IN-DEPTH

Employment Law

ITALY

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In-Depth: Employment Law (formerly The Employment Law Review) is an insightful global survey of the employment law frameworks and related developments in key jurisdictions around the world. It analyses the most consequential current issues faced by employers, including recent case law, legislative and regulatory changes and best practices.

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Italy

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Summary

Introduction

Italian employment law derives from the following sources:

1. international treaties and European sources;
2. the Constitution, domestic law and the Italian Civil Code;
3. collective bargaining agreements and individual employment agreements; and
4. employers' policies and practices.

Court decisions in Italy are not considered a source of law because courts are supposed to apply existing legislation. However, the application and the interpretation of legislation clearly imply a margin of discretion by the courts in applying the law. Thus, case law precedents play an important role in shaping Italian employment law.

In Italy, Labour courts are the only forum where employment disputes can be dealt with. Labour court proceedings involve three degrees of judgments. In the first instance, labour disputes fall under the jurisdiction of a single labour judge, whereas jurisdiction to decide cases in the second instance lies with the Court of Appeal, consisting of three judges.

Finally, Court of Appeal rulings can be challenged before the Supreme Court, composed of five judges. The Supreme Court only decides issues of legitimacy (i.e., violation of rules of law, procedure and jurisdiction).

Government agencies and authorities, among which the Social Security Agency (INPS) and the National Institute for Insurance against Accidents at Work (INAIL) are the main bodies, also deal with the enforcement of labour laws and regulations.

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Year in review

In Italy, Legislative Decree No. 24 of 10 March 2023 transposed the EU Directive 2019/1937 of the European Parliament and of the Council of 23 October 2019. This Decree introduced for employers staffed with an average of at least 50 employees in the last year or, if smaller, operating in the field of certain sectors (e.g., money laundering) or adopting a 'Model 231', the requirement to have in place a whistle-blowing procedure. The Decree protects the whistle-blower and those who have a special relationship with the whistle-blower, such as the facilitators (i.e., the individuals supporting the whistle-blower) and the persons operating in the same work context as the whistle-blower.

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Significant cases

The following noteworthy rulings were issued by the labour courts during 2023.

By way of Judgment No. 12132 of 8 May 2023, the Supreme Court further extended the obligation of *repêchage*, according to which, before serving an individual dismissal for objective justified reasons (i.e., economic reasons), the employer is required to assess the possibility to relocate the redundant employee within the organisation. The court stated that the employer is required to consider those job positions that are 'soon available' with reference to the date of dismissal.

By Decree dated 28 September 2023, the Court of Milan set forth that delivery drivers must be classified as subordinate employees, rather than self-employed workers. In the light of the above, the Court found that the conduct of a company was anti-union, for having shut down food deliveries throughout Italy, terminating delivery drivers' contracts by disconnecting them from the platform only via e-mail. The qualification of delivery driver as subordinate employees had significant implications, for instance the application of the following:

1. the procedure set forth by Law No. 234/2021, which is mandatory in the event of closure and permanent termination of production activities entailing at least 50 dismissals, for employers with an average of at least 250 employees in the previous year; and

2. the mandatory procedure for collective dismissal under Law No. 223/1991.

This judgment significantly strengthened the trend of case law to acknowledge delivery drivers as subordinate employees.

With Judgement No. 30093 of 30 October 2023, the Supreme Court dealt with the delicate balance between the ban on dismissal of the employee refusing the change of working time and the possible objective justified reasons (entailed by such denial) that may legitimately be a ground for terminating the employment. The Court rejected the challenge of the dismissal served as a consquence of the employee's refusal to convert the employment relationship from full time to part time. However, the Supreme Court overturned the decision, highlighting that the employee was unlawfully dismissed, since the company was unable to prove either the impossibility to maintain the working time previously scheduled or the impossibility to propose a different distribution of working time as an alternative to the dismissal, thus breaching the obligation of *repêchage*.

