

1. INTRODUCTION

In Italy, legal rules governing working relationships are found in the Civil Code, the 1948 Constitution, the Workers' Statute of 1970 and a large body of a special legislation which covers the collective aspects of employment relationships (trade union law) and an extensive system of measures run by public bodies aimed to ensure financial protection for workers (social security law).

2. THE DIFFERENT TYPES OF EMPLOYMENT CONTRACTS AND THEIR TERMINATION

2.1 THE OPEN-ENDED EMPLOYMENT CONTRACT

In Italy the working relationship is mainly regulated by open-ended employment contracts. The employment contract has to indicate the working activity to be performed by the employee. According to case-law, **the contract is concluded when employer and employee agree on the essential terms**, if it is clear that the parties do not intend to regulate specifically further elements which are regulated by law and collective agreements. In fact, when there is agreement on the duties to be performed, provisions of law and collective agreements apply automatically to other relevant contractual elements such as category, wage etc. If a collective agreement in force applies to the employment relationship, conditions agreed cannot be less than the ones provided for by the collective agreement.

In general, the law only provides for some legal restrictions and compulsory provisions. Terms and conditions of individual contracts which are contrary to the law are held to be null and void and are automatically replaced by the provisions of law.

Generally speaking, **an employment contract need not be in writing**, however some collective agreements provide that the employment contract has to be proved in writing. By law, the employee has the right to receive certain information in writing (identity of the parties, place of work etc.), which is usually included in an employment letter signed by both parties.

Further, when reference is not made to the applicable collective agreement, other elements such as wages, working hours etc. have to be specified.

Special conditions (for example a non-competition clause) also have to be agreed in writing.

Any **amendment of the employment contract terms** must be communicated by the employer in writing, unless they are required by law or collective agreements (in which case, the provisions automatically apply if more favourable to the employee).

Contractual amendments agreed by both parties are held as valid if they are not in conflict with compulsory rules (for example minimum wage).

The employment relationship **can be terminated by the employee or by the employer**.

In case of resignations and dismissals, the **notice period** as set out in the collective agreement (depending on category and level of the employee, length of service etc) needs to be complied with.

Any termination of the contract of employment, for whatever reason, gives the employee the right to receive from the employer a **severance payment** (T.F.R.).

The employee can freely terminate his employment contract, provided that due notice is given.

In case of serious misconduct by the employer (such as failure to pay wages or social security contributions, offensive behaviour or request of performance of acts that are against the law), the employee may resign with immediate effect without giving notice (and being entitled to “notice indemnity”).

Except in the case of **collective dismissals**, (in respect of which a particular procedure must be followed including information and consultation with unions, and special indemnities for the employees that are made redundant), **individual dismissals** can be communicated directly by the employer, specifying the reason for dismissal.

This general rule does not apply for dismissal during trial periods, for apprentices or employees over 65, who can be freely dismissed by simply giving notice and without specifying the reason for dismissal.

Individual dismissals can be on “subjective” grounds (concerning employee’s conduct), or on “objective” grounds (concerning the employer’s organisation):

- dismissal for “**just cause**”: where there has been very serious misconduct by the employee (not necessarily a breach of contract) which makes it impossible to continue the working relationship, even temporarily, the employer can dismiss with immediate effect without giving notice;
- Dismissal for “**subjective justified motive**”: when the infringement (only of contractual nature) by the employee is less serious, the employer can communicate the dismissal providing that the notice period is given;
- Dismissal for “**objective justified motive**”: this is generally connected with circumstances concerning company organisation and production activity. Due notice has to be given by the employer.

The employee can **appeal for an annulment of the dismissal** on the grounds that there was no “just cause” or “justified motive” within 60 days of the date of notice of his dismissal.

