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# EMPLOYMENT LAW OVERVIEW

# ITALY 2019-2020

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# I. GENERAL OVERVIEW

## 1. INTRODUCTION

Italian employment laws have always been employee-friendly, reflecting the principles of the Italian Constitution. However, the global economic downturn has forced Italian lawmakers to look at ways to enhance flexibility within the Italian job market. The most recent Italian reform on labour law, the so called Jobs Act, has granted more flexibility to the employers through i) a “gradual” protections against unfair dismissals, directly linked to the length of service (for those hired on open-ended employment contracts after 7th March 2015), ii) the possibility under certain conditions, to downgrade employees, iii) the possibility, under certain conditions, to utilise for disciplinary purposes, the content of company mobile devices granted to the employees, to stimulate new hires and attract new foreign investment into Italy. Italy is going through important political, social and legal changes at the moment and employment lawyers are witnessing first-hand how this impacts businesses and the Italian workforce. Italian employment law is still a work in progress and the end product will hopefully be worthy of the prestigious label: “Made in Italy”.

## 2. KEY POINTS

- For each industry sector there is a National Collective Bargaining Agreement (hereinafter, also, “NCBA”) that regulates the employment relationship.
- Companies with more than 15 employees come under the umbrella of the Workers’ Statute.
- Italian labour laws and National Collective Bargaining Agreement provisions may only be amended by employers in a more favorable way for the employees.
- The collective dismissal procedure shall be followed when at least 5 dismissals for economic reasons will be served within 120 days by a company with more than 15 employees.
- Executives are included in the calculation that triggers a collective dismissal.
- There is no longer a need to give a reason for entering into a fixed-term contract.
- Reinstatement is no longer the sole remedy for unfair dismissal.

## 3. LEGAL FRAMEWORK

In Italy, individual contracts of employment and labour relationships are governed, in order of priority, by:

**FIRST.** The Republican Constitution: sets forth general principles and regulates some issues concerning employment.

**SECOND.** The Civil Code: The Civil Code, enacted in 1942, regulates employment and labour matters under Section III (“On the employment relationship”), articles 2094-2134.

**THIRD.** Laws enacted by Parliament: Italy has extensive employment and labour legislation; the objective has traditionally been to protect employees.

**FOURTH.** Regulations issued by authorities other than Parliament and the government.

**FIFTH.** National Collective Bargaining Agreements.

**SIXTH.** Custom and practice – The customs and practices of the parties to an employment relationship apply where the issue is not governed

by legal provisions or by the provisions of a collective agreement. Moreover, those customs and practices that are more favourable to employees prevail over legal provisions, but do not prevail over individual employment agreements.

Furthermore Italy, as one of the member states of the European Union (EU), having signed the Treaty of Rome on March 25, 1957, is subject to EU directives and regulations and to the decisions of the European Court of Justice.

## 4. NEW DEVELOPMENTS

Thanks to the Jobs Act (Law no. 23/2015), for employees hired under an open-ended contract after 7th March 2015, the so-called “employment contract with growing protections” there is now in place a different set of remedies in the event of an employee’s success in an unfair dismissal claim.

In the majority of cases the remedy is damages, which is calculated on the basis of the dismissed employee’s length of service with the company. Reinstatement has now become the exception rather than the rule.

As from 25th June 2015, an employer may unilaterally change an employee’s duties and tasks to those corresponding to a lower job level (note that the employee remains in the same job category, with the same salary), if the following conditions are met:

- there have been changes to the company’s organisational set-up, involving the job position of the relevant employee;
- the National Collective Bargaining Agreement provides so;
- there has been a specific agreement signed before the Public Employment Offices.

As of 24th September 2015, employers are allowed to access the content of company devices given to employees to perform their job (e.g. smart phone, personal computer, tablet), and such content may be used for the purpose of disciplinary sanctions.

As of 12th March 2016, resignations, mutual terminations and their revocations must be filed electronically by employees, on the Government website, following a specific procedure set forth

by the Minister of Labour Decree published on 11 January 2016.

There is a heated on-going debate in Italy regarding data privacy and monitoring from a distance, also considering the new law and in anticipation of the guidelines from the relevant Authority, also at European level.

In this regard, please note that, according to a Ruling of the Italian Court of Cassation issued on 27th May 2015, it is not unlawful for an employer to create a fake Facebook profile in order to uncover employees’ negligence. According to the Court, the employer’s behaviour was lawful and valid because, while always respecting the employees’ dignity and freedom, monitoring employees is allowed if the purpose is not to evaluate the working performance but, for example, to avoid risk of damage to company property.

### A. “DIGNITY DECREE” AND ITS MOST SIGNIFICANT PROVISIONS CONCERNING EMPLOYMENT RELATIONSHIP

On July 14, 2018, the so-called “Dignity Decree” (Law Decree n. 96/2018) was issued. Following parliamentary commissions’ amendments, on August 12, 2018, Decree’s conversion law (Law no. 96/2018) entered into force.

The mentioned Decree introduced very important innovations concerning many employment law matters such as fixed-term contracts, supply of work, and penalties in the event of illegitimate dismissal as provided by the so-called Jobs Act (for open-ended contracts stipulated after March 2015).

The new provisions respond to the Government purpose of fighting the issue of unstable employment.

Please find below a brief overview of the most significant reforms concerning employment contracts, with specific reference to issues, which have mostly attracted the public attention, because of their significant impact on business organisations.

## B. FIXED - TERM CONTRACT

A term of no more than 12 months may be applied to employment contracts.

A further term, in any case no longer than 24 months (instead of 36 months, as previously provided by Legislative Decree no. 81/2015), may be applied only in the presence of at least one of the following “conditions”:

- temporary and objective needs, unrelated to the ordinary activity, for other employees’ substitute needs;
- requirements connected to temporary, significant and non-predictable increases of the ordinary activity.

The above-mentioned “conditions” shall be provided also in case of extensions of already pending fixed-term contracts exceeding 12 months, or in case of renewals.

Given the maximum duration abovementioned, contract extensions cannot be more than four (instead of the previous five, provided by Legislative Decree no. 81/2015).

In case of execution of a fixed-term contract longer than 12 months, in the absence of one of the specific abovementioned “conditions”, the agreement is converted into an open-ended one, as of the date in which the limit of 12 months is exceeded.

## C. TRANSITIONAL PERIOD

The new provisions apply to fixed-term contracts stipulated after the entry into force of the Decree, namely July 14, 2018, as well as to fixed-term contract extensions and renewals carried out after October 31, 2018.

In summary, please find below a brief scheme of the transitional period discipline concerning fixed-term contracts.