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unable to prove either the impossibility to maintain the working time previously scheduled or the impossibility to propose a different distribution of working time as an alternative to the dismissal, thus breaching the obligation of *repêchage*.

Basics of entering an employment relationship

i Employment relationship

By law it is admissible to enter into an employment relationship orally, although it is strongly advisable to execute an employment contract or hiring letter in writing, to prove their content. Written form and signature of the contract or hiring letter are required by law for the purposes of validity of particular terms (e.g., probationary period clause or non-competition agreement).

The Legislative Decree No. 152 of 26 May 1997, implementing in Italy the European Union Directive No. 533/91, as amended by the most recent Legislative Decree No. 104 of 27 June 2022, provides that employers must notify employees of certain detailed information, such as:

1. duration of the probationary or trial period, if any;
2. salary, the frequency of its payment and any terms and conditions regarding fringe benefits;
3. working hours;
4. the workers' duties and the related work 'category';
5. the procedure, form and terms of notice in the event of termination by the employer or employee; and
6. the authorities to which social security is paid.

Additional information can be provided to employees within one month from the hiring date.

In some cases, the law absolutely prevents any review of employment conditions (e.g., relating to the employee's right to receive adequate remuneration pursuant to Section 36 of the Italian Constitution), whereas some amendments can be implemented unilaterally by the employer within the scope of its power of direction and organisation. Changes to the contract may also result from settlement agreements or waivers by the employee.

Fixed-term contracts are also admissible, subject to certain conditions. They are prohibited in the following circumstances:

1. to replace employees on strike;
2. in productive units in which – within the previous six months – employees with the same duties as those hired with fixed-term contracts were dismissed through mass dismissal procedure;
3. in productive units where employees carrying out the same duties as those hired on fixed-term basis were suspended from working activity; and

4. by employers who failed to draft the risks assessment document for health and safety.

Fixed-term employees are entitled to the same economic and normative rights as open-ended term employees, except in cases in which the divergence has objective grounds.

ii Probationary periods

Regardless of the type of employment contract executed, the parties are allowed to undergo a probationary period with the aim to evaluate the convenience of the employment relationship. During such a period, employment is validly in effect, with mutual rights and obligations of the parties, each of which is entitled to withdraw from the contract without notice.

iii Establishing a presence

A foreign company wishing to hire an employee or to engage an independent contractor in Italy, without establishing itself in one of the corporate forms provided by the relevant legislation, may operate with a representative office or by appointing a 'fiscal representative' resident in Italy (usually a professional or a payroll consultant). The non-resident company must grant a mandate to the appointed Italian 'fiscal representative' in order to fulfil the obligations in the company's name and on its behalf with the social security and insurance institutions (INPS and INAIL). Furthermore, income from employment must be taxed in Italy and the employer is required to withhold the relevant income tax as tax withholding agent.

Additionally, there may be the risk that the employee or independent contractor may perform activities that could imply the existence of a permanent establishment (PE).

By law a PE is a stable business office by means of which a non-resident entity carries out all or part of its business in the territory of another state.

The main factors determining the exposure to the risk of a PE are as follows:

1. the presence of an individual working remotely for a foreign entity from the Italian territory. This may suffice to deem an office exists;
2. an individual acting in the name and on behalf of a foreign entity and stipulating contracts in the name of such entity, without the entity requesting substantial amendments of the stipulated contracts; and
3. that individual is operating essentially exclusively for the same legal entity.

If a company is considered to be a fixed place of business in Italy, any revenue earned on the Italian territory qualifies for taxation, which needs to fulfil the relevant obligations pursuant to Italian tax law.

Regarding applicable employment law, the parties are free to subject employment to a law other than Italy's law, but the mandatory provisions of Italian law remain applicable (i.e.

minimum wage, working time, rest periods, health and safety requirements and protection against employment termination).

