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Ring in the changes to the Italian job market in 2015

Can Renzi succeed where other Italian Prime Ministers have failed? Luca Failla and Sharon Reilly, Partners, LABLAW Law Firm discuss the current state of play.



The Italian Prime Minister Matteo Renzi is tackling employment issues

The Jobs Act is one of the most debated pieces of legislation to pass through the Italian Parliament in a long time. Strictly speaking it is still a Bill (in limbo) in that although the enabling law was passed on 16th December 2014 and the initial guidelines were approved by Parliament on Christmas Eve, the "Bill" will not become an "Act" (in the Anglo-Saxone sense of the word) until later this month.

More flexible

The Jobs Act (named after Obama's American Jobs Act 2011) is yet another attempt to make the Italian labour market more flexible. The Act introduces a number of important changes; from an employment law perspective the single most notable (and some may say alarming) change is the section that deals with the remedies in the event of unfair dismissal. Historically the renowned Article 18 of the Workers Statute (*Law no. 300/1970*) provided for the sole remedy of reinstatement if a court found a dismissal to be unfair or unlawful. Now the goal posts are shifting and the remedy of reinstatement will practically disappear, except for in some very specific cases, namely: i) unlawful dismissal (where the facts on which the dismissal are based, are found to be non-existent), ii) discriminatory firings and iii) defective disciplinary dismissals, to be replaced by an award of damages. Such damages will be calculated based on length of service and no longer at the judge's discretion.

In short an employee would be entitled to damages to the tune of two months' salary for each year of service, with a minimum cap of four months salary though - to avoid "easy firings" of new employees - up to a maximum of 24 months. For companies with less than 16 employees (for whom reinstatement did not apply anyway under the old regime) there is a new reduced minimum level of damages: 1 months'salary for each year of service, up to a maximum of 6 months, as was the case before. However the quirk in the law is that as soon as a company crosses the 16-employee threshold, then all the employees on the payroll acquire the more favourable (damages) treatment described above, thus discouraging businesses to grow, yet again.

New hirings

A very controversial aspect of the reform is that it applies only to new hirings, thus creating two tiers of employees and leaving companies wide open to claims not only for discrimination, but worse still, unconstitutional action. The new regime of damages (ie no reinstatement) will also apply in the ambit of collective redundancies of employees hired after the law comes into force, should the company violate the information and consultation procedure in any way or not correctly apply the legal selection criteria when choosing which employees to dismiss.

The bad news is that, for the umpteenth time, the Italian legislature has failed to seize the nettle and put on the statute book "poor performance" as a reason for dismissal. This is very often a bone of contention, particularly for foreign companies operating in Italy who often have to resort to a more convoluted reason for dismissal albeit that they have a well-documented case for dismissing a poor performer who impacts negatively on the business.

The other revolutionary feature of the Jobs Act is the introduction of a new type of open-ended contract for new recruits, which will have "gradual" protections directly linked to the length of service. Critics of the new law say that this is a mechanism to have what is in effect an extended probationary period during which the employer can fire people without giving any reason and paying a minimum of damages.

However probably the most scandalous aspect of all is that the Jobs Act will not extend to employees in the public sector, which will apparently be subject to a shake up further down the line. This is particularly galling given the recent and much publicised events in Rome over the festive period, when over 80% of public sector employees (in a division of the local police), went on sick

leave over New Year. Difficult to digest for the ordinary Italian man in the street and impossible to comprehend for the rest of the world.

The Jobs Act is without doubt innovative by Italian standards; it has been the subject of much discussion throughout the country, which is a sure sign of its importance to Italian businesses. We shall have to wait for the Act to come into force later this month, to fully evaluate its momentum in helping to turn the Italian economy around.

Other recent changes in Italy

All change for executives (*dirigenti*), who are to be included in the collective redundancy process for the first time. *Dirigenti* are top-level employees, who up until now enjoyed fewer protections than the run-of-the-mill employees. However thanks to a decision of the European Court of Justice in February 2014 and the ensuing European Law 161/2014, Italy has recently passed its own law whereby *dirigenti* have to be included in the calculation that triggers a collective redundancy (that is where a company with more than 15 employees dismisses at least 5 of them within a period of 120 days).

Previously executives had been excluded from the whole collective redundancy process: that is information and consultation with the unions and the application of the legal selection criteria (technical/organisational needs of the company, family dependants and length of service). With the reform, companies will need to set up a separate negotiating table with the executives' unions and apply (so it appears) the selection criteria.

However such criteria do not take into account the peculiarity of the *dirigente* relationship: the bond of trust and fiduciary duty. Not only, but in the event of some defect in the procedure the executives would be entitled to damages of up to 24 months' salary thus effectively extending to them protections previously enjoyed only by employees. Good luck to companies who seek to embark on such a procedure early in the New Year - all (legal) eyes shall be on them.