non solo) del lavoro pubblico nella L. 133/08 (quando le oscillazioni del pendolo si fanno frenetiche)*, in LPA, 2008, p. 465 ff.

⁵⁷⁹ See Collective National Contract, Ministries, at www.aranagenzia.it.

⁵⁸⁰ Cf. Collective National Contract, Local Authorities, 1998/2001 and Art. 4, which states "[...] If the number of requests relating to the cases in paragraphs 4 and 11 exceeds the percentages established in these paragraphs, precedence shall be given [...] to parents of minors, in relation to their number.

⁵⁸¹ Cf. Art.11 of Collective National Contract for Local Authorities, which establishes that the following paragraph 2.bis be inserted in Art. 4 of the Collective National Contract of 14.9.2000, after paragraph 2: "Municipalities with no management levels, in relation to the specific organisational requirements deriving from the current system, will identify, if necessary and possibly as a temporary measure, the organisational posts that can also be offered to staff working no less than 50% of the full-time working hours. The principle of re-proportioning salaries also applies to position-related bonuses".

⁵⁸² Cf. 2008 report by Departments of Public Administration and Equal Opportunities quoted in note 15.

Since the introduction of employment contracts for managers in the public sector in 1997-98, there has been a radical change in the way these people work.

Management increasingly focuses, in fact, on the achievement of efficient results.

Managers are assessed and penalised according to their achievement or failure to achieve the targets set out by political leaders⁵⁸³.

Over what period of time a manager is required to achieve these results does not matter.

Nor does it matter whether they have to take up some of their non-work time or, on the contrary, spend little time at their desks; what matters is their achievement of results at the end of the period allowed for assessment of their performance, usually a year.

For this reason time is not always a commodity available to a senior executive.

So true is this that in local authorities, for example, there are no measures in place to check the arrival and departure times of senior executives who, unlike other employees, do not have to clock in and out.

Given this new regulatory framework, it is reasonable to doubt whether those in top management can access part-time employment⁵⁸⁴.

It is just at this point in our system that it may be necessary to take measures to enable a female senior executive to reconcile work and non-work life.

For women, the fluidity and inflexibility of the time needed to meet targets may be quite a significant deterrent to aspiring to a senior executive post in the various sectors of public administration.

It is, however, legitimate to ask whether granting women managers the opportunity to access part-time employment as a way to reconcile work and family commitments might not end up by becoming a sort of *reverse discrimination* against their male colleagues.

In the same way, it should be stressed that part-time work cannot be considered as the only solution for women who aspire to a senior executive post.

The current regulations regarding public administration management posts in Italy lends itself well to a scenario in which the employer, in distributing such posts, might reserve the less prestigious ones for part-timers.

In cases such as these, industrial tribunals should apply the expertise gained in the sector of private employment, where part-time work is notoriously used as an apparently neutral criterion to perpetrate forms of indirect discrimination.

b) Other measures that can favour reconciling work and non-work in the public sector seem to be those aiming at positive action.

⁵⁸³ See Nicosia G., *il polimorfismo della dirigenza pubblica e la "buona amministrazione"*, in QDLRI, 2009, p. 65 - 110; Nicosia G. *La dirigenza statale tra fiducia, buona fede e interessi pubblici*, DLRI, 2003, p. 253-302.

⁵⁸⁴ Some authors maintain that it is applicable on the basis of an old law – Law 448/1999 – which modified Art. 39 of Law 18 bis/1997. Cf. Voza R. *Il lavoro a tempo parziale ed il regime delle incompatibilità*, in Carabelli U. Carinci M.T., (eds.), *Il lavoro pubblico in Italia*, Cacucci, 2007, p. 130; but the prevailing jurisprudence considers the law to refer to management in the field of medicine.

According to Art. 7 of Legislative Decree 165/2001 “Public administration shall guarantee equality and equal opportunities to both men and women in access to employment and treatment in the workplace.”

For the legislator, then, positive action in the public sector is an obligation.

After all, as mentioned previously, public administration operates on terrain dominated by the provisions of the Constitution, including the essential role played by Art. 97, quoted above, which requires the respect of impartiality and best practice. And it cannot be denied that both principles translate into a duty on the part of public administration as an employer to take all initiatives to overcome situations of inequality in any sector that in fact ignores these principles.