A complex system, involving different degrees of worker protection (mostly depending on the size of the employer’s establishment) provides that in case of unfair dismissal:

- companies with **more than 15 employees** (or 5 in the agricultural sector) in any one establishment, branch, office or autonomous department, and employing **more than 60 workers wherever located**, are required both to reinstate the dismissed employee and to pay damages. The employee can refuse reinstatement and request payment of damages;
- companies with **fewer than 15 employees in a unit or fewer than 60 employees in total**, have the choice between reinstatement of the unfairly dismissed employee or payment of compensation.

In case of dismissals “**without effect**” (if the formal procedures for the communication of dismissal are not fulfilled), and dismissals deemed “**null and void**” (unlawful and discriminatory dismissals), the employee is entitled to reinstatement and compensation, whatever the size of the company.

Labour Courts are integrated into the organisation of the general civil court system, but follow **special procedures** which reduce the amount of written material, provide for participation by the litigants, and aim to speed up the trial. First instance proceedings are decided by a single professional judge, whose decisions can be appealed before a Court of three judges, with a possible further appeal before the Supreme Court Labour Chamber.

The law requires the claimant, before he sues in Court, to try to settle the dispute through **conciliation** before the Labour Provincial Office (D.P.L.), or through a **union dispute resolution procedure**.

2.2 THE FIXED-TERM EMPLOYMENT CONTRACT

According to general principles, fixed-term employment contracts are permitted to the extent that they are justified on grounds such as seasonal work, cover for employees on sick leave or maternity leave, extraordinary and occasional work. Collective agreements may specifically authorise other instances of fixed-term contracts.

Termination of fixed-term contracts is automatic at the end of the specified duration or on completion of the specified task. Nevertheless, the employer may terminate the contract earlier for “**just cause**”.

2.3 SPECIAL EMPLOYMENT CONTRACTS

The so-called **Biagi Law (N.30/2003)** has deeply changed the labour market in Italy by setting out a reform of private and public employment aimed at increasing the degree of flexibility of the labour market and by providing new flexible forms of fixed-term labour contracts:

- the “**project contracts**”: they are the main innovation of the reform and replace the contracts previously known as “Co.Co.Co.” (“coordinated and continuous collaborators”, which were half way between an employee and a self-employed worker, carrying out independent activities on a professional basis with a VAT position and bookkeeping obligations and who did not have specific legal protection). The position of the new “project contractors” is now more clearly defined and specific conditions are set for such contracts such as the condition that “project contractors” have to be assigned to a specific project or working program which has to be detailed in the agreement signed by the parties (who must expressly agree conditions such as the duration of contract and project, the salary and the relating criteria for quantifying it);
- the reform also introduced other new forms of employment contracts: “**on call**” **jobs**, whereby workers are available to work on a discontinuous or irregular basis; **job sharing**, whereby two workers share the same position (this kind of scheme already existed, but the reform gave it specific regulation); **additional work**, implying occasional employment activities carried out by individuals who have not already joined the labour market;

- The Biagi Law also provides for wider application of **outsourcing**, and legalises **staff leasing** both on a no time limit and a time limit basis (these forms were already known in foreign countries but were forbidden in Italy).

Furthermore **apprenticeship and training contracts** have become the main way for individuals to enter the labour market. Very flexible forms of **part-time employment** have also been introduced (and extended to the agricultural sector).

3. SOCIAL CONTRIBUTIONS AND THE DIFFERENT KINDS OF BENEFITS IN ITALY

3.1 PRESENTATION OF THE ITALIAN SOCIAL SECURITY SYSTEM

Italy has an extensive social security system, run by a number of state agencies, which have been brought together under the central organisation of the **National Institute for Social Security** (I.N.P.S.).