	FIXED-TERM CONTRACTS SIGNED WITHIN JULY 13, 2018		FIXED-TERM CONTRACT SIGNED STARTING FROM JULY 14, 2018
	WITHIN OCTOBER, 31, 2018	FROM NOVEMBER 1, 2018	
Maximum term	36 months	36 months	12 months (24, only in the presence of conditions)
Extensions maximum number and conditions	Maximum of 5 No conditions	Maximum of 4, Conditions have to be provided after 12 months	Maximum of 4, Conditions have to be provided after 12 months
Renewals conditions	No conditions to be provided	Conditions have to be provided	Conditions have to be provided

Fixed-term contracts entered into with executive's apprenticeships are not subject to the typical rules regarding fixed term contracts.

## D. SUPPLY OF WORK

A mandatory maximum number of fixed-term supplied employees has been introduced for user companies.

In fact, given any different NCBA provision, the user company is entitled to a maximum number of fixed-term supplied employees, which shall not exceed the percentage of 30% of the total number of its open-ended contract employees.

The new provisions concerning maximum terms (12 months or 24 months only in the presence of the so-called "conditions"), extensions and renewals, have also been transposed to fixed-term contracts stipulated between employment agencies and employees.

Please note that Decree's conversion law (Law no. 96/2018) has expressly clarified that the abovementioned "conditions" apply only to user companies: for this reason, according to first interpretations of the law provision, employment agencies shall indicate in their fixed-term contracts the "conditions" adopted and communicated by the user company.

Failure to comply with the abovementioned provisions leads to the conversion of the fixed-term contract into an open-ended one, which will come to be held by the employment agency, as the "formal employer" of the supplied employee.

Additional penalties have been introduced as regards the new regulated figure of "fraudulent supply of work".

In fact, when supply of work is carried out with the only specific purpose of avoiding mandatory law or NCBA provisions, the employment agency and the user company shall be punished with a fine equal to Euros 20, for each employee involved and each day of labour supplied.

The same rules concerning fixed-term contract transitional periods apply to supply of work.

## E. FIXED – TERM AND SUPPLY OF WORK RENEWAL CONTRIBUTIONS

To each renewal of fixed-term contracts (also stipulated in the context of supply of work), the additional contribution equal to 1.4%, provided by the so-called Fornero Law (Law no. 92/2012), is increased by 0.5%, to be paid by the employer.

## F. PENALTIES FOR ILLEGITIMATE DISMISSAL

The "Dignity Decree" increased penalties applicable to illegitimate dismissal of employees hired after March 7, 2015 (as provided by Legislative Decree no. 23/2015).

Under the new legislation, the compensation due to dismissed employees will range between a minimum of 6 and a maximum of 36 months' salary, taking into consideration the length of service (while, in the previous legislation, the indemnity ranged between a minimum of 4 and a maximum of 24 months' salary).

The abovementioned amounts are halved (within the maximum limit of 6 months) for dismissals under the so-called "mandatory protection" (applicable to companies employing up to 15 employees).

## G. YOUTH EMPLOYMENT INCENTIVES

Up to 2020, employers are entitled to benefit from social security contribution reductions of 50%, in case of hiring under 35 employees with open-ended employment contracts. The reduction is applied on a monthly basis, for a maximum period of 36 months, and the maximum amount of the reduction is 3000 Euros on an annual basis.

## H. OCCASIONAL WORK

Companies operating in the tourism sector and employing up to 8 employees can now benefit from the occasional work - voucher system.

# II. PRE-EMPLOYMENT CONSIDERATIONS

## 1. DOES A FOREIGN EMPLOYER NEED TO ESTABLISH OR WORK THROUGH A LOCAL ENTITY TO HIRE AN EMPLOYEE?

No, it does not. The foreign employer needs to file for an Italian tax number and elect a domicile in Italy. Of course, the situation should be evaluated having regard to the activities to be performed. More specifically, should the foreign employer be active in the trade sector, with the employee having to perform bargaining activities, the risk of the constitution of a stable organisation would be high and would have an impact under a tax perspective.

## 2. LIMITATIONS ON BACKGROUND CHECKS

According to Article 8 of Law 300/1970 (the Law), prior to hiring and during the employment relationship, the employer may not carry out any checks or investigations, even through third parties, regarding the employee's political opinions, religious beliefs, union membership, or on any matters which do not strictly relate to the employee's professional skills. The reasoning behind such provisions is to protect the employee's privacy and prohibit any interference by the employer in their private lives and at the same time preventing any information-gathering investigation that may then trigger discriminatory action.

Therefore, any such investigation is always prohibited, as is any investigation of facts that cannot be objectively used to demonstrate the employee's skills, competence, experience and compatibility with the specific duties to be assigned

to him/her. This rule also applies to checks carried out through social networks, which are becoming common among HR departments and head-hunters.

This rule also applies to checks carried out through social networks, which are becoming common among HR departments and head-hunters. Please see below a list of background checks that are allowed:

- verification of academic qualifications and credentials;
- verification of employment history;
- verification of personal references identified by the applicant;
- search of motor vehicle records/validation of driver's license: only allowed if required for the job and if there is the consent of the candidate (the Company may ask the candidate to show his driving license).
- criminal record search: only admissible if required by the nature of the duties (i.e. where the job involves handling money) and if there is the consent of the candidate;
- drug/alcohol screening: allowed if performed by public medical centers (not by doctors hired by the employer) and only if carried out on candidates that are going to perform high-risk duties, as listed by Labour Minister Decree no. 309/1990.

# III. EMPLOYMENT CONTRACTS

## 1. MINIMUM REQUIREMENTS

European Union Directive No. 533/91 has been implemented in Italy and requires that information on the main terms and conditions of employment relationships be evidenced in writing in the employment contract and provided to the employee within 30 days of hiring. In general, individual employment contracts must specify:

- parties to the employment agreement;
- the starting date of the employment and the duration of the trial period, if any;
- the expiration date, if the employment is for a fixed term (where these contracts are permitted by law);
- the salary, method for calculation of the salary, frequency of payment, and any particular term or condition related to the salary and fringe benefits;
- the working hours;
- the annual entitlement to paid holiday leave; and
- the employee's duties and the related work "category" as established by the Civil Code under article 2095.

## 2. OPEN-ENDED CONTRACTS

An employment contract normally has an unlimited duration.

## 3. TRIAL PERIOD

Employment contracts can provide for a trial period ("periodo di prova"). During this period each party is free to terminate the contract without notice and without the payment of any indemnity in lieu

of such notice. The duration of the trial period is set by the applicable NCBA and varies according to different categories of employees (maximum duration being 6 months for high level employees).

Article 2096 of the Civil Code requires that the trial period be written in the employment contract and must be entered into on the first day of the employment at the latest. Failing to meet this requirement renders the trial period null and void and the employment is considered fully effective as of the beginning.

## 4. NOTICE PERIOD

Upon termination of an open-ended employment contract, unless the contract is terminated for "just cause" (a reason that does not allow the continuation of the employment relationship) both the employer and the employee are entitled to a notice period, the duration of which varies according to the employee's length of service and professional level and as established in the applicable NCBA.

