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Practical cross-border insights into employment and labour law

Employment & Labour Law 2023

13th Edition

Contributing Editors:
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Expert Analysis Chapter

Q&A Chapters

Q&A Chapters Continued

Italy


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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

Italian employment law comes from various sources:

a. European and International treaties, laws and conventions;
b. the Constitution and domestic laws (i.e., Law no. 300/1970, the so-called Workers' Statute);
c. collective bargaining agreements;
d. individual employment contracts; and
e. customs and practices.

Furthermore, case law precedents may have a significant role in orienting both the interpretation and application of Italian labour laws and regulations.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

Based on the modality of performance, employment relationships can be distinguished into subordinate and self-employed ones. In particular, the former is characterised with respect to the latter by the employee's subjection to the employer's directive, controlling and disciplinary powers.

Where such elements do not clearly emerge in the concrete case, the jurisprudence has however pointed out a series of so-called "supplementary indexes" which, if they occur, indicate whether a working activity has a subordinate nature (i.e. absence of business risk, observance of working hours and receipt of a fixed salary and at predetermined periods of time).

Italian law also considers two types of collaborations drawn to the discipline of subordinate or self-employment depending on whether or not the modalities of coordination are established by mutual agreement between the interested parties. The former, i.e., hetero-organised collaborations are opposed to the so-called "parasubordinate" work, where complete autonomy is granted to the collaborator in defining the manner and timing of work.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

Pursuant to Italian law, there is no specific obligation to draft in writing the employment contract. Nevertheless, certain clauses must be in writing in order to be considered effective and valid (i.e. the ones envisaging a probationary period or fixed-term period).

Recently, the Legislative Decree no. 104/2022 ("*Decreto Trasparenza*") established that the employer must provide the employee with information in writing, at the date of hiring or at least within seven days after the commencement of the employment relationship, including, but not limited to, the identity of the parties, the place of work, the registered office or domicile of the employer, the date of commencement of employment, the initial remuneration and the items that compose it with details of the timing and method of payment, the employee's contractual category, level and job title and the specific type of contract, specifying whether it is e.g. a fixed-term relationship, its duration, etc.

1.4 Are any terms implied into contracts of employment?

Italian law envisages certain duties incumbent both on employees and employers by virtue of the employment relationship, even if they are not expressly mentioned in the contract itself. For example, it is worth mentioning:

- loyalty, diligence and care in the employees' working performance;
- non-competition during the working relationship; and
- the employer taking measures to protect the physical integrity and moral personality of the employees.

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

Yes, there are. Minimum employment terms set down by law may involve the employee's right to receive a salary commensurate with the quality and quantity of their work, and their right to a minimum of four weeks' paid annual holiday.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

Many issues related to employment relationships – salary, termination of the employment, notice period and leave of absence – are governed by the national collective bargaining agreement (NCBA) applied by the employer.

Bargaining agreements can, albeit less frequently, be entered into also at a company level by the employer and the employees' staff representative (called RSU – *Rappresentanza Sindacale Unitaria* or RSA – *Rappresentanza Sindacale Aziendale*). Typically, these agreements define specific issues of a certain company and provide more favourable conditions for its employees.

1.7 Can employers require employees to split their working time between home and the workplace on a hybrid basis and if so do they need to change employees' terms and conditions of employment?

Yes, they can through a specific agreement which requires the employee's consent.

1.8 Do employees have a right to work remotely, either from home or elsewhere?

Only if it is provided for by their employment contract. Moreover, the condition of frail workers, with the right to smart working, has been extended by the Financial Law for the year 2023 until 31 March 2023.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

Article 39 of the Italian Constitution provides the freedom to set up or to join a trade union association.

Trade unions are considered unincorporated associations that do not need any authorisation or any registration to be recognised.

2.2 What rights do trade unions have?

Trade unions are entitled to be informed and consulted before the company implements certain decisions that may impact the workforce (e.g., in case of collective dismissal or business transfer).

Trade unions are also assigned with the delicate role of negotiation of the NCBA, which provides the detailed discipline to be applied to employment relationships.

Specific rights are granted to works councils.

2.3 Are there any rules governing a trade union's right to take industrial action?

The general right to strike is granted by Article 40 of the Italian Constitution. Moreover, there is a special regulation for strike in essential public services.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

Employers are not required to set up works councils.

Trade unions representatives' bodies may be established internally in a business unit with more than 15 workers.