Restrictive covenants

Section 2105 of the Italian Civil Code establishes a 'duty of loyalty' effective as long as the employment relationship exists. Pursuant to Section 2125 of the Italian Civil Code, post-employment non-compete covenants may only be deemed valid and enforceable if they:

1. are agreed in writing;
2. grant adequate consideration to the employee;
3. narrowly define the prohibited activities and limit the geographical scope of the restrictions; and
4. have a clearly specified term not exceeding three years (five years for executives).

To assess the validity of a non-compete covenant, the court will need to ascertain whether its terms and conditions, when combined, allow the employee to find other employment in compliance with the right to professionalism.

Regarding non-solicitation restraints of customers or employees, there are no legal requirements in terms of duration or compensation.

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Wages

i Working time

Limits on working hours are set forth by the law and the NCBAs (National Collective Bargaining Agreements). The Legislative Decree No. 66 of 8 April 2003 applies to all sectors of business, both public and private, except for a few categories (such as civil aviation staff, the police and the armed forces). Section 3 of the Legislative Decree provides that normal working hours are 40 per week. The NCBAs may, however, determine fewer hours.

The maximum duration of the working week is predetermined by the NCBAs; nevertheless, the average weekly working time may not exceed 48 hours, including overtime. Average working hours are to be computed over a four-month period, taking into consideration that the relevant NCBA could extend such period on the grounds of objective, technical or organisational circumstances.

Night work may not exceed eight hours on average over a 24-hour period calculated from the time of commencement of work. To determine the average on which the eight-hour limit is to be calculated, no account is to be taken of the minimum weekly rest period when this falls within the reference period laid down by collective agreements.

ii Overtime

Work performed in excess of the normal weekly working hours established by the law or by the applicable NCBA is to be deemed as overtime work and must be remunerated accordingly. Section 5 of Legislative Decree No. 66/2003 states that, as a general rule, the NCBA covers the conditions for overtime work and that, without such provisions, overtime work is allowed only upon previous agreement between the employer and the employee, for a period not exceeding 250 hours per year. The Italian legislation provides that overtime is paid with an extra remuneration as determined by the NCBA applied by the employer. The NCBA may establish that alternatively – or in addition to this extra remuneration – employees receive compensatory rest time.

Foreign workers

The immigration system in Italy varies depending on whether the worker is an EU citizen or not. EU nationals are entitled to work in Italy without any work or residence permit; there are no numerical thresholds, and the employees are not subject to any specific immigration procedure. According to Legislative Decree No. 286 of 25 July 1998, nationals of non-EU countries wishing to work legally in Italy require both a residence permit and a work permit. The duration of the residence permit is variable and may not exceed one year in the case of a fixed-term employment contract or two years in the case of an open-ended contract. An exception is the peculiar case of the 'EU long-term resident's permit', which has an indefinite duration.

Furthermore, every year a decree establishes the maximum number of non-EU citizens who may enter into contracts of employment in Italy. This does not apply to the hiring of employees intended to perform certain special activities (e.g., translators and interpreters, journalists and university professors) or to particularly skilled workers.

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Global policies

Pursuant to Section 2104 of the Italian Civil Code, employers are allowed to set out in writing and in a language understandable to employees an internal disciplinary regulation (or code of conduct), consisting of all the disciplinary rules provided for by collective bargaining or unilaterally defined by the employer, without any obligation of prior approval from employees or third parties. According to the Workers' Statute, the employer must make public all disciplinary rules, which 'must be brought to the knowledge of employees by posting them in a place accessible to all (of them)' within the company's premises. According to case law, given the above, any different form of distribution of the document may be deemed inadequate by a labour court, should an employee challenge the sanction applied on its basis.

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Parental leave

According to Legislative Decree No. 151 of 26 March 2001, a mother has the right to paid leave of absence in order to attend pre-birth tests or medical examinations.

Working is forbidden for the period of two months prior to the expected date of confinement and for three months after the actual date of the confinement. During this period, the mother is entitled to an INPS indemnity of 80 per cent of the salary.