Without going into the broad debate on the topic⁵⁸⁵, it is, however, appropriate to point out that positive action in public administration can easily favour the reconciling of work and non-work time; it is sufficient to think of solutions such as parental leave or crèches.

It is thus possible to share a few thoughts about the matter of setting up crèches, leaving an analysis of parental leave (Law 53/2000 and Legislative Decree 151/2001) to the vast amount of literature on the topic.

This is because in the public sector, and in particular local authorities, the bargaining regulations adhere by and large to those that apply to the private sector.

The situation regarding crèches, on the other hand is more varied.

To date, the setting up of crèches is the most sought-after positive action in public administration because it can remove the gap in the respective starting positions separating men and women and, at the same time, can make it effectively possible to reconcile work and non-work commitments, in the sense of care and travelling time.

In the last 10 years the number of state-run crèches or nursery schools for children under the age of three has not increased, unlike private schools, which have gone from 7 to 20% of the total.

The percentage of users in Italy is only 7%, as compared with an average of 30-40% in Central and Northern Europe.

This is very low if compared with that of other European countries such as France (where the coverage is 29%), Germany (10%), Finland (22%), Ireland (38%) and Denmark (64%)⁵⁸⁶. The data is confirmed by the poor distribution of nursery schools in our country. In all, in 2000 there were just over 3,000. Most were in Lombardy (567 state and private nursery schools), followed by Emilia Romagna (403), Veneto (322), Tuscany (253) and Piedmont (248), Sicily (172) and Campania (102). The most critical situation is in Molise, where there are just 5

⁵⁸⁵ With reference to the public sector, see Scarponi S., op. cit.; Saracini P., op.cit.

⁵⁸⁶ Compare the data provided by Profeta P. in *Occupazione femminile conciliazione e sviluppo economico*, to be found at <http://www.mercatoeconcorrenza.unige.it/prin2006/profeta.htm> and presented under the national research project coordinated by Ballestrero M. V. “*La gestione delle risorse umane nella prospettiva della conciliazione tra vita professionale e vita familiare: il ruolo del diritto del lavoro*”. The results of the project are about to be published in Ballestrero M.V and De Simone G. (eds.), “*Persone, lavori, famiglie. Identità e ruoli di fronte alla crisi economica*”.

nursery schools, i.e. 0,2% of the total number, followed by the Valle d'Aosta with 11 (0,4%) and Basilicata with 28 (0,9%)⁵⁸⁷.

Given this lack, legislation in 2002 and 2003 provided support to enable public administration to favour the possibility for parents to reconcile family and work commitments.

The Financial Acts for 2002⁵⁸⁸, 2003⁵⁸⁹ and 2007⁵⁹⁰ set up a fund to support the opening up of nursery schools in the workplace.

Implementation is a response to the intuitive aim of focusing on the needs of workers and their children and making an effective contribution to one of the most significant social needs in our country: the insufficient amount of nursery schools, which still forces families to spend long periods on waiting lists and inevitably limits the development of female professionalism in the world of work. The opening of nursery schools in the workplace brings undoubted benefits to both employers and employees.

a) From the employer's point of view, an improvement in the quality of the work performed because the worker is able to concentrate better; serenity at work means more productivity and reduces the costs of absenteeism due to family problems; professional and interpersonal relationships between employers, employees and collaborators improve; female staff have an incentive to return to work after the obligatory 5 months of maternity leave.

b) From the worker's point of view, a nursery school in the workplace offers parents the opportunity, by using leave of absence, to take part in the educational activities in the school; the parent only makes one journey from home to the workplace/nursery school and vice versa; it eliminates the stress of having to battle with traffic to pick the child up; there is more free time and the atmosphere becomes more relaxed; both parents can pursue a working career without penalising the upbringing of their children.

But how many experiences of this kind have been made possible by our public administration?

Very few.

The new Italian Government is promoting a "Public Administration" nursery school project (2009) which intends to introduce practical family support measures, with the aim of enabling workers to reconcile work and family; it is promoting the development of pre-school childcare services for the children of state employees up to the age of three, thus supplementing the Government's special provisions for early infancy.