Among the rights expressly guaranteed to the members of works councils are the rights to: assembly; referendum; post notices in places accessible to all workers within the production unit; and paid and unpaid leave.

Moreover, the works councils' representatives are granted with special protection in case of transfer or dismissal.

Works councils are assigned with unionisation activities for the aim of granting collective interests of the employees.

There are two types of works councils:

- RSA, which may be formed at the workers' initiative in each production unit staffing more than 15 employees, within the framework of trade union associations which have signed (or have participated in the relevant negotiations of) collective agreement applied in the production unit; and
- RSU, whose members are elected directly by employees, within lists submitted by trade unions.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

In general, the employer retains the right to decide autonomously, notwithstanding any opposition by the trade union.

2.6 How do the rights of trade unions and works councils interact?

Works councils and trade unions have competencies at different levels and, therefore, their respective rights coexist.

2.7 Are employees entitled to representation at board level?

No, they are not.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

Yes, Italian law protects employees against discrimination on grounds such as employees' gender, political opinions, union-related activity, religion, race, language, disability, age, sexual orientation, personal beliefs and nationality.

3.2 What types of discrimination are unlawful and in what circumstances?

Italian law does not differentiate between positive or negative discrimination, though exceptions could be seen for persons with disabilities. To ensure compliance with the principle of

equal treatment, employers are required to make reasonable accommodations in the workplace to ensure full equality of people with disabilities with other workers.

3.3 Are there any special rules relating to sexual harassment (such as mandatory training requirements)?

Sexual harassment is a very serious infraction in the context of employment relationships. The law expressly prohibits sexual harassment within a workplace. There are no mandatory training requirements, but companies are encouraged to bargain conduct codes with their workers' representatives establishing, for instance, specific procedures to prevent gender and sexual harassment.

3.4 Are there any defences to a discrimination claim?

The burden of proof usually lies with the party who files the claim. However, in cases of discrimination based on gender, the Italian law envisages a partial reversal of the burden of proof. In particular, if the employee provides presumptive elements of discrimination, the employer shall prove its non-existence, thus giving rise to a partial inversion of the burden of proof.

3.5 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

Employees may seek for remedies by filing claims for discrimination before the Labour Court. There is also a Commission for Equal Treatment that has the power to promote anti-discriminatory practices. Settlement is always an option, even after the judicial proceeding has started. At the first hearing, the Labour Judge must mandatorily try to reach an agreement.

3.6 What remedies are available to employees in successful discrimination claims?

The Labour Court can order the employer to stop discriminatory conduct against the employee and to remove the effect of the unlawful conduct. Damages can be awarded too.

3.7 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

It depends on the type of the workers' contracts that might require specific adjustments and further protections. Generally speaking, they cannot be treated less favourably than "typical" workers.

3.8 Are there any specific rules or requirements in relation to whistleblowing/employees who raise concerns about corporate malpractice?

As an EU Member State, Italy is about to bring into force a regulation to comply with EU Directive no. 1937/2019 on the "protection of persons who report breaches of Union law". According to the draft of the legislative decree under examination, employers within the private sector with 50 or more employees must establish internal channels and procedures for reporting and following up on reports.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

The mother-employee is entitled to five months of mandatory abstention from work.

Maternity leave shall begin two months prior to the expected date of confinement and terminates three months after the actual date of birth.

However, under certification of absence of any prejudice to the health and safety of both the mother and the child issued by an authorised doctor, it is possible for the mother to abstain from work:

- starting from one month preceding the expected date of confinement and for four months after the birth; or
- for the whole period of five months following the date of birth.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

During maternity leave, the mother receives an indemnity equal to 80% of the salary issued by the National Social Security Body. NCBA applied by the company could provide such allowance to be integrated by the employer for the remaining 20% of the salary.

From the beginning of pregnancy up to the child's first birthday, the mother-employee is also entitled to:

- a ban of her dismissal (except in specific cases);
- declining to provide a notice period and receiving indemnity *in lieu* in the case where she voluntarily resigns; and
- not having to work between the hours of midnight and 6 a.m.

Up to seven months after the child's birth, the mother-employee should not to be assigned any undertaking of dangerous tasks, such as carrying or lifting weights.