In case of termination due to a decision of the employer, it can exempt the employee from working during the notice period while paying a corresponding payment in lieu of notice. In case of termination due to a decision of the employee, if he/she resigns without giving the notice period provided by the applicable collective agreement (with the exception of resignation for "just cause", where the notice is not due by the employee) the employer has the right to withhold the amount of the payment in lieu of notice from the payments that the employee is entitled to receive as a consequence of the termination of the employment relationship.

# IV. WORKING CONDITIONS

## 1. MINIMUM WORKING CONDITIONS

In Italy, the most important provisions included in an employment contract are provided by the law and by the applicable NCBA. In particular, NCBA sets the terms and conditions of employment, amongst which are: categories and related job descriptions; duties and obligations; minimum wages; job retention rights during absences due to illness; salary increases due to length of service; termination, resignation, criteria for calculation of the severance pay; night work; maternity leaves; holidays.

## 2. SALARY

Salary is usually paid at the end of the working month, as established in the company policies or by the NCBA, with the employer deducting all applicable social security contributions and withholding taxes. Italian Law explicitly provides that the salary paid to employees must be stated in a pay slip (produced by the employer or by a third party on the employer's behalf) specifying the period of service which the salary refers to, the amount and the value of any overtime, together with all the elements that constitute the amount paid as well as all withholdings made in accordance with Italian law. Moreover, Italian law provides for an annual 13th payment, paid once a year on the occasion of the Christmas holidays that usually corresponds to one month's remuneration. In addition, NCBA or even individual contracts may provide for the payment on the 14th payment, usually paid in July.

## 3. MAXIMUM WORKING WEEK

The maximum length of the working week is established by the collective agreements. However, the average weekly working time cannot exceed 48 hours, inclusive of overtime. The average working time must be calculated over a period of 4 months; however, the applicable NCBA can extend that term for objective, technical or organisational reasons.

## 4. OVERTIME

The needs of a particular company may, in exceptional circumstances or on an occasional basis, require employees to work beyond their "usual working hours." Overtime is regulated by law and by the applicable collective agreement. Article 5 of Legislative Decree no. 66/2003 provides that normally the NCBA governs the conditions of overtime work and that, in the absence of any provisions of the collective agreement, overtime is only permitted subject to the agreement between the employer and the employee and for a period not exceeding 250 hours per annum.

Finally, the law provides that overtime is calculated separately and paid by way of an increase in salary pursuant to the NCBA, which may in any case permit that overtime be compensated with time off in addition or as an alternative to the salary increases that may be due.

## 5. HEALTH AND SAFETY IN THE WORKPLACE

The duty of the employer to provide safe conditions for workers can be found in articles 32, 35, 38, 41 of the Italian Constitution and article 2087. When managing and operating its business, the employer is required to adopt all measures that—in light of the specific type of work performed, past experience, and techniques used—are required to protect the psychological and physical wellbeing of the employees.

The main provisions relating to health and safety in the workplace are based on the following general principles of prevention, including:

- elimination or reduction of risks at the source;
- updating safety measures in relation to the technological evolution;
- safety of psychological and physical health of workers;
- attention to the health conditions and skills of workers for the purpose of job assignment; and
- surveillance of workers to monitor their adherence to safety measures and use of personal and communal protective gear provided by the employer.

In addition to these general principles, there are some specific duties that the employer must fulfill: i) evaluation of risks; ii) identification of protective and preventative measures; and iii) preparation of the plan for the improvement of safety at the workplace; and

Other duties of the employer include:

- nomination of the person who is responsible to perform the Prevention and Protection Service (inside or outside the company);
- nomination of the Officer in charge of the Prevention and Protection Service;
- preparation of a document, including the evaluation of all the risks for safety and health connected with the activity of the company, protective and preventative measures adopted in light of the risk evaluation, and a plan to improve workplace safety (the document should be prepared together with the Prevention and Protection Officer, and the doctor in charge, where health surveillance is mandatory);

- nomination of the doctor in charge, in the cases provided for by the decree;
- appointment of the employees in charge of fire prevention, rescue, first aid and management of emergencies;
- providing employees with adequate equipment and gear for personal protection;
- keeping a chronological record of work injuries detailing absences from work for at least one day;
- instructing employees to abandon the workplace in the event of a serious, immediate and inevitable danger; and
- organisation of security and hygiene signage.

The employees shall be informed regarding the following: safety instructions and risks deriving from the activity carried out by the company; specific risks related to the workplace and prevention measures adopted by the company; first aid, fire prevention and evacuation procedures; and names of the employees in charge of fire prevention, evacuation and first aid. The employer shall also train the employees in relation to safety and health in the workplace. In particular, the training shall be sufficient and adequate, updated, free, and carried out during working time in cooperation with unions. The employees shall take care of their own safety and health, and of the safety and health of the other persons present in the work place, by means of:

- following instructions received by the employer;
- correctly using machines, tools, work equipment, and personal and communal safety devices;
- immediately informing the employer about any deficiencies of the safety devices, as well as any other dangerous situation of which they become aware;
- not removing safety devices without authorisation; and
- utilising sanitary controls required by law.

Any employee's breach of the above obligations could result in disciplinary sanctions.

# V. ANTI-DISCRIMINATION LAWS

## 1. BRIEF DESCRIPTION OF ANTI-DISCRIMINATION LAWS

Prohibitions against discrimination have been in place since the 1970's when the Workers' Statute (Law No. 300/1970) came into force. The Workers' Statute prohibits any kind of discrimination based on:

- gender;
- political opinions;
- union-related activity;
- religion;
- race;
- language;
- disability;
- age;
- sexual orientation; and
- personal belief.

Furthermore, employers may not:

- make employment conditional on the fact that the employee is or is not a member of a Trade Union or that he or she stops being a member; or
- dismiss an employee, or discriminate against him/her when assigning a job, when changing a place of work, in disciplinary procedure or prejudice him/her because of the employee's membership in a trade union association, because of the employee's union-related activity or because the employee has participated in a strike.

The same anti-discrimination provisions abovementioned apply to religious discrimination as well.

However, according to Legislative Decree No. 216/2003, special conditions based on religious

convictions existing within religious organisations could be allowed if such convictions are necessary to perform the working activity within these organisations.

In the case of occupational activities within churches or other public or private organisations, the ethos of which is based on religion or belief, a different treatment based on a person's religion or belief is not discriminatory where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, a person's religion or belief constitutes a genuine and determining occupational requirement, is legitimate and the requirement is proportionate. In addition, an employer is obliged to employ a fixed number of disabled people, depending on the size of the company (Law No. 68 of March 12, 1999).

## 2. EXTENT OF PROTECTION

Several laws were recently passed, implementing European Directives on Equal Treatment, Racial Equality and Employment Framework. Such laws make it unlawful for an employer to discriminate in the processes of: hiring, promoting, remuneration and termination or with regard to admission to a training or apprenticeship program.

Furthermore, direct and indirect discrimination are prohibited.

Direct discrimination occurs when a person is treated less favorably than another person in a comparable situation on one of the prohibited grounds.