During maternity, under certain conditions the working father is entitled to compulsory abstention from work as an alternative to the mother. This period is called 'alternative paternity leave' and the father – like the mother – is entitled to an INPS indemnity of 80 per cent of the salary.

Working parents benefit from a specific protection against dismissal, which is prohibited:

1. for working mothers from the beginning of the pregnancy (which is presumed to be 300 days before the expected date of birth indicated in the pregnancy certificate) and until the child reaches the age of one year;
2. for working fathers taking alternative and compulsory paternity leave for the duration of the leave and until the child reaches the age of one year; and
3. if caused by the working parents' application for or taking of parental leave.

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Translation

Although the employer is not required to translate employment documents into employees' native language, including Italian, it is strongly advisable that the documentation (e.g., employment contracts, individual agreements, incentive plans and company policies) is executed, without any additional formalities, both in Italian and in the relevant employee's native language. The reason for this is to avoid the risk that employees may claim that terms and conditions of employment were not fully understandable to them and raise objections to the enforcement of the contractual provisions.

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Employee representation

Trade Unions representative bodies may be established internally in business units with more than 15 workers. In particular, there are two types of works councils:

1. company trade unions (RSA), whose members are appointed directly by the territorial trade unions associations; and
2. unitary trade unions (RSU), whose members are elected directly by employees.

RSA are constituted upon the employee's initiative by the territorial trade union organisations who have signed or participated in the negotiations of the NCBA applied by the employer. RSU are elected by the employees by universal suffrage from competing lists through personal and secret vote and the right to indicate only one preference. RSA and RSU delegates are assigned with unionisation activities for the aim of granting collective interests of the employees. RSU mandates may last up to three years. In this respect, they are assigned with appropriate spaces, in places accessible to all employees, for posting notices, publications of trade union and labour interest.

Specific safeguards are granted to RSA and RSU members because, in order to transfer them to a different business unit, the employer must obtain in advance an authorisation from the trade union association that they joined. Moreover, extra protection entitlement applies in the event of dismissal: during litigation on the lawfulness of the dismissal, upon joint request of the employee and the trade union to which the employee adheres, at any stage and level of the proceedings, the competent labour court may order the reinstatement of the employee in their place of work even before the issuance of the judgment, should the court deem that the employer has provided irrelevant or insufficient evidence.

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Data protection

i Requirements for registration

Employees' data processing must be in compliance with the Privacy Code (Legislative Decree No. 196/2003), as amended further to the new requirements under Regulation (EU) No. 2016/679 (the General Data Protection Regulation (GDPR)). Before processing data whose collection is allowed, the employer must carry out specific obligations. In particular and under certain conditions, as data controller the employer must appoint a data protection officer (DPO), which must have in-depth knowledge relating to data privacy provisions. Although the appointment of a DPO is mandatory only in specific cases, the delivery of the information notice to the data subject (e.g., applicant and employee) is always needed. When personal data is collected directly by the data subject, for instance by the employer, the notice must include very detailed information, specifically listed by law, and be clear and concise.

In addition, the processing of personal data may require the data subject's consent, which must be proven by the employer and is valid solely if it is provided without constraint and it is specific, informed and unequivocal. Consent is not required when, among the cases provided by law, the data must be collected to fulfil a contract entered into by the data subject (e.g., the employment contract) and to comply with legal obligations.

Protection and security of stored data, which is required to implement adequate security measures and data breach or disaster recovery measures, must be granted by the employer.

ii Cross-border data transfers

Upon condition that the measures implemented in compliance with the GDPR are in place, 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 European Union is instead subject to stricter requirements, as there must be an adequate level of data protection in the receiving country.

iii Sensitive data

The GDPR makes a distinction between 'personal' and 'sensitive personal' data. The latter is personal data that reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, genetic data, biometric data processed solely to identify a human being, health-related data and data concerning a person's sex life or sexual orientation.

