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Luc Vanaverbeke
Linklaters

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Contents

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Author

Luca Failla specialises in providing assistance to national and international businesses in all areas of Italian employment and labour law – including providing counsel on Italian employment litigation, executive contract negotiations, directors and officers liability, competition protection, personnel reduction, corporate reorganisations, outsourcing, trade union negotiations, privacy, employment contracts, dismissals, and pension schemes, as well as company and commercial law.

1. Terms of Employment

1.1 Status of Employee

Blue-collar and white-collar workers (referred to as subordinate employees) are provided for by Article 2095 of the Italian Civil Code; the Article identifies four categories of workers and delegates special laws and collective bargaining specifically to them.

White-collar workers as defined by their professional status and absence of manual work. No definition of blue-collar workers is provided by law. Consequently, blue-collar workers are considered to be those workers who do not qualify as white-collar workers and whose work is mainly characterised by manual work.

Following the classification introduced by the National Collective Bargaining Agreements, no distinction between the aforementioned two categories appears to be in current use.

In addition, Italian law (specifically Article 2095 of the Italian Civil Code) identifies two further categories of workers: executives and managers (further intermediate categories may be provided for by collective bargaining).

Law dated 13 May 1985, No 190 (Article 2) defines executives as those workers who, though not belonging to a category of managers, perform ongoing functions of significant importance to meeting the company's objectives.

The category of managers is defined by the Collective Bargaining Agreement. A manager can be defined as an employee with decision-making powers and responsibilities regarding the future direction of the company.

The difference between the categories is important. Some workers, eg, managers, are excluded from the application of several legal provisions and are not beneficiaries of a series of protections (for example, unfair dismissal, fixed-term contracts, working hours).

1.2 Contractual Relationship

According to Italian law, both open-ended and fixed-term employment contracts may be used.

The most common type are open-ended, which usually extend to full-time contracts.

Open-ended Contracts

Even though there are no formal restrictions for entering into a full-time, open-ended employment contract, there is a legal obligation to keep the workers informed of certain matters and concerns relating to their employment relationship, eg:

- the identities of the parties;
- the workplace, when the employee is employed at a fixed or main place of work. In the absence of a fixed place of work, all places where the employee may be employed

need to be specified and the registered office or domicile of the employer must be enclosed in the contract;
- the starting date of employment;
- the duration of the employment contract;
- the duration of the trial period, if applicable;
- the placement, level and job title assigned to the worker, or the features of or a brief description of his or her duties;
- the starting salary and the specific elements composing it and periodic payments;
- the amount of paid leave or the method for calculating and taking leave;
- the working hours; and
- the notice period in the event of termination.

For providing the information listed under the fifth, seventh, eighth, ninth and tenth points above, the employment contract may refer to the National Collective Labour Agreement.

A written form is requested for inserting some specific clauses into the employment contract (such as the trial period).

Fixed-term Contracts

Except in those cases where the application of a term concerning the duration of a subordinate employment contract is not permitted by law, fixed-term employment contracts must meet specific requirements and are allowed – subject to the amendments to Legislative Decree No 81/2015, as introduced by the Dignity Decree (Law Decree No 87 of 12 July 2018 and the subsequent Law of Conversion of 9 August 2018 No 96) – provided always that the maximum duration of 24 months is respected, with the exception of seasonal activities and in cases where a different limit has been established by collective bargaining agreements.

Beyond this limit of duration, a further fixed-term contract between the same parties is only allowed if it is for a maximum duration of twelve months, signed before the local Employment Department.

Fixed-term contracts of up to twelve months do not require any specific reasons; specific reasons are, however, required for a term greater than twelve months as well as for extensions and renewals of contracts exceeding 12 but less than 24 months – previously, employers were allowed to hire workers on fixed-term contracts for a maximum of 36 months. Therefore, the last legal provisions introduced by the Dignity Decree have reduced the maximum duration of fixed-term contracts as well as the number of permitted extensions within the maximum period of 24 months (now four).

Should a term included in an employment contract take effect for longer than twelve months or the term be longer than 24 months, the contract will automatically convert into an open-ended employment contract as from the date when the term (12 or 24 months) was exceeded. The same consequence will apply if the procedures for entering into a new fixed-term contract are not complied with or if the maximum number of extensions has been reached.

Fixed-term employment contracts and their extension or renewal (and the reason for their extension or renewal beyond the initial twelve-month period) must be given in writing to the relevant employee (with the sole exception of an employment relationship lasting no more than 12 days), executed in two copies (one for the employee and one for the employer) within five days of the commencement of the contract. If this procedure is not followed correctly the initial fixed-term contract will be converted into an open-ended employment contract.

The contract shall include the reason for the use of the term. The fixed-term contract shall also explain the right of precedence for open-ended contracts for workers appointed under a fixed-term employment contract.

1.3 Working Hours

Normal working hours are fixed at 40 hours per week. Collective labour agreements may establish shorter working hours and express normal working hours as an average, based on a period not exceeding one year (Article 3 of Legislative Decree No 66/2003).