Indirect discrimination occurs when an apparently neutral provision, criterion, practice, agreement or conduct would put someone at a particular disadvantage compared with other persons, on one of the prohibited grounds.

### 3. PROTECTIONS AGAINST HARASSMENT

The same anti-discrimination provisions abovementioned also apply to harassment.

Harassment is unwanted conduct based on a prohibited ground with the purpose or effect of violating the dignity of a person and creating a hostile, degrading, humiliating or offensive environment.

Sexual harassment occurs when unwanted conduct with a sexual connotation (expressed in physical, verbal or non-verbal ways) takes place with the purpose or effect of violating the dignity of a person and of creating a hostile, degrading, humiliating or offensive environment.

### 4. EMPLOYER'S OBLIGATION TO PROVIDE REASONABLE ACCOMMODATIONS

There are no specific labour laws putting an obligation on the employer to provide reasonable accommodations of any kind, other than those required by law related to health and safety at work.

Employers, like public offices, must provide the infrastructure needed to ensure that disabled persons/employees have access to the offices, such as stairs adapted for the disabled and/or elevators, disabled toilets etc.

Italian law does not oblige employers to provide specific accommodations for religious purposes of any kind.

### 5. REMEDIES

An employee who has been discriminated against may sue the employer before the Labor Court, under an ordinary process or an emergency one, claiming for monetary and non-monetary damages.

There is no statutory minimum or maximum amount of damages: it is at the Judge's discretion. The Labor Court may order the employer to stop the discriminatory conduct, to remove the effect of the unlawful conduct, and order a plan to avoid, within a certain period of time, any repetition of the discriminatory conduct.

The Equal Opportunities Commission has the power to promote good anti-discriminatory practices. It can monitor and, in the case of discriminatory conduct, ask the employer to arrange a program to remove the discrimination in order to resolve the matter. It can represent the employee in court and bring proceedings against the employer in cases of collective discrimination.

The Commission for Equal Treatment can issue codes of conduct and has the power to ask employers to provide information so that it can monitor the equal treatment of men and women.

The Commission for Racial Equality has the power to support employees during a claim, investigate discriminatory conduct, ask the employers for information and documents, and give advice and recommendations.

Legislative Decree No. 198/2006 provides that any agreement, unwelcome conduct or gender-related act that takes place with the purpose or effect of violating the dignity of a person and of creating a hostile, degrading, humiliating or offensive environment is null and void if it is in response to a complaint or legal action brought by the employee with the aim of enforcing equal treatment.

According to case law, when the perpetrator of the discriminatory conduct is not the employer but a colleague of the worker who was offended, it is possible that this latter person may be considered liable for damages deriving from the discrimination.

# VI. SOCIAL MEDIA AND DATA PRIVACY

## 1. RESTRICTIONS IN THE WORKPLACE

### A. CAN THE EMPLOYER MONITOR, ACCESS, REVIEW THE EMPLOYEE'S ELECTRONIC COMMUNICATIONS?

With reference to the company devices granted to the employees for work purposes, the employer is entitled to block internet access, or access to certain websites only and/or social networks, for the entire working day or during certain times. The employer has no control over employees' personal devices. However, should the employee use his/her personal device during working time and/or in violation of the relevant company policy, this may trigger disciplinary action.

By Ruling dated 1st August 2014, the Tribunal of Milan upheld a disciplinary dismissal as valid, based on the fact that the employee posted on Facebook a picture showing him and other colleagues, along with offensive comment against the company. According to the Judge, such behavior is considered as clearly breaching the fundamental duty of diligence, honesty and loyalty required by the employees, therefore the disciplinary dismissal was lawful and justified.

## 2. EMPLOYEE'S USE OF SOCIAL MEDIA TO DISPARAGE THE EMPLOYER OR DIVULGE CONFIDENTIAL INFORMATION

According to the specific circumstances of the case in question, employee's utilisation of social media to disparage the employer or divulge confidential information may trigger disciplinary action (even dismissal) and may constitute a crime as well.

# VII. AUTHORISATIONS FOR FOREIGN EMPLOYEES

## REQUIREMENT FOR FOREIGN EMPLOYEES TO WORK

There are no specific rules related to the employment of European Union (“EU”) citizens as they can move and work in every EU Country, free of restrictions. On the other hand, limitations are provided by the law with respect to non-EU citizens. Visas and different work permits are necessary in the following situations:

- Hiring of non-EU citizens: their employment can start only after a specific immigration procedure is completed, which includes complying with the limitation of the annual quotas. After the annual quotas are established, a non-EU citizen must request a work visa, assuming that they have been offered employment in Italy.
- Secondment in Italy of non-EU citizens: this is not subject to annual quota limitations, but should be activated on the basis of a special and more simplified procedure, strictly related to the purposes of the secondment in Italy.

# VIII. TERMINATION OF EMPLOYMENT CONTRACTS

## 1. GROUNDS FOR TERMINATION

Under Italian law, any termination of employment must be justified. The reasons to terminate an employment contract can be divided in three main categories:

- Objective justified reasons - which are related to the abolition of a job position due to a company's economic situation regarding production, work organisation, or proper functioning;
- Subjective justified reasons - which occur when the employee commits a breach of his/her contractual obligations or is guilty of negligence in the performance of his/her duties, but the behavior is not so serious as to constitute a dismissal for just cause; or
- Just cause ("giusta causa") – that indicates any serious misconduct or breach that renders the continuation of the employment impossible, including, theft, riot, serious insubordination, and any other behavior that seriously undermines the fiduciary relationship with the employer.

## 2. COLLECTIVE DISMISSALS

Under Italian law, a collective dismissal occurs when at least five dismissals are served in the same business unit or in more units within the same district and in the time frame of 120 days, due to reduction, transformation, or closure of business.

According to Law 223/1991, employers with more than 15 employees must follow a specific information and consultation procedure involving the Trade Unions with regard to collective dismissals. The employer must notify, in writing, the competent employment office, the employees' staff representatives (RSA - "rappresentanze

sindacali aziendali" or RSU - "rappresentanze sindacali unitarie") and the respective Trade Unions of the decision to proceed with the collective dismissal. In the absence of the above-mentioned employee representative bodies, notice shall be given to the "comparatively more representative" trade associations.

The written notification should explain:

- the reasons for the redundancy;
- the technical, organisational or production reasons which necessitate the redundancy;
- the number of employees to be made redundant;
- the timetable of the redundancy plan;
- possible measures planned for the occupational consequences of the redundancy plan; and
- the calculations of economic awards in addition to those provided by the law or by the applicable collective agreements.

Within seven days from the date of the notice's receipt, upon request of the Union the parties must meet (depending on the number of employees involved in the redundancy, for up to 45 days) to discuss and analyse the possibility of avoiding dismissals. If the parties do not reach an agreement, the company must give written notice to the competent employment office regarding the results of the negotiations, specifying the reasons for the negative outcome. Consequently, the competent employment office convenes the parties for a further negotiation, which cannot, depending on the number of employees involved in the redundancy, last longer than 30 days.

