

Doing business in Italy from an employment law perspective *Complex but rewarding - with the right advisors*

LABLAW is not your typical Italian named partner firm, but, as the name suggests, a firm with a distinctly international flavour. We do one thing and one thing only: **employment law**. We are specialists in our field and our local knowledge of Italian employment law and industrial relations is probably second to none. We work across a wide variety of sectors: from manufacturing to retail, oil and gas to banking, tourism to real estate and last but not least, fashion! Our head office is in Milan, the business capital of Italy, and we cover the rest of the country through our 4 branch offices in Rome, Genova, Pescara and Padua. We advise companies, both national and international in all its aspects of workplace law, from setting up a company and managing the workforce (hiring, disciplinary, union negotiations, firing, etc) to restructuring and closing down. Our particular forte, for which we pride ourselves, is in providing practical, clear and commercial advice to foreign clients operating in Italy. We navigate them through the maze of Italian employment law, offering solutions (in English) rather than putting up barriers. We have a mother-tongue English partner, which does help!

We are also founding members of L&E Global alliance of employment law experts. With our newest Affiliate member in China we now cover 5 continents and are equipped to advise clients on cross border projects in all aspects of workplace law, offering a seamless high quality service with one point of contact.



Expo 2015

The Expo 2015 theme: feeding the planet, energy for life is an appropriate theme for Italy, where the eating habits of a nation and the culinary expertise that can be found in even the lowliest of eateries, is second to none. 20 million visitors are expected to invade Milan during the 6 month period, including one million from China.

The underlying theme of Expo 2015 from an employment law point of view is the people behind it, that do the jobs that make the Expo world go round. For foreign companies coming into Italy for the first time and wishing to set up even a temporary presence, getting it right is crucial. One of the necessary cogs in the wheel is the workforce and whether a company is hiring 1, 10 or 100 employees the basic principles are the same. A word of advice: use trusted advisors and do need try to do it DIY.

Good news for businesses on the employment law front.

The law in Italy regarding fixed-term employment contracts has changed for the better recently (with the reform introduced by the new Renzi Government). The main points of interest are:

- companies no longer need to give a reason why they are hiring on a fixed term basis (as opposed to permanent) and this is a welcome breather for businesses; it also applies to contracts for temporary agency workers. The maximum duration of fixed-term contracts has been extended from 12 months to 36 months and can be extended up to 5 times, as long as the extensions always relate to the same job, and with no need to justify the reasons for the extension.
- The prior obligation of "stop and go" still remains: i.e. to let a period of grace elapse of at least 20 days between one fixed-term contract and another (10 days if the first contract did not exceed 6 months). This rule does not apply to seasonal workers.
- These new rules on fixed term contracts do not apply to employment relationships with Executives (*dirigenti*) that can have a duration of up to 5 years.
- Such fixed-term contracts can only be used for up to a maximum of 20% of the open-ended employees in the whole workforce (not a single unit) as at the 1st January of the hiring year, unless different limits are provided by the applicable Collective Bargaining Agreement.
- Some fixed term employees are completely exempt from hiring limits, such as those hired during the start-up stage of the company, for substitution reasons, seasonal activities or aged over 55.
- There are fairly hefty administrative sanctions for breach of the rules: up 50% of the monthly salary, per employee.

The Jobs Act: making the Italian labour market more flexible.

Another important reform which is going through Parliament at the time of writing is The Jobs Act (name

taken from Obama's American Jobs Act 2011): This means that as of 2015 new hirings on open-ended contracts will have "gradual" protections directly linked to the length of service. The remedy of reinstatement will practically disappear except for some very specific cases (e.g. unlawful dismissal, discriminatory and disciplinary cases).

Disappointingly however, and 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 they have a well documented case for dismissing a poor performer who impacts negatively on the business.

This most recent reform is without doubt innovative; 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 Jobs Act to come into force later this month (January 2015), to fully evaluate its momentum in helping to turn around the Italian economy.

All change for Executives (Dirigenti): included in the collective redundancy process for the first time.

Who are Dirigenti? In Italy while top level managers (dirigenti) are employees, they enjoy fewer protections than 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 the number of dirigenti have to be included in the calculation that triggers a collective redundancy (i.e. where a company with more than 15 employees dismisses at least 5 of them within a period of 120 days).

What does this mean in practice? Previously Executives were excluded from the whole collective redundancy process: i.e. 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: i.e. 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.

In short Italy is going through important political, social and legal changes at the moment and as employment lawyers we are seeing firsthand how all of this impacts on our clients and their Italian workforce. Italy is a work in progress and the end product will hopefully be worthy of the prestigious label: "Made in Italy".



LUCA FAILLA – Founding Partner

Luca Failla is an expert in Italian employment law and employment related litigation as well as international civil litigation, employment contracts and dismissals, the reduction of personnel, pension schemes, trade union negotiations, company and commercial law. Widely recognized throughout the Italian legal and academic community, is Professor at LUM Jean Monnier University in Bari and often invited to lecture at trade and business conferences as well as in-house company training courses. He is a member of, and lectures at, the Italian Association of Employment Lawyers (AGI), as well as being a member of the European Employment Lawyers Association (EELA), the International Bar Association (IBA) and the American Bar Association (ABA). He is also a Member of the Board of the Italian Association of Law Firms (ASLA).

SHARON REILLY – Partner

Sharon is a dual qualified, bilingual UK and Italian lawyer. She is in charge of the firm's international team advising global clients on HR projects such as: harmonising employment contracts and workplace policies across jurisdictions, outsourcing, secondments, health and safety in the workplace and non-compete covenants across borders.

Having lived and worked in Italy for 20 years, Sharon can approach and understand issues from the client's Anglo-Saxon perspective and put them into an Italian context and vice versa. This is a value-add for clients.



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