The distribution of working hours may thus exceed eight hours per day, provided that the working hours in the week do not exceed 40 hours on average.

Overtime work is work exceeding the average of 40 hours per week or exceeding any lower weekly working hours established by a collective agreement, but within the maximum limit of 48 hours per week.

A part-time employment contract (both in open-ended and fixed-term employment contracts) can be entered into at the time when the employment relationship is established or during the course of it.

The following reductions in working hours are possible:

- horizontal part-time work: when the working hours are shorter than the normal daily working hours established by law or by way of a collective labour agreement (for example, four hours a day instead of eight);
- vertical part-time work: the working activity is performed on a full-time basis but only on some days of the week, month or year (for example, eight hours a day but only on Tuesdays and Wednesdays); or
- mixed part-time work: a combination of the two aforementioned models.

A part-time employment contract must be drawn up in writing. Written form is required by law for the purposes of proof; if no proof can be provided, the employee may claim and obtain from the courts a declaration of full-time working employment, but only with effect from the date when the judgment was delivered.

The employer must provide part-time workers with the same information given to all employees when the employment relationship is established. Specifically, the part-time employment contract must enclose: (i) the duration of the work; (ii) the working time with reference to the day, week, month and year; and (iii) specific clauses allowing variations in the working times or an increase in the duration of work.

Supplementary work is work that exceeds an agreed reduction in working hours. Collective bargaining agreements may provide for pay increases in case of supplementary work.

Overtime is work that is performed beyond normal working hours. According to Article 5 of Legislative Decree No 66/2003, such work must be limited. Provided always that the maximum limit of 48 working hours per week is maintained, collective bargaining agreements regulate the rules for overtime. In the absence of a collective provision, the prior agreement of both the employer and employee is required; it must be limited and can only be requested for specific cases and events.

Except in specific cases (ie, in the case of student workers or when serious situations occur) the consent of the employee to work overtime is usually not required.

1.4 Compensation

According to Article 36 of the Italian Constitution, a worker has the right to receive a remuneration in proportion the quantity and quality of his or her work sufficient to ensure that he or she and his or her family live a free and dignified existence.

The law does not define "fair" remuneration; however, the national collective agreements determine the minimum wage for each category of employment (manual workers, office staff, middle management). The remuneration determined by collective bargaining agreements must be considered by courts to be equitable (as minimum wage) and consistent with the parameters set by the Italian constitution. This minimum remuneration is also considered by the courts to be a parameter to determine the minimum wage in cases where no collective bargaining agreement has been made.

If no national collective agreement has been made and a dispute arises regarding wages paid to employees, the judge is entitled (pursuant to Article 2099 of the Italian Civil Code) to make reference, in establishing a just minimum wage, to the salaries set forth by the national collective agreements in force in similar business sectors.

Article 2099 of the Italian Civil Code also sets a classification of forms of remuneration:

- remuneration determined on a time basis;
- remuneration determined on a piece-rate basis;
- remuneration that is determined on the basis of:
  - (a) profit or product-sharing (provided always with respect to Article 36 of the Italian Constitution;
  - (b) payment in kind: this is a complementary form of payment beyond traditional remuneration; and
  - (c) commissions (along with basic pay).

It is also important to consider:

- current remuneration, which includes:
  - (a) the minimum wage (base salary);
  - (b) the former contingent allowance, ie, the cost of living periodic adjustment, which is now included in the base salary;
  - (c) a separate element of remuneration (eg, "the third remuneration element" determined by the collective bargaining agreements);
  - (d) periodic seniority increases (only provided for by collective bargaining agreements);
  - (e) individual or collective extra allowance;
  - (f) third local elements;
  - (g) payment for supplementary work/overtime;
  - (h) bonuses determined by the employer (bonuses are generally agreed on an individual level in the letter of hiring or in the company's collective agreements). There is no legal right for the worker to receive a bonus; and
  - (i) indemnities provided by collective bargaining agreements in connection with the duties to be performed.
- indirect remuneration, that is, remuneration paid in relation to workers' absences from work, including the remuneration paid by the employer on behalf of INPS/INAIL (social security/insurance bodies) and the remuneration contractually due from the employer;
- deferred remuneration, that is remuneration accrued in a certain period but paid at different times (after the performance of the work). The timing of payment is usually established by collective bargaining agreements (during the year, such as the thirteenth and fourteenth monthly instalment) or when the employment relationship ceases (TFR); and
- additional remuneration, which includes fringe benefits, ancillary payments and expense refunds.

Pay increases, etc, are mainly governed by collective bargaining agreements.

1.5 Other Terms of Employment

According to Article 2109 of the Italian Civil Code, employees are entitled to one day of rest each week, usually a Sunday. After a year of uninterrupted service, employees are also entitled to an annual period of paid leave taken at a time established by the employer, taking into account the exigencies of the company and the interests of the employee. The duration of this period is fixed by law, corporate rules, common usage or on an equitable basis. The enterprise must inform the employee of the period established for their holidays. The notice period envisaged in Article 2118 (termination) may not include holidays.