If the company and the Trade Unions do not reach an agreement, or if they reach an agreement before the deadline, the employer is allowed to serve the dismissals by giving written notice to each of the employees involved. Moreover, the employer should provide the competent employment offices

and the Trade Unions with a written list of the dismissed employees, stating their names, place of residence, qualifications, length of service, age, family dependents, and a detailed description of the selection criteria applied for the dismissal of each employee.

The selection of the employees to be dismissed should follow the criteria provided by the agreement reached during the negotiations or, in the event of a negative outcome, the criteria laid down by Law 223/1991 (family circumstances; length of service; technical, production or organisational requirements). Upon dismissal, all employees are entitled to the payment of the usual severance payments, including the notice period or the indemnity in lieu thereof.

Please note that by the Ruling issued on 13th February 2014, the European Court of Justice has declared that the Italian legislation on collective dismissals does not meet the legal criteria set out by European Directive no. 98/59/CE, because it does not involve executives.

Thus with the passing of Law no. 161/2014 the Italian legislature has for the first time provided that executives have to be included in the calculation that triggers a collective dismissal, and that companies will need to set up a separate negotiating table with the executives.

### 3. INDIVIDUAL DISMISSALS

Dismissal must be given in writing and must detail the reasons on which it is based.

Whenever a dismissal is due to an employee's conduct (constituting either just cause or justified grounds, depending on the gravity), an employer must follow a specific disciplinary procedure set forth by art. 7, Law May 20, 1970, no. 300 (the so called "Workers' Statute"), according to which a letter containing the allegations must be delivered to the employee outlining the facts and circumstances where the company sees the breach of his/her obligations and giving the employee a term of no less than 5 days of receipt of the letter to present, either in writing or orally, his/her possible justifications, and only after such term has expired a letter of dismissal may be validly served.

Moreover, whenever a dismissal is based on economic reasons a mandatory pre-emptive consultation phase must be carried out by companies employing more than 15 workers, before the dismissal becomes effective.

According to the Fornero Reform, for the purposes of validly serving the letter of dismissal, an employer is bound to inform the local Labour Office of its intention to terminate the employment, detailing the reasons on which the dismissal is founded, as well as the possible measures developed to the extent of easing the reallocation of the employee. The same communication needs to be copied to the concerned employee as well. The Labour Office should summon both parties within seven days, running from the date of receipt, by the administrative office, of the communication by the employer and the pre-emptive procedure must be terminated within twenty days, which may be suspended for a maximum period of fifteen days in case of documented unavailability of the employee (e.g. in case of sickness).

Thus, the overall maximum duration of the pre-emptive mandatory attempt at an out of court settlement is equal to forty-two days (7+20+15). However, the terms may be increased upon agreement by the parties.

If no settlement is reached between the parties, or on expiry of the term for the procedure above, the employer is free to serve the letter of dismissal, that will be effective retrospectively, to the opening of the pre-emptive phase (i.e. from the communication by the employer to the Labour Office), notwithstanding the employee's entitlement to the notice period or payment in lieu thereof.

Please note that the obligation of such a pre-emptive procedure is not required in case of dismissal of employees hired after 7 March 2015, through the so-called "employment contract with growing protections".

Different rules apply to the dismissal of dirigenti (executives). The executive's dismissal is deemed to be justified only if it is as a result of:

- objective reasons related to the employer’s economic, organisational and production-related needs; or
- subjective reasons related to performance.

In the case of particularly serious misconduct the dirigente can be dismissed for just cause. In this event, the dismissal is effective immediately and the dirigente is not entitled to any notice period. Moreover, whenever a dismissal is due to subjective reasons, a specific disciplinary procedure must be followed by the employer before serving the dismissal.

#### A. IS SEVERANCE PAY REQUIRED?

Italian law provides for the payment of a deferred form of remuneration, otherwise known as the severance payment (“Trattamento di Fine Rapporto” or TFR). Along with other minor statutory termination amounts, the TFR must be paid to employees whenever an employment contract is terminated, irrespective of the cause of termination. The amount of the TFR varies depending on the employee’s salary and length of service (it is approximately equal to 8% of the yearly gross salary per each year of employment). Therefore, upon termination of their employment, employees are entitled to:

- payment of the TFR;
- payment of holidays/paid permits accrued and not used;
- payment of 13th and 14th salary installments pro rata, if applicable; and
- a notice period if the dismissal is not for “just cause”. If the employer exempts the employee from working during the notice period, the employee must receive a corresponding payment in lieu of notice, which is equal to the normal salary (plus social security contributions thereon) that would have been paid during the notice period.

## 4. SEPARATION AGREEMENTS

At the termination of the employment relationship, the parties may enter into a separation agreement providing a mutual, full and final waiver of any claims related to the employment relationship.

#### A. IS A SEPARATION AGREEMENT REQUIRED OR CONSIDERED BEST PRACTICE?

The parties are not obliged to enter into a separation agreement, but we consider it as best practice in order to avoid future claims and lawsuit.

#### B. WHAT ARE THE STANDARD PROVISIONS OF A SEPARATION AGREEMENT?

Please find below the standard provisions of a separation agreement:

- full waiver from the employee of any potential claim of any kind related to, or connected with the employment relationship, including its execution and its termination, and to the directorships or any other appointment held for the company;
- acceptance of the waivers by the employer, waiving any kind of claim against the employee, with the exception of fraud or gross misconduct unknown at the time of the settlement;
- incentive to leave and/or compensation to the employee in return for the separation agreement;

Please note that separation agreements must be signed before the Public Employment office in order to be final and unchallengeable.

#### C. DOES THE AGE OF THE EMPLOYEE MAKE A DIFFERENCE?

The age of the employee may help the parties reach an agreement. Should the employee dismissed be near retirement, this may be relevant in negotiating the amount of leave incentive.

#### D. ARE THERE ADDITIONAL PROVISIONS TO CONSIDER?

Separation agreements usually provide that the employer pays the legal fees (or a contribution towards them) incurred by the employee and related to the negotiation of the agreement. Also, the parties may provide restrictive covenants and regulate minor items such as the employee’s right to keep the phone number and/or any other company device, or the company car.