The system (not including the National Health Service - S.S.N. - which is funded by general taxation) covers most of the workers in the public and private sector and provides for a wide range of benefits, including:

- benefits for unemployment, mobility, sickness and maternity;
- benefits for accidents at work and occupational diseases;
- old-age, invalidity and survivor's pensions;
- family allowances;

All people working in Italy (including E.U. citizens and workers from outside the E.U. with residence papers), whether they are employed, self-employed, professionals or entrepreneurs, are entitled to these benefits by paying **social security compulsory contributions** (calculated according to the level of their earnings), in different ways:

- for **employees**, contributions are deducted at source from their gross salary by the employer, who carries out all necessary formalities for the registration with social security system and provides for direct payment to I.N.P.S.. Failure to make payments due is a criminal offence. The standard social security contribution made by an employer amounts to roughly 35 % of an employee's salary, while the employee's contribution is about 10% of the gross salary (making a total of about 45%). Different contribution rates apply to employees in industry, commerce and agriculture, and for workers, office staff and managers, who also receive different benefits;
- **self-employed people** must register with and make contributions to separate organisations, which are social security funds allied to their profession (freelance professionals such as lawyers, engineers, architects, accountants, medicals specialists, have different rates of contributions), or alternatively directly to the I.N.P.S. (usually in the case of small businessmen, shopkeepers, tenant farmers, smallholders etc.).

People who are not subject to compulsory insurance, unemployed people, employees who interrupt the employment relationship or have reached retirement age are offered, under specific circumstances, the option of paying “voluntary contributions” in order to ensure continued cover or to reach the minimum amount of contributions required in order to be entitled to pension benefits.

Further, so called “notional contributions” are directly credited by the state in certain circumstances where contributions are not actually made, as a consequence of military service, illness, pregnancy and maternity leave.

3.2 THE STATE PENSION SCHEME

The Italian state pension scheme was radically revised by **Law No. 335/1995**.

The most relevant innovation introduced by the reform concerns the way in which pensions are calculated. The “earnings-related system” (whereby the pension is calculated on a percentage of the average pay over the last 5 to 15 years of their working life) was implemented, for people employed after 31.12.1995, with the “contributions-based system” (whereby the pension is calculated on the basis of the social security contributions paid during the whole working life). For people with less than 18 years of contributions at 31st of December 1995, a “mixed system” is applied.

With the “earnings-related system”, people are entitled to “old age” pension if they have at least 20 years of contributions and are 65 years of age (60 for females).

With the “contributions-based system”, people have access to pension benefits with fewer years’ contributions and at a younger age (but in general this system will give rise to low pensions, therefore young workers should arrange for some form of supplementary pension).

The criteria for quantifying for pension benefit under the “contributions-based system” are as follows: the total amount of contributions paid, revalued, is divided by a figure indicating the individual’s remaining life expectancy (which is proportional to the average time of life and is different for men and women). The outcome is the amount of the old age pension benefit to be paid.

At present time these pension benefits are catered for:

- **“Old-age Pension”**. Its requirements are: age 65 for men and 60 for women and 20 years of contributions. The same requirements apply for self-employed people;
- **“Seniority Pension”**. It is available before full retirement age with these requirements: age 59 (from 1st of July 2009, becoming 60 starting from 2011 and 61 starting from 2013; for self-employed people 1 year must be added to any group, but they keep the option to continue their work activity) and 35 years of contribution, or alternatively 40 years of contribution (also valid for self-employed people);
- **“Disability Pension”**. Employees (and self-employed people) affected by physical or mental disease with a permanent 100% reduction of their working ability are entitled to this benefit under income and contribution requirements;
- **“Invalidity Allowance”**. Employees (and self-employed people) affected by physical or mental disease with a permanent 75% reduction of their working ability are entitled to this benefit under income and contribution requirements;
- **“Survivors’ Pension”**. At the worker’s death, certain members of his family are entitled to this benefit.

Law No. 335/1995 also changed the criteria for retirement age, fixing an age range during which it is possible to retire on a voluntary basis, and confirmed the principle of placing public employees on an equal footing with private sector employees with reference to payment of pension benefits.

New pension schemes were introduced by **Law No. 243/2004** and **Law No. 247/2007** with the aim of meeting those objectives widely agreed upon by European countries, including: a) promoting complementary forms of private social security insurance in addition to the public social security system; b) introducing economic incentives (“superbonus”) for employees who choose to delay retirement; c) gradually raising the retirement age, mainly through liberalization on a voluntary basis.