Pursuant to Article 10 of Legislative Decree No 66/2003, a worker should have a minimum period of annual leave of no less than four weeks, which may not be substituted by payment except in the event of termination of the employment relationship.

Following the introduction of this rule and the supplementation of the original provisions already contained in Article 2109 of the Italian Civil Code, the period of annual leave must include at least two consecutive weeks in the year in which it is accrued – if requested by the employee – and the remaining two weeks within the subsequent 18 months following accrual.

Public holidays are recognised by the state as holidays where the workers' right not to work is guaranteed. If an employee does not work on a public holiday, he or she will receive their regular daily pay. If the employee works on a public holiday, he or she will receive their regular daily pay plus an enhancement as provided for by the collective agreements.

Legislative Decree No 151 of 26 March 2001 also provides for leave, rest periods, permits and maternity and paternity pay in respect of natural children, adopted children and foster children, as well as economic support for the parents. Part-time workers have the same rights as full-time workers as regards the duration of leave established under Decree No 151. The relative amount is proportionate to the reduced working hours.

In the case of illness, the law provides a so-called "period of grace" for which a post may be preserved following an illness that is protected under the system. Once this period has expired, the employer is free to terminate the employment contract.

The law on private employment (cf Article 6 of Royal Decree Law No 1825 of 13 November 1924) established that in the event that an employee becomes ill, the employer will preserve the post for the employee for a period of:

- three months, if the worker's length of service does not exceed ten years; or
- six months, if the length of service is over ten years.

Such a period of grace is also regulated by collective labour agreements.

Specific disability permits are provided in favour of disabled workers (Law No 104 of 5 February 1992) as well as for workers assisting a person with disabilities (Article 42 of Legislative Decree No 151/2001).

The protection of persons with disabilities is also guaranteed under Legislative Decree No 151 of 26 March, which allows working mothers or fathers to extend the period of parental leave (so-called "optional leave") for up to three years if the child has a disability, provided that the child is not resident full-time in a specialised facility, unless the healthcare provider has requested the presence of a parent (Article 33(1) of Legislative Decree No 151/2001).

Italian law also provides for:

- study permits;
- sabbatical leave;
- marriage leave: employees are entitled to a special paid permit in the case of marriage (except during a probationary period). They are entitled to the same salary they would have received if they had performed their normal duties; and
- leave for personal reasons.

Employees elected as members of the European Parliament, the Italian Parliament, Italian regional counsels or local governmental administrations are entitled to unpaid leave of absence for the entire duration of their mandate. Other leave may be envisaged by the collective bargaining agreement.

2. Restrictive Covenants

2.1 Non-competition Clauses

Article 2105 of the Italian Civil Code governs the duties of loyalty and non-competition during the course of employment.

According to Article 2105 of the Italian Civil Code, the employee shall not carry out any business on behalf of third parties in competition with the employer or divulge information concerning the organisation and production methods of the company or use them in such a way as to cause damage.

The non-competition obligation is part of a wider duty of loyalty and is structured to prevent workers from carrying out activities that exploit competitive advantages derived from their role in the company organisation and from their

knowledge of its technical and production processes or business practices.

This obligation is different from non-competition agreements pursuant to Article 2125 of the Italian Civil Code, which are merely optional and are entered into only upon termination of the employment relationship in order to extend the obligations of loyalty imposed on the worker by Article 2105.

The rule set forth by Article 2125 establishes that such an agreement should possess the following specific elements:

- be made in writing;
- specify the subject matter: it is necessary to state precisely which activities may not be carried out by former employees and for whom;
- have a predefined duration: the obligation not to compete must be confined within certain time limits. Such limits may not exceed three years or five years in the case of managers, pursuant to Article 2125;
- specify a pre-established geographical area of application; and
- set forth specific consideration in favour of the employee, which must be reasonable and proportionate. Case law shows that an amount ranging from 15% to 35% of the salary received by the employee at the termination of the employment relationship provides adequate compensation.

The non-compete covenant has to be constructed according to the conditions illustrated above and a liquidated damages clause contained within the covenant. However, the Labour Court can reduce the amount of liquidated damages pursuant to Section 1384 of the Italian Civil Code if they are deemed to be excessive.

The existence of a non-compete clause does not prevent the employer from claiming additional damages in judicial proceedings. The employer is also entitled to reimbursement of the consideration paid to the employee by virtue of the covenant.

According to Italian case law, the former employer may ask the judge to inhibit the former employee from performing the same activities for the competitor.

2.2 Non-solicitation Clauses - Enforceability/ Standards

Non-solicitation covenants must be agreed between parties and included in the employment contract. These restrictive provisions do not require that consideration be paid to the employee.

Damages are usually predetermined by a liquidated damages clause contained in the covenant. In the absence for such a clause, the employer must prove in a judicial proceeding the damages actually suffered and the amount thereof. Liquidated damages that are deemed excessive may be reduced by the judge.

3. Data Privacy Law

3.1 General Overview

Legislative Decree No 196 of 30 June 2003 provides for a code, the purpose of which is to ensure the processing of personal data with respect for employees' personal rights, dignity and fundamental freedoms.