4.3 What rights does a woman have upon her return to work from maternity leave?

In addition to those rights listed above in question 4.2, following maternity leave, the mother-employee is entitled to:

- retain her job position and return to the business unit where she was employed at the beginning of her pregnancy, or to another located in the same municipality;
- be assigned the same tasks lastly performed or to equivalent ones;
- benefit from any increases in working conditions (either provided by collective agreements or by law) she would be entitled to during her absence; and
- priority access to, respectively, smart working modality up to the first 12 years of her child's life and part-time up to the first 13 years of her child's life.

Up to the first year of her child's life, a mother-employee is entitled to two specific daily paid breaks (reduced to one if daily working hours are less than six), which are one hour long each. Each break is reduced to 30 minutes if there is a kindergarten set by the employer, either within its premises or nearby. Break times are doubled in the case of multiple births.

4.4 Do fathers have the right to take paternity leave?

A father-employee is entitled to compulsory abstention from work for 10 working days (or 20 working days in the case of multiple births) with the right to an indemnity equal to 100% of his salary.

He is also entitled to compulsory abstention of five months as an alternative to the mother if: (1) she does not benefit from it; (2) she dies or she is affected by a serious illness; (3) she abandons the new-born baby; or (4) the father has exclusive custody of the new-born baby.

4.5 Are there any other parental leave rights that employers have to observe?

Up to the first 12 years of the child's life, parents are entitled to a voluntary leave which aggregate maximum cannot exceed 10 months (increased to 11 months if the father abstains from work for at least three months).

Parental leave pertains:

- to the mother and the father (or adoptive parents), a maximum of six months (increased to seven months for the father-employee in the abovementioned case); and
- to a maximum of 11 months for single parents.

During this period, up to the first 12 years of the child's life, the mother and father are entitled tor three months each to an indemnity equal to 30% of the salary, raised, alternatively among parents until the child's sixth year, for the duration of up to one month, at a rate of 80%. Additionally, they are entitled to a further three months granted with the same indemnity of 30% to be enjoyed alternatively.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

Briefly, both the regulations on smart and part-time working grant work flexibility, among others, to caregivers and employees whose relatives/children are affected by serious illness providing these employees to have priority access to smart working and to conversion of a full-time employment contract into a part-time one.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

In a case of an asset transfer, employees automatically transfer to the buyer.

Instead, the share deal does not affect the employment relationship.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

The employee retains all the rights related to the employment relationship.

The buyer is obliged to apply the economic and regulatory treatments provided for in the national, territorial and company collective agreements in force from the date of the transfer till their expiry, unless they are replaced by other collective agreements of the same level applied by the buyer.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

In case of business transfers regarding companies staffing more than 15 employees, both the seller and the buyer are obliged to give advance notice (at least 25 days before the business transfer) to works councils (so-called RSA or RSU) and to trade unions that have signed the collective agreement applied in the companies involved in the transfer. In the event that there are no works councils, such notice shall be delivered to the comparatively more representative trade unions.

Such notice must include some information regarding the business transfer: the expected or actual date; the reasons; the consequences on the workforce; and any measures to be adopted towards the employees after the transfer.

Upon written request of works councils or trade unions, communicated within seven days from the said notice, the seller and the buyer shall begin consultations with the requesting parties within the following seven days. The consultation shall be deemed exhausted if, after 10 days, no agreement has been reached.

Non-compliance with the procedure constitutes anti-union behaviour by the seller and the buyer.

Nevertheless, according to the most recent case law any eventual infringement of the information and consultation procedure does not affect the validity of the business transfer.

Special rules are also provided for in the case of the transfer of a company in crisis.

5.4 Can employees be dismissed in connection with a business sale?

The business sale does not in itself constitute grounds for dismissal.

The possibility to terminate the employment contracts in accordance with the general discipline on dismissals remains unaffected.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

No, in general they are not; moreover, an employee whose working conditions undergo a substantial change in the three months following the business transfer may resign for just cause.

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

Upon the termination of an open-ended employment contract, unless the dismissal is served for "just cause" (i.e., a reason that does not allow the employment relationship to proceed even on a temporary basis) the employee is entitled to the notice period, whose length depends on the employee's contractual level and service seniority as determined by the applied NCBA.

The employer may exonerate the employee from working during the notice period by paying the relevant indemnity *in lieu*.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

Italian law does not provide for garden leave which, however, may be agreed by the parties if they reach a settlement.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

Protections against dismissal are described under question 6.7 below.

Employees are treated as dismissed starting from the receipt of the dismissal letter (dismissal has immediate effect if the notice period is not due, otherwise the termination's effects start at the end of the notice period).