3.3 THE UNEMPLOYMENT BENEFITS SYSTEM

Various kinds of unemployment benefits are provided in Italy.

People who have paid unemployment insurance contributions for at least 2 years (52 weeks during the previous two-year period) are entitled, in the event of unemployment, to “Ordinary Unemployment Benefit”, available for a maximum of 8 months (12 months for people over 50); whilst people who have worked for at least 78 days in the previous year (but less than 1 year in total) and have paid contributions for at least 2 years, are entitled to a “Reduced Benefit”.

In addition to unemployment benefits, the Italian system of the “**social shock absorbers**” provides special measures aimed at dealing with collective redundancies caused by industrial restructuring; measures which are different depending on whether the work reduction is temporary or permanent.

The “**Wages Guaranteed Fund**” (C.I.G.), which is divided into the “Ordinary” and “Extraordinary” Fund, intervenes in the event of **temporary structural labour surpluses** affecting a company because of transitory events or temporary market crisis, when the employment relationships must be suspended for a limited period of time (“Ordinary” C.I.G.) and in the event of **restructuring/reorganization** of companies having more than 15 employees (“Extraordinary” C.I.G.). The Fund is designed to supplement employees’ earnings until work is resumed: workers involved are entitled to an “income support” (80% of the normal wage) paid out of a fund financed by the state and by the private companies and managed by the National Institute of Social Insurance (I.N.P.S.). This measure can cover a maximum period of 3/12 months (“Ordinary” C.I.G.) and 12/24 months liable to extension, not for more than 36 months in a five-year period (“Extraordinary” C.I.G.).

On the other hand, **when staff cuts are expected to be permanent** due to production downsizing or discontinuation of the business, the rules on “**collective dismissal**” apply (providing that the company has more than 15 employees and the redundancies involve at least 5 employees in a period of 120 days), i.e. a collective redundancy procedure is applied which aims to provide assistance and protection to the workers in the form of redeployment, training, outplacement, and especially the introduction of “social plans” suitable for reducing the consequences of the planned redundancies.

4. FOREIGNERS WORKING IN ITALY – TRANSFERS OF UNDERTAKINGS

4.1 FOREIGNERS WORKING IN ITALY

EU citizens

In accordance with the principle of free circulation within the territory of EU Member States, any EU citizen can come to Italy and stay for **less than three months** without any formalities other than having a valid passport or identity card (only having the obligation to issue a “declaration of stay” with a police office in Italy).

For periods of stay **exceeding three months**, EU citizens do not need a permit to stay, but the right to stay is conditional upon the fulfilment of certain requirements. In particular, an EU citizen has to prove that: a) he is performing an economic activity in Italy as an employee (or is self-employed) by giving evidence of an employment relationship (or of the necessary authorisations needed to carry out self-employed activity); b) he has sufficient income and health insurance so as not become a charge for Italian social assistance.

If he can satisfy these requirements, the EU citizen is registered with the General Registry Office of the place of domicile and issued with an employment record card just like an Italian citizen.

Members of his family who are not EU-citizens can apply for a permit to stay which will be valid for a minimum of 5 years.

An EU citizen who has been resident in Italy for an uninterrupted period of 5 years (and family members including those who are not EU-citizens) can acquire an **indefinite and unconditional right to stay**.

Non-EU citizens

According to the provisions of Law No.189/2002, by 31 December each year a decree of the Ministry of Internal Affairs establishes the number (based on the effective demand for labour) of non-EU citizens that are allowed entry for working reasons (“entry quotas”).

In each provincial office of the Prefecture, an **“Immigration Desk”** connected online to Italian embassies and consulates abroad (where foreign citizens wishing to come to Italy have to present information regarding their qualification and personal data) deals with the whole procedure for the recruitment of non-EU workers.