The General Data Protection Regulation (GDPR) is the new European privacy and data protection law (replacing Directive 95/46/EC) which establishes new mandatory requirements for the collection and further usage of personal data within the European Union. The Regulation is directly applicable in all EU Member States.

As of 25 May 2018, these regulations replaced incompatible national provisions contained within Legislative Decree No 196/2003 (which continues to be applied to those parts that are not incompatible).

Pursuant to Articles 6 and 7 of the GDPR, the legal grounds for processing personal data include: consent, performance of a contract, fulfilment of a legal requirement, the legitimate interests of the controller (to the extent it does not conflict with the rights of the data subject), protection of the vital interests of the data subject, public interest, and the exercise of official authority.

Article 7 of the GDPR governs conditions for consent and in particular provides that, where processing is based on consent, the controller shall be able to demonstrate that the data subject has consented to the processing of his or her personal data.

Pursuant to Article 13 of the GDPR, the following information must be provided where personal data is collected:

- where personal data is collected from the data subject, the controller shall, at the time when the personal data was obtained, provide the data subject with all of the following information;
  - (a) the identity and contact details of the controller and, where applicable, the controller's representative;
  - (b) the contact details of the data protection officer, where applicable;
  - (c) the purposes for which the personal data is intended, as well as the legal basis for the processing thereof;
  - (d) where the processing is based on point (f) of Article 6(1), which is necessary for the legitimate interests of the controller or by a third party except where such

interests are overridden by the interests or fundamental rights and freedoms of the data subject which require the protection of personal data, in particular where the data subject is a child;
(e) the recipients or categories of recipients of the personal data, if any; and
(f) where applicable, the fact that the controller intends to transfer personal data to a third country or international organisation and the existence or absence of an adequacy decision by the Commission, or in the case of transfers referred to in Article 46 or 47 or the second subparagraph of Article 49(1), reference must be made to the appropriate or suitable safeguards and the means by which to obtain a copy of them or where they have been made available.

- the controller shall at the time when the personal data is obtained provide the data subject with the following information necessary to ensure fair and transparent processing:
  (a) the period for which the personal data will be stored or, if that is not possible, the criteria used to determine that period;
  (b) the existence of the right to request from the controller access to and rectification or erasure of personal data, restriction of processing, or objections to processing personal data as well as the right to data portability;
  (c) where the processing is based on point (a) of Article 6(1) – that is, the data subject has given consent to the processing of his or her personal data for one or more specific purposes or based on point (a) of Article 9(2) – that is, the data subject has given explicit consent to the processing of personal data for one or more specified purposes, except where European Union or Member State law provides that the prohibition referred to in paragraph 1 may not be lifted by the data subject, the existence of the right to withdraw consent at any time without affecting the lawfulness of processing based on the consent given prior to its withdrawal;
  (d) the right to lodge a complaint with a supervisory authority;
  (e) whether the provision of personal data is a statutory or contractual requirement or a requirement necessary to enter into a contract, as well as whether the data subject is obliged to provide the personal data and the possible consequences of failure to provide such data; and
  (f) the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, in such cases, meaningful information about the logic applied as well as the significance and envisaged consequences of such processing.
- where the controller intends to process further the personal data for a purpose other than that for which the data was collected, the controller shall provide the data subject with information on that other purpose and with any relevant further information as referred to in paragraph 2 of Article 13 of the GDPR prior to further processing of that information.

The above bullet points shall not apply where and insofar as the data subject is already in possession of that information.

4. Foreign Workers

4.1 Limitations on the Use of Foreign Workers

EU citizens can move and work in every EU country without limitation. No special rules apply to their employment.

Limitations are provided by the law with regard to non-EU citizens whose entry into Italy is subject to specific immigration procedure.

4.2 Registration Requirements

EU citizens do not need a visa or work permit. They need only register with the town hall if they intend to stay for more than three months (Legislative Decree No 30/2007).

However, non-EU citizens are subject to an annual quota as set forth in a Ministry Decree. Provided that they fall within the quota, non-EU citizens must apply for a work visa, assuming they have already been offered employment.

The secondment of non-EU citizens is not subject to annual quota limitations. Secondment is activated on the basis of a special and more simplified procedure strictly related to the purpose of secondment/mission.

5. Collective Relations

5.1 Status/Role of Unions

Trade unions play an important role, especially considering the relevance of collective bargaining agreements in governing several aspects of the employment relationship, as well as legal provisions.

Pursuant to Article 39 of the Italian Constitution, which secures the trade union freedom:

- people are free to organise themselves into trade unions (Article 39(2));
- trade unions are not subject to any obligations other than the registration of their local or central offices (Article 39(2));
- a condition for registration is that the articles of the trade unions establish their internal organisation on a democratic basis (Article 39(3)); and
- registered trade unions are legal persons. They may enter into collective labour agreements with mandatory effect

on all categories of persons the contract refers to (Article 39(4)).

However, the process of registration, which would lead to the union acquiring legal personality and the capacity to enter into collective agreements, has been totally ignored; consequently, the second paragraph of Article 39 has not, as yet, been implemented.