The consent of the third party is not required to dismiss employees (except in certain cases provided by the NCBA for staff representatives). However, a mandatory procedure involving third parties shall be triggered with regard to collective dismissals (see question 6.8 below).

6.4 Are there any categories of employees who enjoy special protection against dismissal?

The dismissal is null and void if served to:

- pregnant women (or women one year after the child's birth);
- male employees who have enjoyed compulsory paternity leave (from the period of the leave's start date up to one year after the child's birth);
- within the period following the request of the wedding's publications up to the first anniversary of wedding; and
- an employee requesting parental leave or leave for a child's sickness.

Moreover, special protection is granted to staff representatives who are entitled to immediate reinstatement in case of lack of evidence grounding the dismissal.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so, how is compensation calculated?

1) Reasons related to the individual employee may be:
   - disciplinary reasons: misconduct by the employee; or
   - objective reasons such as an employee's physical unsuitability or an employee's absence from work due to illness or injury exceeding the maximum threshold set forth by the applicable NCBA.
2) Business-related reasons concern technical, production-related and organisational reasons to be proven by the employer. These kinds of reasons are objective and they regard the activity of the employer. They may be due to technological renewal or to the need of rationalising a production system or the work organisation.

   With regard to compensation, upon termination the employer shall mandatorily pay to the employee:
   - vacation days and paid leave accrued and not used;
   - instalments of the additional monthly salaries; and
   - severance indemnity (which is a deferred compensation that is accrued annually during the employment relationship).

In case of unlawfulness of dismissal, employees are entitled to further compensation (for this calculation please see our answer to question 6.7 below).

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

Individual dismissals shall be served in writing and specific procedures shall be followed depending on the type of dismissal to be served.

In case of dismissal grounded on objective reasons, companies staffing more than 15 employees ("big companies") who intend to dismiss employees hired before 7 March 2015 shall communicate in advance the intention to proceed to the competent Labour Office. This procedure does not apply to executives. Within seven days from the receipt of the communication, the parties are summoned before the Labour Office to attempt to reach an agreement. The procedure will terminate by no later than 20 days starting from the day in which the Labour Office sent the communication of summoning.

In case of disciplinary dismissals, the employer shall first explain in writing the employee's misconducts and then the latter has the right to submit a written/oral justification within five days (or the longer term set forth by the applicable NCBA). The employer may apply the disciplinary termination just after the receipt of the justifications letter or at the end of the above-mentioned term.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

The employee shall challenge the dismissal within 60 days from its communication and then issue the relevant action before the Labour Court within the following 180 days.

The remedies for successful declaration of unlawfulness of dismissal vary depending on the reasons grounding the dismissal, the employee's qualification, date of hiring and the size of the employer, as summarised below:

Null dismissal (discriminatory, served after marriage, during maternity/parental leaves, other cases provided by law).

Reinstatement and indemnity of a minimum of five months of salary (alternatively to reinstatement, the employee may opt for indemnity equal to 15 months of salary), regardless of the date of hiring or the size of the employer.

Dismissal grounded on disciplinary reasons

Employees hired before 7 March 2015:

(i) For companies with less than 15 employees ("small companies"): re-hiring or alternatively, indemnity from 2.5 to six monthly salaries (up to the employer's choice).
(ii) Big companies: reinstatement and indemnity of a maximum cap of 12 monthly salaries, in case the disciplinary reason does not occur (in other cases: indemnity from 12 to 24 monthly salaries).

Newly hired employees (after 7 March 2015):

(i) Big companies: reinstatement and indemnity with a cap of 12 monthly salaries is residual and applied only in the case where there is a lack of "material fact" grounding the dismissal. indemnity from six to 36 monthly salaries (in other cases).
(ii) Small companies: indemnity from three to six monthly salaries.

Breach of procedural rules

Employees hired before 7 March 2015:

(i) Small companies: re-hiring or, alternatively, indemnity from 2.5 to six monthly salaries.

(ii) Big companies: indemnity from six to 12 monthly salaries.

Newly hired employees:

(i) Small companies: indemnity from one to six monthly salaries.

(ii) Big companies: indemnity from two to 12 monthly salaries.

Dismissal grounded on objective justified reasons

Employees hired before 7 March 2015:

(i) Small companies: re-hiring or alternatively, indemnity between 2.5 and six monthly salaries, in the case of a lack of objective justified reason.