For the first recruitment of non-EU workers who reside abroad, an application for “authorization to work” must be submitted by the employer to the “Immigration Desk” of the place where the Italian company has its registered office or where the work activity will be performed. Italian companies which require a foreign workforce may ask for a specific person, or for a number of workers with specific characteristics. The “Immigration Desk” asks for advice from the local Police Headquarters (about any possible obstacles with regard to the foreign worker or the employer), from (D.P.L.) Labour Provincial Offices (about minimum contracts requirements provided by law), and promotes cross-checking by the Italian embassy or consulate abroad (about visa requirements and worker’s personal data). In case of positive outcome an “authorization to work” is issued.

The non-EU citizen who is already in Italy for different reasons can perform a work activity by applying for the conversion of his title of residence and obtaining a permit to stay for

working reasons. The permit lasts a maximum of 1 year for a fixed-term employment contract and 2 years for an unlimited employment contract or for freelance work; it can be renewed before the expiry date. After 5 years of regular stay (with certain income requirements) the non-EU citizen may request an indefinite permit to stay.

Sanctions for illegal stay in Italy include expulsion orders for the illegal immigrant, or imprisonment in case of a violation of the expulsion order. Employers who hire illegal immigrants risk imprisonment ranging from 6 months to 2 years and a fine for each person illegally employed.

Workers belonging to certain categories may access the Italian employment market according to special rules and outside the entry quotas fixed for subordinate employment (executives or highly specialized personnel, workers employed by companies operating in Italy admitted to perform specific functions for a limited period of time, university professors, artistic and show staff, people performing professional sport activities).

Social security rights and health system:

The current social security system for Italian citizens applies to every citizen of the European Union working in Italy who is employed, self-employed, a professional or an entrepreneur. Pursuant to the EU coordinating arrangements, the rules currently in force are aimed at eliminating inequalities between local workers and immigrant workers from other EU countries. Therefore, both Italian and Community workers may refer to the **National Institute of Social Insurance** (I.N.P.S.) for the exercise of their social security rights, including admission to benefits provided for sickness, unemployment, old-age pension, family and maternity allowances.

As far as citizens of non-EU countries are concerned, they also can enjoy social security benefits. In order to enjoy such benefits, foreign workers need to be in possession of valid residence documents and make regular social security compulsory contributions.

Italy has reciprocal social security agreements with some 40 countries (including non-EU countries) whereby expatriates may remain under their home country's social security scheme for a limited period.

Workers coming from abroad also enjoy access to health care provided by the **Italian National Health Service** (S.S.N.).

All citizens, residents and foreigners in possession of legal requirements, have the right to the registration with the National Health Service and can access a number of clinical services (including the choice of a general practitioner from the special list available at the Local Health Authority).

Even foreign nationals not legally present in the Italian territory can enjoy health treatments when urgently needed.

4.2 TRANSFERS OF UNDERTAKINGS

Workers enjoy protection when there is a change in company ownership, and the effects on the employment relationship are regulated by art.2112 of the Civil Code.

The rules were made consistent with the European standards by art.47 of Law No. 428/1990, after the European Court of Justice ruled that Italy was in infringement of its obligations to comply with Community law.

In short, Italian law provides that all work contracts continue with the transferee as employer and that the workers are entitled to all rights coming from collective and company agreements applicable at the time of the transfer, except when these are replaced by other collective agreements applicable to the buyer company.

The transferor may withdraw from the contract of employment for one of the legitimate reasons laid down by law.

The employee retains all rights acquired on the basis of the length of service completed prior to the transfer, and transferor and transferee are jointly liable towards the employee with reference to any pay rights accrued for work performed (unless the transferor is expressly freed from this liability in the forms specified by art.410 and art.411 of the Code of Civil Procedure).

Where the transfer concerns a company with more than 15 employees, the transferor and transferee are required to notify the union structures of their respective companies and the competent industrial-level unions, which may initiate a consultation procedure.

Different rules apply in cases where the company is in economic crisis or where insolvency procedures are in progress.

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