5.2 Employee Representative Bodies

The principle of freedom of association, as provided for by Article 39 of the Constitution (and in its non-implementation), has, as a direct result, led to trade union pluralism, ie the implicit possibility that there may be a number of unions at a national level, even within the same category.

The freedom of association and representation is provided by Article 14 of the Workers' Statute which grants to all employees the right to form or become a member of labour associations as well as the right to perform labour-related activity.

In a company, the workers are represented by a "corporate union representative body" (RSA) and/or a "joint union representative body" (RSU) which adopt the contractual and union measures best suited to meeting the needs of the workers in their individual working or production context. Pursuant to Article 19 of the Workers' Statute, RSAs and RSUs may be formed through the initiative of the employees in every plant that has more than 15 workers in trade union associations who have executed a collective bargaining agreement with the company.

According to Article 23 of the Workers' Statute, the worker representatives may be appointed directly by the trade union associations (RSA) or elected by the employees (RSU).

5.3 Collective Bargaining Agreements

A collective bargaining agreement is an agreement between one or more trade unions representing the employee and the employer for the purpose of regulating certain aspects of the employment relationship. Collective bargaining legally regulates the employment relationship, which generally may not be derogated from if to do so would lead to an adverse impact on the employment relationship.

Italian legislation entrusts the negotiation of procedural and substantive aspects of the employment relationship to collective bargaining. In terms of collective bargaining, the Italian legal system is divided into three different levels: between confederations, national-sectoral and decentralised (at company and/or territorial level).

6. Termination of Employment

6.1 Grounds for Termination

Dismissal may concern one or more workers.

Individual dismissal is the act through which the employment relationship is terminated by the employer. The dismissal must be made in writing and the written document (except in specific cases) must specify the reason for termination. The reason must be specified a priori, not a posteriori.

Individual termination may be served at will in only a few specific cases, ie: domestic workers, workers on probation, executives and workers who have reached pensionable age.

Aside from the above cases, individual dismissal may be served only for one of three reasons:

- for just cause (or gross misconduct): where the conduct of the worker has been so serious as to undermine the trust required in an employment relationship (Article 2119 of the Italian Civil Code). If the contract is open-ended, no notice need be given. In the case of fixed-term employment contract, the employer is entitled to immediately terminate for cause the contract prior to its natural expiry date;
- for subjective reasons: determined by a significant breach of contractual obligations on the part of the worker (Article 3 of Law No 604 of 15 July 1966). This occurs where the employee is responsible for a significant breach of his or her contractual obligation, but the breach is not so serious as to render the employment relationship impossible, even if on a provisional basis. In this case, employee is entitled (according to Article 2118 of the Italian Civil Code) to a notice period or to be paid the indemnity in lieu of it;
- for objective reasons: when the dismissal is determined for reasons regarding production activity and organisation of work (Article 3 of Law No 604 of 15 July 1966). In this case, the employee is entitled (according to Article 2118 of the Italian Civil Code) to a notice period or to be paid an indemnity in lieu of it.

Collective dismissals occur when a company that employs more than 15 employees serves at least five redundancy notices (in each production unit or in a number of production units within the same Province) within a period of 120 days for an objective reason. These numerical and temporal requirements must be met.

Resignations, even if encouraged by incentives, are excluded from the list of redundancies.

Employees are protected from collective dismissal, as provided by Law No 223/91 with some exceptions. This also applies to executives, but with some differences.

According to the Law No 223/1991, the employer should follow a specific consultation procedure involving trade union(s).

6.2 Notice Periods/Severance

Notice periods are provided in all cases of dismissal except for cause by the national collective bargaining agreements that consider the worker's category, level and length of service.

Severance indemnity is due according to Article 2120 of the Italian Civil Code and is paid on top of indemnity in lieu of notice (this indemnity is paid when the employment relationship ceases and the worker no longer provides services during the period of notice).

No specific formalities need to be observed as the severance pay shall be paid with the last payslip, usually within 60 days following the termination of employment.

Civil, administrative and criminal penalties are applicable in case of infringement of the rules governing severance pay.

6.3 Dismissal for (Serious) Cause (Summary Dismissal)

The disciplinary code must be displayed by the employer in a place where it is accessible to all staff.

Specific procedures must be followed in cases of individual dismissal and in cases of dismissal for just cause, as well as for justified subjective reasons. The employer must follow the procedure provided for by Article 7 of Workers' Statute (Law No 300/1970). This procedure requires that:

- the worker's conduct must be immediately and specifically challenged by the employer; the principle of unmodifiably applies to this challenge;
- the employee has the right to give his or her defence within the term provided by the law (five days) or within the period provided for by the collective bargaining agreement (five days or seven days); and
- the employer may accept the defence or commence disciplinary measures.

In the case of dismissal for a justified objective reason, an employer employing more than 15 workers in the production unit must comply with the conciliation procedure provided for by Article 7 of Law No 604/1960.

6.4 Termination Agreements

Termination agreements are permissible according to Italian labour law. The law does not require specific forms for consensual termination, but a written form is advisable.