⁵⁸⁷ Cf., Campini, Gentile, Molinari, *Dove sono gli asili nido?*, in Ancrivista, 2006, p. 61; see Del Boca, Vuri, *Mi fa paura l'asilo nido?*, on *La voce; Info*, 3 gennaio 2007, <http://www.lavoce.info/articoli/pagina2514.html>

⁵⁸⁸ Art. 70 of the Financial Act for 2002, Law 448/2001, states "a Fund has been set up for nursery schools included in the expenditure of the Ministry of Labour and Social Policies. 2. Nursery schools, as structures aiming to guarantee the education and socialisation of children between the ages of three months and three years, and to support families and parents, are one of the basic responsibilities of the State, the regions and the local authorities. [...]".

⁵⁸⁹ Art. 91 of the Financial Act for 2003 states "in order to ensure adequate family support for workers with children, from 2003 a Rotating Fund has been set up to support employers who provide nursery school and crèche facilities in the workplace, as established by Art. 70 of Law 448, 28 December 2001 [...]".

⁵⁹⁰ Art. 193 of Financial Act for 2003; see Del Boca, Vuri, *Mi fa paura l'asilo nido?*, on *La voce; Info*, 3 gennaio 2007, op. cit. .

This is being piloted by the Minister for Equal Opportunities, who opened a nursery school in the Ministry in 2002.

3. “Micro” implementation of policies favouring the work-life balance in public administration.

Let us now pass to examining our second area of interest: micro application of policies enabling work and non-work times to be reconciled.

As mentioned previously, this second field of investigation includes any local or territorial⁵⁹¹ measures aiming to provide working women with almost personalised forms of protection.

The micro sphere includes any initiatives taken following decentralised supplementary bargaining which, since they have been promoted by single local authorities, can be seen as being closer to the individual sphere of the working woman. As my place of investigation I chose local authorities because it is there that one can better grasp the continuous attempt to combine the public interest with possible policies enabling women to reconcile work and family commitments.

a) *The regulation of working hours*: as established by national contracts applying to local authorities, working hours policies are dealt with through decentralised bargaining.

The parties usually agree that working hours should try to satisfy different needs. On the one hand, the need for office opening hours to be organised in such a way as to meet the needs of a public service; on the other, the worker’s interest in being able to benefit from the possibility of flexitime, as long as it compatible with the organisation of the offices and the work to be performed, above all when the request comes from employees in situations of personal, social or family disadvantage (in some cases, importance is attached to the needs of employees with school-age children) and employees engaged in voluntary work⁵⁹².

To this attempt at reconciliation must be added the decision to recognise flexible working hours at both ends of the working day, in a range of tolerance which usually goes from a minimum of 15 to a maximum of 30 minutes (contracts generally stipulate that this time is to be made up on the same day, even though in some cases workers are allowed to make it up during the month).

At a decentralised level, therefore, there emerges a certain sensitivity towards women workers by means of measures regarding working hours.

In addition, in compliance with Art. 38 bis of the Collective National Contract of 14.9.2000, various agreements in municipalities of different sizes regulate a “working hours bank”, establishing an individual working hours account, i.e. the opportunity to pay any extra time worked into a special account and then take a corresponding amount of time off.

⁵⁹¹ See Spinelli C., *La flessibilità degli orari per la conciliazione dei tempi di vita e lavoro: l’organizzazione municipale*, in Bavaro V., Carabelli U., Sforza G., Voza R., (eds.), *Tempo comune. Conciliazione di vita e lavoro e armonizzazione dei tempi della città*, Franco Angeli, 2009, p. 107 ff.

⁵⁹² Cf. the data from research coordinated by Carabelli U., *Contratti integrativi e flessibilità nel lavoro pubblico riformato*, at http://www.sspa.it/ArchivioCD/RicercheSSPACD5/A_D_I_P/Carabelli/frontespziocarabelli.htm and also in Bellardi, Carabelli, Viscomi, *Contratti integrativi e flessibilità nel lavoro pubblico riformato*, Cacucci, 2007. In connection with this topic, of the contracts examined see that of the “Comune di Casale Corte Cerreto” (Art. 16).