## 5. REMEDIES FOR EMPLOYEE SEEKING TO CHALLENGE WRONGFUL TERMINATION

Under Italian law, if an employee were to win a case for unfair dismissal, the remedy in most cases would be damages of between 12- and 24-months' salary, depending on the gravity of the 'unfairness'. In some particular cases the remedy could be reinstatement (discrimination or in-existence of facts on which the dismissal is grounded). Please find below the legal framework (pre and post reform) related to the remedies that employees have against wrongful dismissals:

### COMPANIES WITH NO MORE THAN 15 EMPLOYEES

#### EMPLOYEES HIRED BEFORE 7TH MARCH 2015

REASON	REMEDY
Dismissal null and void (retaliatory, oral and so on)	Reinstatement (or 15 months' salary) + damages equal to the salary that would have been paid from the date of dismissal until reinstatement (min. 5 months' salary)
Dismissal for just cause or subjective/objective justified reason held as unfounded	Damages ranging between 2.5 and 6 months' salary

#### EMPLOYEES HIRED AFTER 7TH MARCH 2015

REASON	REMEDY
Dismissal null and void (retaliatory, oral and so on)	Reinstatement (or 15 months' salary) + damages equal to the salary that would have been paid from the date of dismissal until reinstatement (min. 5 months' salary)
Dismissal for just cause or subjective/objective justified reason held as unfounded	Damages equal to 1 months' salary for each year of length of service within the company (max 6 months' salary)
Dismissal for just cause or subjective/objective justified reason with formal defects	Damages equal to 0.5 months' salary for each year of length of service with the company (max 6 months' salary)

## COMPANIES WITH MORE THAN 15 EMPLOYEES

### EMPLOYEES HIRED BEFORE 7TH MARCH 2015

REASON	REMEDY
Dismissal null and void (retaliatory, oral and so on)	Reinstatement (or 15 months' salary) + damages equal to the salary that would have been paid from the date of dismissal until reinstatement (min. 5 months' salary)
Dismissal for just cause or subjective justified reason where the allegations are not existent or punished with a minor sanction according to NCBA; Dismissal for objective justified reason held as evidently not existent	Reinstatement (or 15 months' salary) + equal to the salary that would have been paid from the date of dismissal until reinstatement (max 12 months' salary)
Dismissal for just cause or subjective/objective justified reason held as unfounded	Damages ranging between 12 and 24 months' salary
Dismissal for just cause or subjective/objective justified reason with formal defects	Damages ranging between 6 and 12 months' salary

### EMPLOYEES HIRED AFTER 7TH MARCH 2015

(When a company with no more than 15 employees on 7th March 2015, exceeds such threshold through new employees hired, on open-ended basis, after 7th March 2015, the protection system described below will then apply to all its open-ended employees, also those hired before 7th March 2015)

REASON	REMEDY
Dismissal null and void (retaliatory, oral and so on)	Reinstatement (or 15 months' salary) + damages equal to the salary that would have been paid from the date of dismissal until reinstatement (min 5 months' salary)
Dismissal for just cause or subjective justified reason where the fact alleged is not existent	Reinstatement (or 15 months' salary) + damages equal to the salary that would have been paid from the date of dismissal until reinstatement (max 12 months' salary)
Dismissal for just cause or subjective/objective justified reason held as unfounded	Damages equal to 2 months' salary for each year of length of service within the company (min 6 max 36 months' salary)
Dismissal for just cause or subjective/objective justified reason with formal defects	Damages equal to 1 months' salary for each year of length of service within the company (min 2 max 12 months' salary)

## 6. WHISTLEBLOWER LAWS

Whistleblowing was introduced for the first time in Italy by means of Law N. 179 November 30th 2017, published in the Official Gazette on December 14th 2017. The new legislation established that public and private sector employees must be protected if they report illegal practices within their company/organisations. The law states that employees are protected from dismissal, disciplinary action or any form of discrimination/retaliation as a consequence of having flagged any unlawful practices to the authorities. However, the Law No. 179/2017 does not require firms to adopt a compliance or whistleblower protection program. Specifically, pursuant to the new paragraph 2-bis of Article 6 Decree 231 (ruling the company liability), compliance programs shall include a whistleblowing procedure so that officers and employees can report violations of Decree 231.

As a consequence, companies that have adopted compliance programs in accordance with Decree 231 should evaluate whether their policies comport with Law No. 179/2017, and companies seeking to implement compliance programs should incorporate whistleblower protections as part of those policies. The law does not provide for a specific procedure for the private sector for making a qualifying or protected disclosure. However, Law No. 179/2017 includes specific requirements for qualifying whistleblower policies. Specifically, a compliance program must provide for:

- more than one whistleblowing channel able to protect a whistleblower's identity, of which at least one has to be computerised;
- the prohibition on acts of discrimination or retaliation against whistleblowers;
- disciplinary measures for those who retaliate against a whistleblower and for the whistleblowers who intentionally, or with gross negligence, file false or unsubstantiated reports of violations.

The law also requires that companies ensure the confidentiality of a whistleblower's identity to the extent permitted by Italian law. However, anonymous whistleblower complaints are not entertained. According to mandatory law, formal whistleblower channels must be available to i) directors, managers or other subjects acting on behalf of the company or one of its organisational

units; and ii) persons subject to the direction or supervision of those in part i) above. As such, whistleblower programs need not be available to self-employed contractors, external consultants, or others, though from a practical point of view there may be good reasons to include such persons within the scope of a whistleblower program.

Complaints must be grounded on "accurate and consistent elements of fact" (Art. 2-bis, lett). a, Decree 231). Law No. 179/2017 provides protection against retaliation by permitting whistleblowers to raise allegations of retaliatory and discriminatory acts arising from whistleblowing activities to the Senior Labor Inspectorate (Ispettorato del Lavoro) personally or through a labor union. Moreover, in case of disputes concerning disciplinary measures, dismissals, transfers, or demotions imposed after the employee reported the complaint by means of the whistleblowing procedure, the new law requires the employer to demonstrate that the measure is based on grounds different from the reporting. Law No. 179/2017 does not specify how whistleblower complaints must be escalated or who within an organisation must review them. However, the structure of the law strongly suggests that such complaints should be escalated to the Compliance Program Supervisory Body (Organismo di Vigilanza) that Decree 231 requires companies to adopt, as part of qualifying compliance programs. As an alternative, the Organismo di Vigilanza may deputise an appropriate officer or internal function to receive and evaluate whistleblower complaints.

# IX. RESTRICTIVE COVENANTS

## 1. DEFINITION OF RESTRICTIVE COVENANTS

According to article 2125 of the Italian Civil Code, the non-competition covenant is an agreement entered into between employer and employee, limiting the employee's right to perform the same activities after the termination of the employment relationship.

The parties may also agree to a so called “non-solicitation covenant” with reference to clients and employees. Such covenants are not specifically provided by the Italian Civil Code, and represent a specification of the general ban of unfair competition provided by article 2598 of the Italian Civil Code. Indeed, such covenants do not allow a former employee to try to convince company's clients and employees to leave the company and join him/her or his/her new employer.

## 2. TYPES OF RESTRICTIVE COVENANTS

### A. NON-COMPETE CLAUSES

The non-compete covenant limits the employee's right to keep performing the same activities after the termination of the employment relationship. In order to be valid and enforceable, the non-compete covenant has to be: (i) in writing; (ii) limited in terms of activities not allowed; (iii) limited in term of duration (max 3 years for employees, and max 5 years for managers); (iv) limited in terms of geographical reach; and (v) provide a fair compensation (ranging between 20 and 40% of the annual gross salary, according to case law).