Such data may be collected on a mandatory basis, if necessary to fulfil the employment agreement. However, the employer cannot process this data for a different purpose than what is clearly stated to the data subject.

iv Background checks

Section 8 of Law 300/1970, the 'Workers' Statute', prevents the employer from investigating the political, religious or trade union opinions of a prospective employee, as well as facts or circumstances that are not relevant to assess professional aptitudes.

In light of this, criminal records checks may be allowed, if deemed relevant with respect to the professional profile for which the candidate applies, whereas any investigation aimed at collecting information that may then trigger discriminatory conduct is forbidden.

In addition, employers cannot directly perform checks to verify a potential workers' physical suitability. Formal credit checks for recruitment purposes are also not admissible, since they violate the prospective employees' right to privacy.

v Electronic signatures

In addition to wet ink signature, employment-related documentation can be executed by way of electronic signature, on the condition that the signed document is uniquely linked to the signatory, which can be identified through the signature and only the individual has control over the data created using that signature, and on the condition that the documentation is linked to the data signed therewith, so that any subsequent change in the data is detectable.

Discontinuing employment

i Dismissal

Grounds for Termination

Italian labour law requires the termination of the employment contract to be justified on specific reasons:

1. just cause occurring in case of gross misconduct by the employee, which does not allow the continuation of the employment relationship even temporarily;

2. subjective justified reasons, which occur whenever the employee breaches a contractual obligation, or the employee negligently performs their duties, but the behaviour is not serious enough to ground a dismissal for just cause; and
3. objective justified reasons, which concern technical, production-related and organisational reasons that have to be proved by the employer. These kinds of reasons are objective and concern the activity of the employer. They may be due to technological renewal or to the need to rationalise a production system or the work organisation. Before proceeding with dismissal, the employer must assess whether it is possible to assign the employee alternative duties.

Disciplinary dismissal

If the dismissal is grounded on just cause or on subjective justified reasons, the employer must follow a procedure set forth by Section 7 of the Workers' Statute, which is to:

1. provide the employee with a written description of the misconduct;
2. await justification, if any, by the employee to be rendered within five days; and
3. communicate termination.

The dismissal is effective from the day on which the disciplinary procedure commenced.

Dismissals for objective justified reasons

Regarding employees hired before 7 March 2015 by large companies staffed with more than 15 employees,[2] the employer must communicate in advance of its intention to proceed with individual dismissal to the Labour Office of the employee's workplace, explaining the reasons for the termination. The Labour Office summons the parties before the Conciliation Office for a meeting in which the parties will attempt to reach an agreement. Should the parties not reach an agreement or, in any case, after seven days have elapsed without any summoning communication by the Labour Office, the employer can serve the dismissal.

Exceptions apply, as the indicated procedure does not take place for executives or for employees having exceeded statutory sick leave entitlement.

Notice period (or the relevant indemnity in lieu of notice), whose duration is determined by the applicable NCBA based on the employee's contractual level and service seniority, can be granted solely in the case of dismissal for subjective or objective justified reasons. Regardless of the reasons for termination, a severance indemnity (TFR) must be paid to employees. The amount of TFR is equal to about 7.4 per cent of the overall amount of salary received during employment.

Remedies for employees seeking to challenge unlawful termination

The sanctions for unlawful individual dismissal vary depending on the reasons grounding the served dismissal, the employee's qualification and date of hiring, and the size of the employer.

Dismissal null and void

Italian law provides several cases in which the employer is prevented from dismissing employees (including executives). The dismissal is deemed null and void if it is:

1. grounded on discriminatory or retaliatory reasons;
2. served from the beginning of pregnancy up to one year after the child's birth;
3. caused by the employee's request to take parental leave or by marriage; or
4. served in oral form.

In the above cases, employees have the right to be reinstated and to receive back pay as from the date of dismissal to reinstatement, with a minimum of five-months' salary. Alternatively, employees can opt for an indemnity in lieu of reinstatement equal to 15-months' salary (indemnity for lost salary shall also be paid in this case).