All this obviously has to respect the organisational requirements of the authority.

Finally, a number of agreements, fully applying regulations laid down by the national contract, establish that workers whose hours are divided into shifts or according to a multi-weekly schedule, should be granted a reduction in hours to 35 a week⁵⁹³.

To this we must add that there is a regulation (Art. 50, par. 7 Legislative Decree 267/2000) that gives the Mayor the power to intervene regarding working hours: among the powers of the head of a municipality, it is stated that “7. The mayor also coordinates and reorganises, on the basis of guidelines given by the town council and any criteria indicated by the region, the opening hours of shops and public services; in agreement with the competent territorial authorities, he/she also oversees the opening hours of local public offices, with the purpose of harmonising the provision of services with the overall and general requirements of the users.”

The regulation offers an opportunity to mention an interpretative problem that needs solving quickly and affects the problem of reconciliation quite strongly.

Up to now we have almost taken it for granted that the trade unions can bargain for working hours that allow workers to reconcile work and non/work.

This presupposes that the topic of working hours, or opening hours, has nothing to do with the constraint of purpose; that is, that the decision as how to modulate working hours does not have any immediate effect on the public interest, as it involves private law (micro organisation), but only a mediated effect.

Art. 54 of the recent Brunetta⁵⁹⁴ reform states that “topics concerning the organisation of offices are in particular excluded from collective bargaining”.

Now, if we accept the thesis⁵⁹⁵ whereby such topics also include opening hours, the result is the exclusion of working and opening hours from the competence of the bargaining partners, with all the imaginable consequences.

If used well by administrators, the regulation could be a great resource in promoting reconciliation on a territorial basis, although sensitivity to this does not seem to be very widespread, except for a few cases of excellence such as the city of Modena and the Emilia Romagna region in general (see the site www.tempopermettendo).

b) positive action at a local level.

As regards positive action, there are very few cases in which the parties have identified specific action to be taken by local authorities.

⁵⁹³ Cf. The data in the contribution by Saracini P., Chirillo G., *La contrattazione integrativa nei comuni e nelle province nel periodo 1999-2002*, coordinated by Esposito M., in the research mentioned in the previous note. The contract stipulated by the City of Bologna (Art. 13) also identifies the sectors that will immediately be affected by this reduction in working hours; more specifically, the municipal police, funeral services, the Beltrame Centre for the Homeless, services provided in the sectors of culture and citizens' advice, town council messengers, school janitors, the specialised collaborators of the master of ceremonies of the Mayor's office, and district libraries.

⁵⁹⁴ Legislative Decree 150/2009.

⁵⁹⁵ Among others, cf. Scarponi S., Pizzoferrato A., op. Cit.; Forte P., op.cit; Boscati A.; op. cit.

The towns involved are usually medium – large in size. Action deemed to be positive includes the drawing up of anti-discrimination regulations and their application in relation to horizontal and vertical progression and the assignment of organisational responsibilities; the identification of measures to correct mechanisms leading to differences in bonuses between men and women; research, analyses and proposals regarding the collocation of women returning to work after maternity leave; specific training courses for workers focusing on self-esteem, the recovery of individual potential, and helping women to convince themselves that they can occupy posts typically held by men⁵⁹⁶.

c) Types of flexible work aiming to reconcile work and family commitments.

Where local contracts do appear to be more sensitive to reconciling work and family commitments concerns the types of flexible work local authority employees can do.

Flexible jobs most frequently the subject of supplementary contracts, especially in medium – large size towns or some provinces, are working from home and part-time work, in the latter case with quite detailed regulations.

As far as working from home is concerned, the partners have confirmed the potential of this form of employment as an extremely flexible way of permitting work and family to be reconciled. They have therefore expressed the intention of setting up experimental “e-work” projects with the aim of taking functional advantage of this type of flexibility consistently with the organisation of labour; to this end, they have identified the jobs most suitable for “e-work” experiments. At the same time the attempt is to safeguard the legitimate expectations of workers in terms of training and professional growth, socialisation, information and participation in a work context⁵⁹⁷.