(ii) Big companies: reinstatement and indemnity to maximum 12 monthly salaries, if the termination is "groundless" (in all the other cases: indemnity between 12 and 24 monthly salaries).

Newly hired employees:

(i) Small companies: indemnity between three and six monthly salaries.

(ii) Big companies: indemnity between six and 36 monthly salaries.

6.8 Can employers settle claims before or after they are initiated?

A settlement agreement providing the waiver by the parties to raise any claim connected with the employment relationship is a common praxis.

Italian law also contemplates a special procedure regarding employees hired after 7 March 2015 whereby, within 60 days from the communication of the dismissal, the employer may start conciliation before the competent body by offering to the employee a sum which is exempted from taxes and social contributions.

Moreover, starting from 1 July 2023, the possibility to trigger the out-of-court negotiation procedure within the assistance of the parties' lawyers will also be extended to labour disputes.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

A "collective dismissal" occurs when five dismissals are served in a business unit or in more business units located in the same province within a period of 120 days, due to objective reasons. In such case, the employer is burdened to implement a mandatory procedure involving the company's work council, Trade Unions and competent Labour Office. The selection of the employees to be dismissed should follow determined criteria.

A more complex procedure shall be implemented in case of closure of production activities entailing at least 50 terminations for employers staffing 250 workers or more.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

Employees are entitled to challenge collective dismissals before the Labour Court individually or jointly.

For employees hired before 7 March 2015, if the employer breaches the procedure for collective dismissals, employees are entitled to an indemnity between 12 to 24 monthly salaries.

If selection criteria are violated the employer shall reinstate the employee and pay an indemnity of up to 12 monthly salaries.

Newly hired employees are entitled to an indemnity from six to 36 monthly salaries. Reinstatement applies if the dismissal is communicated orally.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

Widespread restrictive covenants are:

- non-solicitation of customer/employees, preventing employees to persuade another company's employees or customers to leave it;
- non-compete, preventing employees from carrying out activities in competition with the former employer once the employment relationship has ended; and
- confidentiality, preventing employees from disclosing trade secrets or confidential information.

7.2 When are restrictive covenants enforceable and for what period?

Restrictive covenants may only be deemed valid and enforceable if they are agreed in writing.

Non-compete ones shall also:

- grant consideration to the employee (15%–35% of the employee's current monthly salary for each month of duration of the non-compete obligation is usually considered adequate compensation);
- define the prohibited activities and limit the geographical scope of the restrictions; and
- provide a clearly specified term not exceeding three years (five years for executives).

No legal regulation is provided for non-solicitation of customer/employee restraints. Non-solicitation clauses should nonetheless be clearly drafted and specific on which customers/employees are within the scope of the restraint.

As per the duration, it is common for these covenants to be inserted in a non-competition agreement and therefore is usually agreed that they will last for the same duration as the non-competition one.

As to the compensation, there are no legal requirements related to the non-solicitation of employees' covenants, while for non-solicitation of customers ones, it is debated whether the statutory requirement for a non-compete agreement would also apply to a non-solicitation covenant: however, in principle, no compensation is due to the employee.

7.3 Do employees have to be provided with financial compensation in return for covenants?

Please see question 7.2.

7.4 How are restrictive covenants enforced?

A judicial urgency proceeding aimed at obtaining an injunction is the main remedy.

It is also common to include a penalty clause so that, if the restraint is wholly or partly breached, the employee must pay a certain and predetermined amount to the employer.

8 Data Protection and Employee Privacy

8.1 How do employee data protection rights affect the employment relationship? Can an employer transfer employee data freely to other countries?

Processing personal data is usually inevitable for the purpose of managing the employment relationship itself. The transfer of data within the European Union does not raise many issues, since there is a level of data protection largely harmonised within the EU area. Data transfer to recipients outside the EU is instead subject to stricter requirements, as there must be an adequate level of data protection in the receiving country.

8.2 Do employees have a right to obtain copies of any personal information that is held by their employer?

Yes, employees have the right to obtain a copy of their personnel files and any data held on them. This right of access should be made possible at reasonable intervals and free of charge. For further copies, a reasonable fee could be requested. The right of access is not absolute and must not affect the rights and freedoms of others, including trade secrets or intellectual property.

8.3 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?