Dismissals grounded on just cause or subjective justified reasons (disciplinary dismissals)

Employees hired before 7 March 2015

1. Small companies employing up to 15 employees:[3] if a dismissal is declared invalid by a labour court for lack of just cause or subjective justified reason, employees may be entitled to be re-hired with a new employment contract or to receive an indemnity ranging between two and half and six-months' salary, depending on the employee's length of service, employer's size and type of business and the parties' behaviour before dismissal; and
2. large companies employing more than 15 employees:[4] in the event that the 'justified subjective reason' or the 'just cause' does not occur because (1) the objected behaviour is non-existent or (2) a more conservative measure than dismissal may have been applied, the employee may be entitled to reinstatement and to an indemnity up to 12 months' salary, plus social security contribution, deducting the salary that the employee earned whether employed in a different workplace (*aliunde perceptum*) or the salary that the employee could have earned if he or she would have found employment using the ordinary diligence (*aliunde percipiendum*). In all other cases other than those set out at in items (1) and (2) above, the employee is entitled to the payment of an allowance ranging between 12 and 24 months' salary.

Employees hired from 7 March 2015

1.

Small companies employing up to 15 employees:[5] the sole remedy applicable would be the payment of an indemnity ranging between three-months' salary and six-months' salary; and

2. large companies employing more than 15 employees:[6] the newly hired employees have the right to be reinstated only in a specific case of disciplinary dismissal (i.e., dismissal for 'just cause' and for 'justified subjective reason'), when it is directly proven that the 'material fact' upon which the dismissal was based did not occur. In this case, the reinstatement should be implemented together with the payment of an indemnity up to a maximum amount of 12-months' salary, plus social security contribution, deducting *aliunde perceptum* or *aliunde percipiendum*, if any. In all other cases, the employee will be only entitled to an indemnity, to be established by the labour judge within a minimum of six-months' salary and a maximum of 36-months' salary, thus taking into account the general criteria provided for by Italian law such as the relevant employee's company seniority, the size of the employer's business, the overall number of employees with whom the latter is staffed, and conditions and behaviours of both the employer and the employee.

Dismissals grounded on objective justified reasons

Employees hired before 7 March 2015

1. Small companies employing up to 15 employees:[7] In case of lack of objective justified reason, the company may be ordered to re-hire the employee with a new employment contract or pay an indemnity ranging from two and a half to six-months' salary, depending on the employee's length of service, the employer's size and type of business and the parties' behaviour before the dismissal; and
2. large companies employing more than 15 employees:[8] according to Section 18 of the Workers' Statute, in the event that the fact on which the termination was based is inexistent or 'groundless', the employee is entitled to reinstatement and to an indemnity for the remuneration lost, within a 12-month cap, plus social security contribution, deducting *aliunde perceptum* or *aliunde percipiendum*, if any. In all the other cases, the employee is entitled to a payment of an allowance ranging from a minimum of 12-months' salary to a maximum of 24-months' salary.

Before the recent Constitutional Court ruling of 19 May 2022, reinstatement applied only when the fact on which the termination was based was 'manifestly groundless'. Following this ruling, the context of application of the remedy of reinstatement has been significantly increased.

Employees hired from 7 March 2015

1. Small companies employing up to 15 employees:[9] an employee may be entitled to the indemnity with a minimum of three-months' salary and up to a maximum of six-months' salary; and

2. large companies employing more than 15 employees:[10] no reinstatement applies; only monetary compensation in the range of between six and 36-months' salary may be awarded.

In the event that the employer serves the individual dismissal unlawfully based on the employee's physical unsuitability for working, the employee will be entitled to reinstatement and the payment of all remuneration lost during the period from dismissal until reinstatement, subject to a minimum of five-months' salary, deducting *aliunde perceptum* or *aliunde percipiendum*, if any.

When an employment relationship is terminated, the parties may agree to enter into a full and final separation agreement providing the waiver by the parties to raise any claim for any right arising from or connected with the employment relationship and its termination.