As regards part-time work, on the other hand, decentralised bargaining regulates various issues, mostly the definition and regulation of bonuses connected with the achievement of results or the realisation of projects, in addition to other aspects not linked to the duration of the work.

The partners to local contracts often also stipulate: a) the maximum percentage of staff who are allowed to work part-time; b) priorities in the evaluation and acceptance of requests for transformation of a job from full-time to part-time and vice versa, in the event that there are too few places available⁵⁹⁸.

To report any inequality or penalisation with respect to full-time employees, special “employee information desks” are being set up⁵⁹⁹.

Many contracts also take account of the local authority’s intention, if compatible with organisational requirements, to find alternatives to part-time work for men and women who opt for it as

⁵⁹⁶ Cf. For example, the contracts of the towns of Casamicciola (Art. 6) and Larciano (Art. 13); data in Saracini, Chirilli, op. cit.

⁵⁹⁷ Cf. Cagliari (Art. 24); Palermo (joint declaration no. 7); the Province of Milan (Art. 8); the Province of Venice, which authorises those responsible for safe, healthy and maintenance to access the homes of e-workers at certain pre-established times of day (Art. 11), in Saracini, Chirilli, op. cit.

⁵⁹⁸ Cf. The town of Bresso (Art. 25); the town of Ortona (Art. 4); the Province of Venice (Art. 10); the Province of Milan (Art. 4). All data available in the research edited by Carabelli U., op. cit.

⁵⁹⁹ This is the case of the contract for the town of Casoria (art. 15); cf. The research by Carabelli op. cit.

a consequence of a heavy care workload or a psychological or physical handicap (different working hours, e-work, transfer on request to another office, etc.).

As a note to this analysis, decentralised bargaining seems to be relatively sensitive not only to the reconciling of work and family commitments but also to care.

Despite this sensitivity, however, no practical measures have been taken so far.

No decisive recipe has been found, in fact, as shown by ISTAT data⁶⁰⁰, from which it emerges that flexibility at the two ends of the working day is still a rarity – although on the increase in the public sector – and that the creation of nursery schools could reduce the recourse to part-time jobs.

This would undoubtedly be an advantage if we only think that part-time employment, apparently an excellent aid to reconciling home and work, may translate into an opportunity to limit professional growth, if not indirectly discriminate against working women.

To promote the employment of women in public administration it is not necessary to act on the modulation of working hours but rather on the offer of social guarantees and things like crèches that will allow women not to give up their professional aspirations to carry out their family duties⁶⁰¹.

At this point it is legitimate to wonder whether the many interests involved in the handling and reconciling of family, care and work, and the potential occurrence of conflicts even between parties represented by trade unions and their local branches, does not make decentralised collective bargaining the most suitable and efficient way to regulate the issue.

A topic so steeped in social relations, existential problems and values requires regulatory measures capable of dealing with such complexity. This would mean the participation not only of non-professional collective representatives but directly from civil society itself, its organisations and varied interests (non-profit organisations, female representatives, etc.).

Territorial pacts, which have become popular both in Italy and the rest of Europe since the turn of the century, are in my opinion a fundamental means of regulation of this type of policy, much more so than traditional decentralised collective bargaining, for two basic reasons:

a) first because they take the territory, and not only the workplace, as the area in which to implement these policies;

b) secondly because the object of regulation by territorial pacts concerns by definition aspects of social organisation (and the enhancement of social capital) and not only the organisation of labour⁶⁰².

⁶⁰⁰ Cf. A study by L.L. Sabbatini, Central Director of ISTAT, 29 September 2006, *Tempi di vita tempi di lavoro: permangono le disuguaglianze di genere*, at http://www.tempermettendo.info/gallery/interventi/Linda_Laura_Sabbadini_Istat.pdf.

⁶⁰¹ See Viscomi A., *I "tempi" delle donne nelle pubbliche amministrazioni*, in AA.VV., *Le azioni positive nelle pubbliche amministrazioni*, Edis Calabria, 1994.

⁶⁰² On all these aspects, see Caruso B., *Occupabilità, formazione e "capability" nei modelli giuridici di regolazione dei mercati del lavoro*, in DLRI, 2007, p. 1 ff.