Specific clauses for consensual termination are usually enclosed in settlement agreements according to Article 2113 of the Italian Civil Code, wherein the employer and employee may mutually waive some of their rights. However, pursuant to Article 2113 (1) of the Italian Civil Code, waivers and transactions relating to employees' rights that cannot be waived by the contracting parties are thus null and void. The said waivers and transactions can be challenged within six months of the date of termination of the employment relationship or if the waiver or transaction occurs after termination within six months from the date of the waiver or the transaction.

The consensual termination of an employment relationship of a worker who is pregnant or of a worker of either gender for a period of three years following the birth of a child or in the first three years after adopting or fostering a child are subject to a procedure of confirmation by the Ministry of Employment and Social Policy (Local Employment Departments).

Particular procedures are envisaged to validate the consensual termination of employment – except for domestic work, workers on probation, parents, maritime workers and when a consensual termination of the employment agreement is signed according to Article 2113, paragraph 4, of the Italian Civil Code or before the commission of certification pursuant to Article 76 of the Legislative Decree No 276/2003.

6.5 Protected Employees

Dismissals are null and void in the following circumstances:

- the dismissal was discriminatory or ordered for illicit reasons (Article 1345 of the Italian Civil Code);
- unless served for "just cause" or when the operations of an enterprise terminate or in the case of fixed-term employment contract that expires or in the case of unsuccessful result of a probationary period, the employer is forbidden to dismiss a female employee from the beginning of a pregnancy up to one year after the child's birth;
- the dismissal of a female employee was in the period between the request for the publication of marriage banns up to one year after the wedding date;
- the dismissal was served to an employee who took paternity leave for the whole length of such leave up to the child's first birthday; and
- the dismissal was served after the employee requested parental leave or leave to take care of a sick child.

Trade union members are entitled to a specific protection in case of dismissal.

A judge may order the reinstatement of an employee upon the joint request of the worker and the union (Article 18 of Law No 300/1970) even before judgment if he or she considers the evidence adduced by the employer to be irrelevant or non-sufficient.

In the case of a worsening of health conditions or significant variations in the organisation of work, disabled workers may only be dismissed if the competent medical commission confirms the impossibility of continued employment within the company.

A dismissal cannot be served during the grace period (see **1.5 Other Terms of Employment**) as well as during the call to arms.

7. Employment Disputes

7.1 Wrongful Dismissal Claim

Pursuant to Article 18 of Law No 300/1970, which applies to employers with more than 15 employees:

- where the judge ascertains that the dismissal is discriminatory or is anyway null and void (and also when it is not served in writing), the penalty is reinstatement of the worker and the payment of damages (ie, an indemnity of not less than five months' salary from the date of dismissal to that of effective reinstatement, plus security contributions and deductions from any earnings made elsewhere. As an alternative to reinstatement, the employee is entitled to ask for an indemnity equal to 15 months' salary (no security contributions will be paid in this case);
- where the judge ascertains that there is no just cause or subjective justified reason due to the non-existence of the facts complained of or because the facts, although ascertained, fall within the types of conduct punishable with a penalty pursuant to the collective labour agreements or disciplinary codes, the employer shall reinstate the employee (unless the worker opts for compensation in lieu of notice equal to 15 months' salary) and will be ordered to pay damages in proportion to the months running from the date of dismissal to reinstatement (in any case no more than 12 months' salary). This system of sanctions applies also to: (i) a dismissal ordered as a result of the physical or psychological unsuitability of the worker; (ii) a dismissal served in breach of Article 2110 of the Italian Civil Code; and (iii) a dismissal based on an objective justified reason, but in the subsequent legal proceedings the court ascertains that the facts on which dismissal was based did not exist;
- where the judge ascertains that there are no grounds for a subjective justified reason or just cause, the working relationship shall be terminated and the employer may be ordered to pay an all-inclusive compensation of between 12 and 24 months' salary on the basis of the last de facto salary received. The amount of compensation is determined by the judge, taking into consideration the length of service of the worker, the size of the enterprise and the conduct or conditions of the parties. The same consequences apply to dismissal for an objective justified reason where the reason referred to is "evidently inexistent".

When dismissal has been declared ineffective due to an infringement of the requirement of motivation, eg;

- an infringement of the procedure set forth under Article 7 of Law No 300/1970; or
- an infringement of the conciliation procedure set forth under Article 7 of Law No 604/1966,

the working relationship will in any case be terminated and the employer will be ordered to pay compensation of between a minimum of six and a maximum of 12 months' salary on the basis of the last salary received.

For those employers that do not satisfy the requirements of the number of employees as set forth by under Article 18 of the Workers' Statute, without prejudice to reinstatement in the case of null and void dismissals, the consequences of unlawful dismissal are only economic: ie, compensation in a range between 2.5 and 6 months' salary (Article 8 of Law No 604/1966).

With regard to open-ended employment contracts, ie a so-called "contract with proportional protection" (Legislative Decree No 23/2015), dismissal only envisages protection of a compensatory nature. Reinstatement is reserved only for discriminatory dismissals, oral dismissals, dismissals involving workers with physical or psychological disabilities and dismissals for subjective reasons where it has been demonstrated that "the material fact complained of was non-existent".