Except for the above-mentioned cases, such as retaliatory or discriminatory dismissal, different provisions apply to executives because, if unlawfully dismissed without grounded reasons, they are not entitled to reinstatement, but solely to an indemnity depending on length of service and grounds for dismissal pursuant to the applicable NCBA.

ii Redundancies

A collective dismissal occurs in a large company[11] when at least five dismissals are served by the employer in a business unit or in more business units located in the same province and in a period of 120 days, due to reduction, transformation or ceasing of activity.

Regarding the decision to proceed with a collective dismissal, the employer must notify:

1. the company's works council; and
2. the competent employment office (i.e., Region or Welfare Ministry).

In the absence of any company's works council, notice shall be given to the 'comparatively more representative' trade unions. Such notice must include:

1. the reasons backing the redundancy;
2. technical, organisational and production reasons for which it is not possible to adopt suitable remedies and avoid, in whole or in part, collective redundancies;
3. the number of active employees in the company, their role and the department, office or unit where they are located;
4. the number of redundant employees, their role and the department, office or unit where they are located;
5. the prospected timeframe to implement the collective dismissal plan;
6. the possible measures to address the occupational consequences of the redundancy plan; and
7. the calculations for all sorts of economic awards in addition to those provided by the law or by the NCBA.

Within seven days from the date of receipt of the mentioned notice, the parties must meet to jointly discuss the reasons determining the collective dismissal's decision taken by the company and the adoption of possible alternative measures. It is not required to reach and sign any agreement.

If either the company or the trade unions are unable to reach an agreement within the maximum length of the procedure (two steps: 45+30 days = max 75 days), or if they reach an agreement during the procedure, the employer is allowed to terminate the redundant employees by granting them the due notice period.

The dismissals may be served within a period of 120 days from the completion of the procedure unless the parties have agreed to extend the term.

The selection of the employees to be dismissed should follow the criteria provided by the agreement reached during the procedure or, in the event of a negative outcome, the employer must follow the criteria provided for by Law No. 223 of 23 July 1991, which are family charges, seniority, and technical, productive or organisational matters, to be applied jointly.

Effective as of 1 January 2022, a special and additional information and consultation procedure for collective redundancy for shutting down of activities was set out for employers with an average of at least 250 employees in the year preceding the year in which they intend to close 'an office, a factory, a branch, or a functionally autonomous department located in the national territory', with definitive termination of the relevant activity, resulting in at least 50 redundancies. This special procedure requires written notice of the intention to proceed with the closure, submitting to the works council and the involved institutions a plan to limit the employment and economic effects resulting from the closure.

Transfer of business

The rules governing the transfer of business are set forth in Section 2112 of the Italian Civil Code, as amended by Section 47 of Law No. 428 of 29 December 1990, and apply also where a transfer involves a separate and self-contained branch of undertaking.

The Italian law on transfer of undertaking is intended to grant employees occupational stability and preserve their acquired rights.

A change of employer due to the transfer of the business does not give the employer the right to terminate or worsen employment conditions.

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Outlook and conclusions

The enactment of a new law is expected based on the EU Directive No. 2023/970, made public on 17 May 2023, aimed at strengthening the principle of equal pay for men and women in the case of the same job or job of the same value, by way of requiring transparency on the criteria to determine remuneration.

In particular, among the other provisions on the matter are the following:

1. in the event of gaps on average remuneration for men and women, the employer will be required to explain the reasons for this based on objective and neutral criteria and to correct, as a matter of urgency, pay gaps that are not justified by these criteria; and
2. employees affected by remuneration gaps will be entitled to remedies, such as compensation for damages for lost opportunities and payment of back pay remuneration and bonuses.

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Endnotes

1 Angelo Zambelli is a founding and managing partner, and Barbara Grasselli and Alberto Testi are founding partners at Zambelli & Partners. ^ Back to section

2 If the employer has more than 60 employees in the whole Italian territory or more than 15 in a single business unit or more business units within the same municipality. ^ Back to section

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