### B. NON-SOLICITATION OF CUSTOMERS

The parties may also provide a non-solicitation covenant related to the employer's customers, which shall be entered into in writing (generally provided along with the non-compete covenant) and does not require a separate compensation.

### C. NON-SOLICITATION OF EMPLOYEES

The parties may also provide a non-solicitation covenant related to the employer's employees, which shall be entered into in writing (generally provided along with the non-compete covenant) and does not require compensation.

## 3. ENFORCEMENT OF RESTRICTIVE COVENANTS—PROCESS AND REMEDIES

In case of violation of a restrictive covenant, the employer is entitled to sue the employee for damages incurred due to the violation and limit payments made for such covenants. The restrictive covenant may provide a penalty in case of violation, reserving the right to claim further damages, if any. Please note that the Judge may also reduce the penalty, if considered disproportionate. It is also possible to ask the Judge for a Court ordered (injunction) preventing the employee from continuing to violate the restrictive covenant.

## 4. USE AND LIMITATIONS OF GARDEN LEAVE

Garden leave as such, does not exist under Italian law. Indeed, an employee has a right to work, even during the notice period. Therefore, to continue paying the salary to the employee during the notice period without him/her working is only permitted with the consent of the employee. In the absence of such consent, in order to prevent (for a limited period of time) the employee from working for other employers, the employer has two options, namely i) agree to a non-compete covenant or ii) let the employee work his/her notice period.

# X. TRANSFER OF UNDERTAKINGS

## 1. EMPLOYEES' RIGHTS IN CASE OF A TRANSFER OF UNDERTAKING

Under Italian law, a Transfer of Undertaking is regulated by article 2112 of the Italian Civil Code regarding the management of the employment relationships, and article 47 of the Law no. 428/1990 regarding the information and consultation process to be implemented before the transfer. According to article 2112 of the Italian Civil Code:

- The employment relationships of the selling company's employees carry on with the buyer company, on the same conditions.
- The employees are transferred automatically. However they may challenge the transfer if, for instance, they were not part of the undertaking transferred;
- The transfer of undertaking itself does not represent a reason to dismiss employees;
- The employees transferred keep all the rights they have accrued with the selling company;
- Should the employment relationship of the transferred employees be subject, within 3 months following the transfer, to significant changes because of the transfer of undertaking, the employees may resign for just cause. In this case, the employees may claim indemnity in lieu of notice. Please note that specific further provisions may be provided by the relevant National Collective Bargaining Agreement applied/applicable to the employment relationship.

For managers (dirigenti) a similar protection is provided by the applicable collective agreement.

## 2. REQUIREMENTS FOR PREDECESSOR AND SUCCESSOR PARTIES

As per buyer and seller companies' obligations, please note that article 2112 of the Italian Civil Code provides that seller and buyer companies are jointly and severally liable for all the credits accrued by the transferred employees with the selling company at the moment of the transfer, and that the buying company shall apply terms and conditions provided by the National Collective Bargaining Agreement applied by the selling company, unless replaced by more favorable terms and conditions. Also, in case of transfer of undertaking within companies with more than 15 employees, article 47 of the Law no. 428/1990 obliges both seller and buyer companies to implement a Union procedure before the transfer.

# XI. TRADE UNIONS AND EMPLOYERS ASSOCIATIONS

## 1. BRIEF DESCRIPTION OF EMPLOYEES' AND EMPLOYERS' ASSOCIATIONS

In general, employees and employers organisations are structured as private associations governed by articles 36-38 of the Civil Code.

In Italy, unions are primarily organised by business sector. All workers involved in a particular industry belong to the same union regardless of the nature of their particular job or occupational qualifications.

### A. EMPLOYEES' ORGANISATIONS

Unions are either independent or associated with one of the three union confederations. The three union confederations have differing ideological and political orientations:

- The Italian General Confederation of Labor (CGIL) is left-wing-inspired;
- The Italian Confederation of Trade Unions (CISL) is center-inspired;
- The Italian Labor Union (UIL) is left-wing with a small center-inspired component.

The most prominent exceptions to this confederation structure are the National Federation of Managers in Industrial Enterprises (FNDAI) and the National Federation of Managers of Commercial and Related Services Enterprises (Manageritalia). Such nationwide structure has also been adopted by various associations representing mid-level management and by the independent unions, sometimes called "autonomous unions" (namely, those that do not belong to one of the three major union confederations, described above).

### B. EMPLOYERS' ASSOCIATIONS

Employers are also organised into unions or associations. These confederations are composed of the various employer associations, each representing a specific industry. These are established as private associations that are grouped into confederations according to the type of enterprise represented:

- Confindustria represents manufacturers;
- Confcommercio represents trade and commerce employers;
- Confagricoltura represents agricultural employers.

## 2. RIGHTS AND IMPORTANCE OF TRADE UNIONS

Unions are not recognised by the Italian State as entities with a legal personality and are free to regulate their internal activities as they deem appropriate. Legally, NCBA only bind individuals who are actually members of the union that is a signatory to the agreement.

Like all private law contracts, only the signatories are bound and, therefore, only those employers and workers who have specifically given a mandate to an employers' association or a union to represent them, may benefit from the collective agreement concluded on their behalf. Although this is the legal rule, in practice, once a collective agreement is concluded, even non-union members typically accept its terms.

Since collective bargaining is subject to private law, collective agreements are regulated by the laws applicable to private contracts in general.

### 3. TYPES OF REPRESENTATION

The Workers' Statute grants all the employees the right to form or become members of unions as well as the right to perform union-related activities. Article 19 of the Workers' Statute states that the work councils ("Rappresentanze Sindacali Aziendali" (RSA) and "Rappresentanze Sindacali Unitarie" (RSU)) may be formed through the initiative of the employees in every plant with more than 15 workers within the Trade Union's associations that have signed the collective agreement applied in the company.

Employee union representatives are granted some rights, such as the right to have paid and unpaid leave for performing union-related activities; the right to avoid being transferred from one place of work to another, and cannot be dismissed without having previously obtained the consent of the territorial Trade Unions association.

#### A. NUMBER OF REPRESENTATIVES

There is no limit to the number of representatives for the RSA. In the case of an RSU presence, for each union there shall be:

- in units employing up to 200 workers, 1 union representative;
- in units employing from 201 to 3,000 workers, 1 union representative for each 300 workers or fraction thereof; and
- in units employing over 3,000 workers, 1 union representative for each 500 workers or fraction thereof, in addition to the minimum number of representatives provided for under (2) above.

#### B. APPOINTMENT OF REPRESENTATIVES

The terms and conditions of the nomination of the representatives are different for RSA and RSU.

RSA representatives are nominated directly by the employees who participate in Union representations, and signed the collective agreement applied by the employer. No formalities

and limits are provided by law with respect to their nomination.

On the other hand, RSU representatives are nominated upon the initiative of the Union's representations and their nominations follow a formal election. 2/3 of the RSU are nominated by all the employees and 1/3 by the Union's representatives. The date and place of the election must be notified to the employees no later than 8 days before the election.