In addition to reinstatement, the payment of compensation is envisaged, the amount being equal to the salary that would have been earned from the date of dismissal to the date of reinstatement, and in no case being less than five months pay. Alternatively, the employee may opt for the payment of fifteen months' salary in lieu of reinstatement.

In all other cases of unlawful contract termination, protection will exclusively be in terms of compensation:

For small enterprises that do not satisfy the requirements of number of employees as set forth by under Article 18 of the Workers' Statute, the indemnities described above will be reduced by half and may not exceed a limit of six months' salary.

7.2 Anti-discrimination Issues

According to the Workers' Statute, discrimination on grounds of sex, political opinions, union-related activity, religion, race, language, disability, age, sexual orientation and personal beliefs are prohibited. Moreover, direct and indirect discrimination are both prohibited.

In cases of discrimination, the employee may sue the employer before the Labour Court and claim both financial and non-financial damages. The burden of proof lies with the employee. The Labour Court may order the employer to stop the discriminatory conduct, to remove the effect of the unlawful conduct and order a plan to avoid, within a certain period of time, any repetition of the discriminatory conduct.

In the absence of any legal parameters, the amount of damages will be determined at the judge's discretion.

LABLAW Studio Legale

Corso Europa, 22
Milan
Lombardy
Italy
20122

LABLAW
STUDIO LEGALE
FAILLA ROTONDI & PARTNERS

Tel: +39 02 30 31 11
Fax: +39 02 30 31 12
Email: info@lablaw.com
Web: www.lablaw.com

8. Dispute Resolution

8.1 Judicial Procedures

Pursuant to Article 413 of the Italian Code of Civil Procedure, specific forums are provided for employment claims and proceedings. No legal provision provides for a collective or class action for labour issues.

Court decisions in Italy are not considered to be a source of law; however, case law precedent plays an important role in the interpretation of Italian employment law.

At a hearing before the Labour Courts, judges discuss the possibility of settling the dispute with the parties. If no settlement is possible, the proceeding will continue up to the decision, provided that a settlement may still be reached during the proceedings.

8.2 Alternative Dispute Resolution

Arbitration is possible according to Italian Law, which can be provided:

- in the employment contact;
- by the applicable National Collective Bargaining Agreement; and
- by the parties.

Arbitration agreements are enforceable.

8.3 Awarding Attorney's Fees

An employee may be awarded attorney fees if the judge accepts his or her claim.

In the case of a settlement, attorney's fees are often paid (total or partially) by the employer.

Trends and Developments

Contributed by LABLAW Studio Legale

LABLAW Studio Legale is an award-winning employment and labour law firm, which boasts the largest presence in Italy. Founded in 2006 by Luca Failla and Francesco Rotondi, the firm has almost 80 specialised professionals located throughout the peninsula in seven major business centres: Milan, Rome, Naples, Genoa, Padua, Pescara and Bari – and soon Bologna. The firm offers Italian employment and labour law counsel 24 hours a day, seven days a week, 365 days a year, on a range of matters from day-to-day advice to major corporate restructurings, complex cross-border M&As, due diligence, large and complex employment disputes and more. LABLAW is one of the six founding members of L&E Global, which is recognised by independent sources as one of the leading international labour and employment law networks, which boasts over 1,500 members in more than 30 countries.

Author

Luca Failla specialises in providing assistance to national and international businesses in all areas of Italian employment and labour law, including providing counsel on Italian employment litigation, executive contract negotiations, directors and officers liability, competition protection, personnel reduction, corporate reorganisations, outsourcing, trade union negotiations, privacy, employment contracts, dismissals, and pension schemes, as well as company and commercial law.

Productivity and Work by Objectives in Employment Relationships

A few months ago, the newspapers published a story about how an important American company dismissed a number of employees on the basis of low productivity and efficiency. The company explained that there was no direct or automatic consequence between the measurement of low performance and the decision to resolve the problem of poor performers. Hence it was not an algorithm that generated the decision, but the human evaluation of the data provided by the algorithm. The dismissals occurred only after an overall and deep human evaluation.

Once it had been ascertained that it was an organisational process and not an automatic decision, one wonders if a similar procedure could be introduced in Italy. In theory, yes, since it was the outcome of an organisational process that involved the exercise of a great deal of caution.

Italian labour law does not acknowledge "poor performance" as a parameter to evaluate an employee's work performance, nor does Italian labour law allow, hypothetically, the termination of an employment relationship on the basis of failing to achieve the employer's "objectives". Instead, one must seek recourse to the negligent behaviour of the worker in the execution of his or her work. In such a case, the employer must rigorously prove the accusation of non-performance on the part of the employee. In practice, employers must demonstrate a "significant non-fulfilment" of contractual obligations as a whole over a certain period of time.

The courts have indicated that where individual "parameters" have been connected to a specific duty (with the normal diligence and professionalism typical of the tasks assigned to a worker), any "deviation" from the said "parameters" may constitute unacceptable performance. In the most serious cases, this could lead to termination of the employment relationship.

