



OPENING UP SHOP

LABLAW is a member of L&E Global, the alliance of employment counsel worldwide

Italian employment law has always been employee-friendly, reflecting the principles of the Italian constitution. However, the global economic downturn has forced Italian legislation to enhance flexibility in the job market and attract foreign investment. From 2015, the “Jobs Act” has made important changes to the entire system of employment contracts and has recently overhauled Italian employment law: new hirings have “gradual” protection directly linked to length of service. The remedy of reinstatement has practically disappeared except for some very specific cases.

LABLAW is one of the most important Italian law firms specialized in labour law, with over 60 employment law specialists, working out of strategic branch offices in Milan, Padua, Pescara, Genoa, Naples, Bari and Rome. This capillary presence makes LABLAW the largest boutique firm by geographical reach and allows us to serve our clients throughout Italy with a uniform offering of high quality commercially orientated services at the local level.

LABLAW acts for large and mid-size Italian companies as well as multinationals in both advisory

and contentious matters and provides day-to-day practical advice and assistance on a full gambit of workplaces issues, across a wide variety of sectors. As recognized experts in our field, we pride ourselves in giving our clients practical, commercial, solution-driven advice in an easy and accessible manner.

I. LABOUR AND EMPLOYMENT REQUIREMENTS

A) THE CREATION OF WORKING RELATIONS

- The essential element of the employment agreement is the exchange between work provided by the employee and wages paid by the employer for the performance of such work;
- The obligation to inform the worker of certain aspects concerning the employment relationship and the obligation to set down certain clauses in writing, make the written form essential;

- The full time open-ended contract is the usual form of employment. Alongside the full-time open-ended employment contract, there are alternative more flexible forms of contract, such as part-time employment contract (fixed-term or open-ended contract) characterized by shorter working hours;

- A term may be applied to an employment contract of no longer than 36 months (fixed-term contract);

- As of 2015, the “Jobs Act” has made important changes to the entire system of employment contracts. New hirings have “gradual” protections directly linked to length of service. Reinstatement is no longer the sole remedy for unfair and wrongful dismissal, being largely replaced by an award of damages calculated on the basis of length of service;

- The parties may envisage a trial period agreement in order to evaluate whether they

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wish to finalize an employment relationship. The contract must be in writing upon penalty of invalidity;

- Under Italian law, employers are required to implement policies concerning employees' privacy protection and policies concerning control of the use of employer's tools (personal computer, phone, internet, mails, and social media). Furthermore, it is recommended to create a disciplinary policy to address employee misconduct and how the company will respond to any possible misconduct;
- The employer is obliged to ensure health and safety at work and has to proceed to an evaluation of risks, drafting a risk assessment report.

B) PROCEDURES

- The employer must register the employee with the Social Security Body INPS using the online procedures set in place by INPS, in sufficient time to allow payment of contributions to the social security body;
- The employer forwards the notice of commencement of work, since he is obliged under law to insure employees against the risk of injury/occupational diseases, no later than the date on which the insured activity commences;
- When appointing someone, the employer sends the data concerning the employment contract to the competent Employment Centre by digital means (notice of employment);
- The employer is obliged to provide, fill in and keep at the

registered office an employee register (LUL), containing information relating to employees, including payments and attendance records;

- Omitted registration may lead to penalties, which may apply under civil, administrative or criminal law.

C) REMUNERATION AND SOCIAL CONTRIBUTIONS

- Remuneration must be proportioned to quantity and quality of work performed and in any case sufficient to ensure to workers and their families a free and dignified life.

It may exist in various forms: on a time basis, on a piecework basis, profit sharing, in kind, and in the form of commission.

Retribution must be paid by means of a payslip according to terms and procedures in use where the work is performed and provided for by the National Collective Bargaining Agreements.

- Contributions to INPS are owed in part by the employer and in part by the employee, and are calculated by the employer on the income taxable for social security purposes.

On a monthly basis, the employer sends the data flow of income and contributions digitally to INPS and, every month, using F24 form, pays the total contributions owed.

D) WORKING HOURS, HOLIDAYS AND REST PERIODS

- Working hours are the period during which the employee is at

work, at the employer's disposal and performing his activities and duties.