The employer cannot investigate the political, religious or trade union opinions of a prospective employee, as well as facts that are not relevant to evaluate his/her professional aptitudes. However, some delicate positions may need an assessment to evaluate whether the candidate is indeed suitable for the job. In any case, an employer can ask a prospective employee to bring references from former employers.

8.4 Are employers entitled to monitor an employee's emails, telephone calls or use of an employer's computer system?

The main reform on statutory rules governing employees' remote control loosened restrictions, considering the technological progress. Under the current legal framework, employers can monitor instruments/equipment which are used by employees for performing work activities (e.g., laptop, mobile and e-mail), provided that the employees have been adequately informed on how said instruments must be used and how controls can be carried out, in compliance with data protection legislation.

8.5 Can an employer control an employee's use of social media in or outside the workplace?

Italian law does not specifically regulate the use of social media in the workplace and beyond. However, if an employee posts a negative comment on a company platform, or to his/her colleagues, or in relation to the company's products or its customers, said employee could face disciplinary consequences. The relevant assessment shall be carried out on a case-by-case basis, thus considering the specific circumstances characterising each case. Given the increasing issues arising from the use of social media, many clients – especially multinational companies – have implemented company policies regulating its use, which may help in taking disciplinary measures against an employee.

9 Court Practice and Procedure

9.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

In Italy, labour courts are the only forum where employment disputes can be dealt with.

Labour proceedings involve three levels of judgments. In the first instance, labour disputes fall under the jurisdiction of the Court ("*Tribunale*") in monocratic composition serving as Labour Judge, while the jurisdiction to decide in the second instance lies with the Court of Appeal ("*Corte d'Appello*"), which is territorially competent, consisting of three judges.

Finally, the appeal rulings can be challenged before the Supreme Court composed of five judges ("*Corte di Cassazione*") only on issues of legitimacy (i.e. violation of rules of law, procedure, jurisdiction).

9.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

The Italian legal system has provided for a special procedure for the resolution of disputes relating to labour relationships and in matters of social security and compulsory assistance, which is characterised by orality and immediacy.

Employment lawsuits can be filed before a court without any attempt at conciliation, which is merely facultative.

There is an obligation to pay the unified contribution ("*contributo unificato*") for labour and social security cases, whose amount depends on the value of the dispute itself.

9.3 How long do employment-related complaints typically take to be decided?

The timeframe for employment claims is shorter than that provided for ordinary cases: the intent of the legislator is to shorten their duration which – on average – should close within a range of a few months to a few years, for each level of instance, depending on the object of the proceeding and on the territorial area.

9.4 Is it possible to appeal against a first instance decision and if so, how long do such appeals usually take?

Yes, it is. Regarding the duration of the appeal proceeding, see question 9.3 above.

Angelo Zambelli is a leading expert in employment law, labour law and industrial relations, as well as in all related labour disputes.
He has in-depth experience in the planning and concrete implementation of extraordinary finance operations and restructuring, reorganisation and downsizing plans of companies belonging to national and international groups.
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Barbara Grasselli has a significant experience in employment law and industrial relations.
She advises domestic and foreign clients in implementing and managing personnel restructuring plans, in dealing with business crisis situations as well as in procedures involving the relocation of business.
She assists clients in labour-law issues over both the pre-litigation and the litigation stage. She has a wide experience in agency relationships, thus assisting clients in drafting agency contracts as well as in managing the relevant litigation.
She regularly participates, as a speaker and lecturer, in numerous conferences or courses organised by Convenia and Paradigma.
She is also a member of the Italian Employment Lawyers Association, the Italian Association for Personnel Management and the European Employment Lawyers Association.

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The Firm has extensive experience in employment law, industrial relations and related litigation, as well as an in-depth knowledge of the legislative and regulatory system governing employment relationships.
The Team is made up of professionals with proven in-court experience and an in-depth knowledge of the complex and articulated Italian legislation, also in the context of European Union law.
As a consultant of industrial, financial and commercial companies and corporate groups, the Firm offers ongoing assistance to clients in matters relating to Employment Law, Trade Union Law and Industrial Relations, providing its clients with strategic advice, assisting them in the day-to-day management and solving of any labour disputes.
The Team has successfully addressed many legal disputes relating to all labour law issues and has managed numerous reorganisations of companies in the engineering and steel, chemical and pharmaceutical, petrochemical and publishing sectors, as well as finance and credit.
The Firm also assists top managers in the stages of contractualisation and termination of employment.

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