Even though it is not easy to link a disciplinary measure to poor performance, we have evidence – both from abroad and in Italy – that employment relationships are evaluated in terms of objectives and results. In fact, the new organisation of work imposed by technology and AI obliges us to start measuring work performance in terms of "goals" and "objectives".

This is one of the aims of the Smart Working management philosophy. With Smart Working the employment relationship is no longer based on the exchange of work/money for time, but the results of a certain activity in a given time (hour/day/week). As a result of the law on Smart Working – called Agile Working in Italy – work is considered in terms of "objectives". The law on Agile Working speaks of work by phases, cycles and objectives without precise constraints on time or place.

It is now necessary to understand the relationship between time and performance, because production efficiency will be increasingly influenced by future ways of interpreting this combination. This will mean adopting more flexible forms of work organisation, which will evaluate subordinate work in terms of "results" and "performance".

This is reflected in some recent supplementary company agreements signed with trade unions in which the companies experiment with new forms of work organisation (even with working hours lower than the "normal" 40 hours per week, as provided by EU and national Law). This is an important example of the modernisation of industrial relations and an example of the increased importance of working "objectives".

Some Law Topics of the Year 2019

Quota 100

Some of the rules regarding pensionable age changed with the introduction of the Quota 100 Decree (Law Decree 28 January 2019 No 4). The basic premise is that it is possible to retire when the sum of the employee's age and years of social security contributions to the First Pillar pension scheme equal 100. As an example, the benefit is reserved for employees who are 62 years of age with 38 years of social security contributions.

With this new regulation, the Italian government overturned the controversial Fornero Reform (introduced on 6 December 2011 with Decree Law No 201 which fixed the minimum retirement age at 67 for both men and women). The new provision was approved on an experimental basis and should apply to employees who reach the contribution level between April 2019 and the end of 2021.

Companies have started to look at the demographics of their workforce and in some cases have entered into agreements with trade unions on how to apply the new provisions.

The Academic Excellence Incentive and other youth employment measures

Many youth employment measures aim to assist young people (including those with the lower abilities and educational standards) into employment. This is a strategic goal for the Italian government, a goal which is continuously amended and strictly connected to retirement issues and generation turnover. In fact, during the current year (2019), the National Labour Agency (ANPAL) declared that the Youth Guarantee measure increased the number of young people in internships programmes by more than 50%.

As well as this and other measures dedicated to assisting young employees, the Italian government introduced with its Italian Budget Law 2019 a new youth incentive plan called the "Young Excellence Incentive" (assunzione giovani eccellenze). The measure aims to encourage businesses to hire on indefinite employment contracts the top academic graduates in their class. Any employer who hires graduates who finished with top marks (more specifically referred to as 110/110 or lode) between 1 January 2019 and 31 December 2019 will be exempted from paying social security contributions on their salaries for the first 12 months of their employment. The students must be under 30 years of age and must have graduated between 1 January 2018 and 30 June 2019. This age limit is extended to 34 for PhD graduates. The maximum incentive with regard to social security contributions (excluding health and safety contributions) is EUR8,000.

If a student is hired under this incentive scheme for part-time work on an indefinite contract, the incentive is proportionate to the amount of time worked.

However, if the graduate is dismissed for just cause within 24 months of hiring, the employer must repay in full the social security contributions avoided.

Maternity and paternity leave

Due to EU Directive 2019/1158 on work-life balance for parents and carers, the terms of which the government must implement, it is important to note that some new provisions in the field of maternity and paternity leave had already come into force at the beginning of 2019, thanks to the Italian Budget Law.

In implementing the above-mentioned Directive, Member States should take into consideration the importance of an equal uptake of family-related leave between men and women. The Directive should encourage a more equal sharing of caring responsibilities between women and men so as to create a bond between fathers and their children. Studies have demonstrated that the taking of paternity leave has increased the employment rate for mothers.

Whereas Italian law already provides some of the best maternity and paternity protections in Europe, this new Directive will allow each member state to determine whether to allow part of the paternity (or maternity) leave to be taken before the birth of the child or to require all of it to be taken afterwards. Therefore, we must consider the importance of the new provisions with regard to maternity leave.

For many years, pregnant women were required to stop working two months before the estimated due date of their

child and were also prohibited from working for the three following months (or one month and four months in respect of flexible maternity leave – with the permission of the doctor). Starting from January 2019, pregnant women can now (with the permission of their doctor and provided that there are no health and safety at work issues) choose to work up to their due date and take the subsequent five months off as maternity leave.

New fathers are now able to take up to five days of compulsory paternity leave (to be taken within the first five months from the birth of the child) and one day by agreement with the mother in substitution of her maternity leave.

LABLAW Studio Legale

Corso Europa, 22
Milan
Lombardy
Italy
20122

LABLAW
STUDIO LEGALE
FAILLA ROTONDI & PARTNERS

Tel: +39 02 30 31 11
Fax: +39 02 30 31 12
Email: info@lablaw.com
Web: www.lablaw.com