Normal working hours: normal working hours are fixed at 40 hours per week.

Overtime: work exceeding an average of 40 hours per week or exceeding the weekly working hours established by National Collective bargaining Agreement, but within the maximum limit of 48 hours per week also to be calculated as an average.

- The employee has the right to a weekly rest day, which usually falls on a Sunday
- The employee is entitled to a period of annual leave of no less than 4 weeks, which may not be replaced by payment, except for the case of termination of the employment relationship. It is an inalienable right that is acquired gradually during the year.

E) UNION AND COLLECTIVE BARGAINING

- A collective bargaining agreement is an agreement between one or more trade unions and employers, with the purpose of regulating certain aspects of the employment relationship and, when applied to the employment relationship, generally may not be departed from the individual contract;
- In a company the employees are represented by a "corporate union representative body" RSA or a "joint union representative body" RSU.



II. CORPORATE LAW REQUIREMENTS

INCORPORATION OF AN ITALIAN COMPANY UNDER THE FORM OF AN S.P.A. OR S.R.L.

A) DOCUMENTARY REQUIREMENTS

- The Articles of Incorporation and Bylaws for either an S.p.A. (Società per Azioni - joint stock company) or an S.r.l. (Società a responsabilità limitata - limited liability company) must set forth the following:

- 1) The name of the company
- 2) The nature of the proposed business
- 3) The amount of capitalization
- 4) The amount of stock to be issued
- 5) The location of its registered office
- 6) The number of directors (whether a sole director or a board

of directors) and their respective powers

7) Whether the fiscal year should coincide with the calendar year

8) The duration of the company
The Articles of Incorporation and the By-laws are filled in to the Italian Chamber of Commerce by the public Notary.

- If the incorporators intend to act through representatives, it is necessary to provide a power of attorney from each of the incorporators. For the power of attorney to be operative under Italian law, it must meet the following:

- 1) Be in Italian
- 2) Be notarized by a notary public
- 3) Be apostilled in accordance with the Hague Convention of October 5, 1961. [to be verified State by State]

Such a resolution must specify the purposes, address, and capital of the Italian company, as well as the respective equity contributions, stated in euro. The resolution should grant to the officer who is to execute the power of attorney referred to above all the necessary powers in connection therewith. The incorporators should also include official certificates stating that each of the companies involved in the incorporation exists and is not in voluntary or compulsory liquidation or subject to bankruptcy proceedings (certificates of good standing of the incorporators).

B) TIME REQUIREMENTS

- To proceed with the incorporation, usually requires 2 weeks.



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C) CORPORATE STRUCTURE AND FUNCTION

- **Management System:** Either type of corporation may have a Board of Directors or a sole Director, any or all of whom may be foreign citizens residing abroad. It is common practice to appoint one of the members of the Board of Directors as Managing Director with ample powers to represent the company;

- **Legal Accounting Control:** Auditing control varies depending on the type of incorporation and the other conditions specified below:

S.r.l.: The appointment of a Board of Auditors is required only in same case indicated by the Italian law.

S.p.A.: Auditing control is in any case required

- **Required Minimum Capital**
 - The S.r.l. has a minimum capital of € 10,000. The immediate cash contribution must be at least 25% of the share capital of the S.r.l.

Please note that there is the possibility to incorporate a S.r.l.s. which is a company like the S.r.l. whose capital may be of € 1 and maximum € 10.000.

The law requires the remaining 75% to be subject to call by the Board of Directors as needed. The amount of capital subscribed and paid-in must be shown on the letterhead and on all official instruments.

- The S.p.A. has a minimum capital of € 50,000. The immediate cash contribution must be at least 25% of the share capital of the S.p.A. However, if the S.p.A. is incorporated by a single

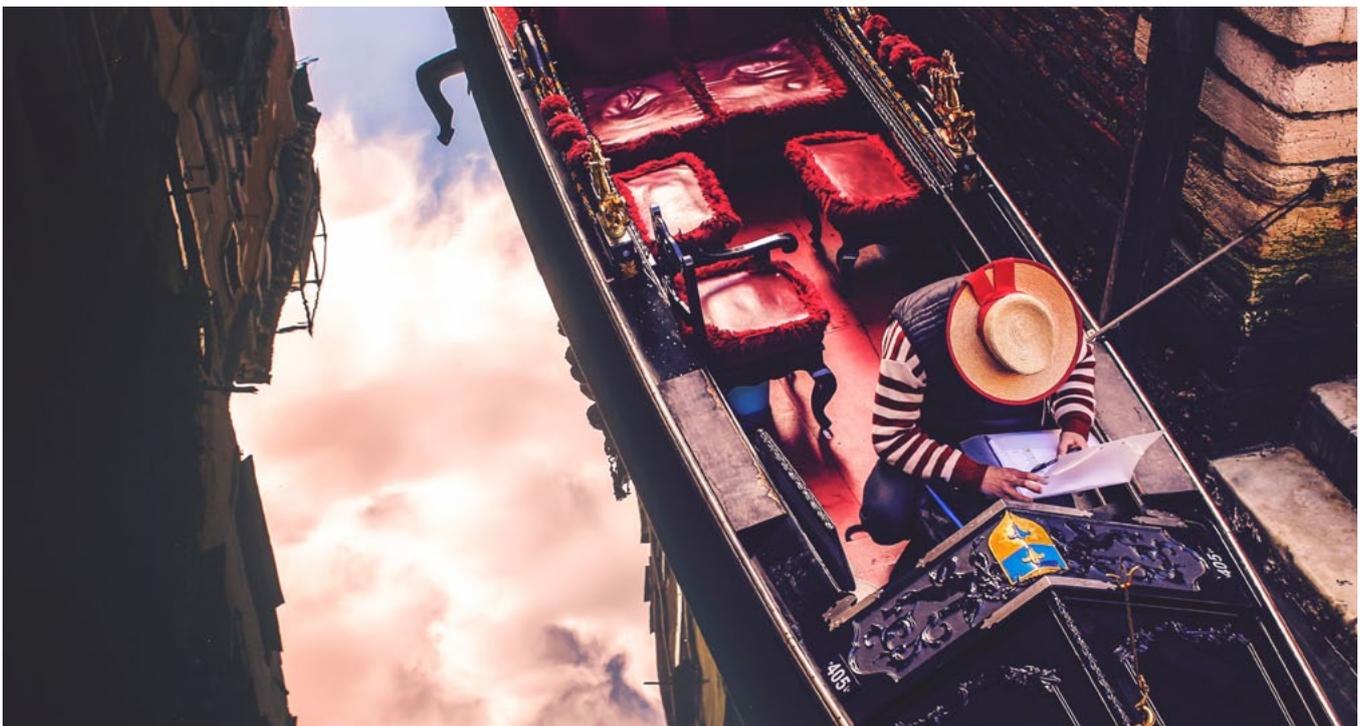
shareholder, the entire amount of the share capital must be paid.

The law requires the remaining 75% to be subject to call by the Board of Directors as needed. The amount of capital subscribed and paid-in must be shown on the letterhead and on all official instruments.

- **Quotas and Shares:** an S.p.A. issues shares of stock while an S.r.l. may not. The S.r.l. entitles equity owners to a quota holding in the corporation proportionate to their capital contribution.

D) COSTS OF INCORPORATION

- **Fiscal costs of incorporation** for either the S.p.A. or the S.r.l. are very similar and depend, in part, on the amount of capital subscribed and the range is from € 600 to € 1,000. This does not include notary fees and the legal assistance.



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III. PAYROLL AND BENEFITS PROVIDERS

- In Italy, the vast majority of employers outsource payroll and benefit responsibilities to third party companies. This reduces the administrative burden faced by the company by outsourcing payroll deductions and benefit administration to qualified companies who specialize in these areas.
- The larger employers however have their own internal teams processing payroll and are responsible for all related compliance requirements.

Depending on the preference, we would be happy to recommend payroll providers to fit your business requirements.

We are pleased to offer our services for all of the required work identified above and assist your organization to open in Italy. Any portion of work can be conducted on the basis of an hourly blended rate equal to Euro 325, in addition to any required disbursements and tax. As an alternative, all of the above work can be offered for a project budget to be discussed from time to time.

If you have any questions, please contact the following representative:

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We look forward to working with you.



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