### 4. TASKS AND OBLIGATIONS OF REPRESENTATIVES

The representatives are entitled to carry out any typical unionisation activity, such as distributing propaganda and promotion of the unions. In particular, where there are more than 200 workers at any given plant or unit, the employer is required to provide space, free of charge and exclusively for the use of the union, within the workplace or nearby, for holding meetings and conducting other union business. Where there are fewer workers, space must be made available for these purposes upon the union's request. Plant or unit union representatives also have the right to affix, in properly designated places, union publications and information regarding the union, its activities, and workers' rights and interests.

### 5. EMPLOYEES' REPRESENTATION IN MANAGEMENT

Italian law does not contain any specific provisions allowing employees and/or their representatives to participate in the management of the company.

### 6. OTHER TYPES OF EMPLOYEE REPRESENTATIVE BODIES

Please find below other types of employee representative bodies:

- Company European Committee, provided within the European companies, so-called: “CAE” (Comitato aziendale europeo);
- the employees’ representative for health and safety, so-called: “RLS” (Rappresentante dei Lavoratori per la Sicurezza);
- the employees’ representatives for health and safety on the production site, so-called: “RLSP” (Rappresentante dei Lavoratori per la Sicurezza del Sito produttivo);
- the employees’ representative for protection and prevention, so-called: “RSPP” (Rappresentante dei Lavoratori per il Servizio di Protezione e Prevenzione).

# XII. EMPLOYEE BENEFITS

## 1. SOCIAL SECURITY

In Italy, pensions are operated by INPS and fed by salary-based contributions paid by both the employer and the employee. For employees who started working after January 1, 1996, the amount of salary to be taken into account for the purposes of calculating the pension contributions is capped at an annually determined amount depending on cost of living increases.

### A. REQUIRED CONTRIBUTIONS

Receipt of pension benefits is contingent upon payment of the social security contributions provided for by the law. For employees, the pension is linked to the amount of contributions paid as a percentage of the employee's global salary during an entire working life. In certain specific cases provided for by law (e.g. periods of leave), in order to allow the employee to reach the minimum pension requirements, the contribution is directly paid by the government. In other cases, such as the interruption or the termination of work (from lack of work during one's working life or retirement before retirement age) the contribution due by law can be directly paid by the employees.

## 2. HEALTHCARE AND INSURANCES

Protection of workers who suffer accidents or occupational illness is primarily controlled by the INAIL (National Institution for Insurance Against Work Related Accidents).

### A. ACCIDENTS

The right to payments arises in cases of a violent accident that occurs during working hours resulting in death, permanent, total or partial disability, or the temporary inability to work, which lasts longer than three days. Payments are made even in cases

where the worker is at fault and are only excluded in cases of willful misconduct by the worker.

### B. ILLNESS

Benefits available to those suffering occupational illnesses are generally restricted to a specific list of such illnesses. The Constitutional Court however, has held that workers suffering from all occupational illnesses, even if not originally listed, are eligible to apply for benefits, provided that the occupational illness manifests itself within a given period of time from the employee leaving the position that purportedly caused the illness, and if the disability resulting from the illness is greater than 10 percent. Moreover, some collective agreements also provide for the employer's obligation to enter into specific insurance policies covering accidents, death, and disabilities of its employees.

## 3. REQUIRED LEAVE

### A. HOLIDAYS AND ANNUAL LEAVE

**Holidays:** Under Italian law, employees are entitled to annual holidays. Legislative Decree 66/2003 establishes that the minimum length of annual holidays is four weeks per year, but the applicable NCBA may provide for a longer term. The four-week period must be used for at least two consecutive weeks during the same year, if requested by the employee, and the remainder of the weeks must be used within 18 months of the end of the accrual year.

Except in the case of the termination of employment, an employer cannot replace the right of the employees to benefit from the minimum annual holiday entitlement with payment in lieu thereof. On the other hand, it is possible for the employer to pay the indemnity in lieu only with regard to the annual holidays exceeding the above-mentioned minimum period of four weeks.

**Annual leave:** There are approximately 11 public holidays in Italy and an additional four days that used to be public holidays, but are now working days on which workers are paid double time.

## B. MATERNITY / PATERNITY / PARENTAL LEAVE

**Maternity leave:** Female employees cannot work during the 2 months prior to the planned birth of the child (3 months in case of dangerous jobs, listed by the Minister), and during the 3 months following the birth. Upon permission released by the competent doctor, the maternity leave can start 1 month before the planned birth and finish 4 months later. During the maternity leave, the employee is entitled to 80% of her regular salary, which is paid by the employer who then claws back such amounts from INPS. At the end of the maternity leave, the mother has the right to come back to the same job position she left and at the same/better conditions, and until the child is one year old, entitled to work in the same office or at least, in the same city.

**Paternity leave:** The father is entitled to paternity leave, on the same terms and conditions as in the case where the mother is seriously mentally injured, and for the residual duration if the mother dies or abandons the child.

**Parental leave:** During the first 12 years of the child, each parent is entitled to a period of absent from work of 6 months. If both parents take the parental leave, then they are entitled to a maximum period of 10 months combined. If there is only one parent, he/she is entitled to a parental leave of 10 months. If the parental leave is taken during the first 6 years of age of the child, INPS provides an indemnity equal to 30% of the regular salary for a maximum period of 6 months of parental leave, combined between both parents.

**Time off:** During the first year of age of the child, the mother is entitled to 2 paid hours a day to feed the child (1 paid hour a day if the working day lasts less than 6 hours). Such time off is granted to the father if: the child is in his care, the mother does not take them, the mother does not work, the mother is dead or is seriously mentally injured. The above rights are granted in case of adoption as well. Further rights are also provided in case of illness of

the child and/or depending on the total income of the family. As from the beginning of the pregnancy and until the child is one year old, the mother cannot be dismissed unless for: i) just cause, ii) expiry of a fixed-term employment agreement or iii) closure of the company. Mutual termination or resignations filed by the mother during maternity leave or filed by each parent during the first 3 years of the child, shall be confirmed before the Public Employment Office in order to be valid.

## C. SICKNESS LEAVE AND DISABILITY LEAVE

In case of sickness and disability, the employee is entitled to a period of sick leave and during this time, the employee cannot be dismissed, unless for just cause or closure of the company, so-called: “periodo di comporta”. The duration of the “periodo di comporta” is established by the NCBA, which also provides the amount of remuneration due. At the end of the leave, the employee is entitled to come back to the same job position he/she left and on the same/better conditions.

## 4. PENSIONS: MANDATORY AND TYPICALLY PROVIDED

The Italian pension system was redefined by Law no. 335/95, which combined two different kinds of pension schemes into a single system. The preexisting systems were based, alternatively, depending on the choice of the employee, on the attainment of a certain age (“pensione di vecchiaia”, or old-age pension) or on a minimum period of contributions (“pensione anticipata”, or length-of-service pension). The amount of the length-of-service pension was based on the remuneration paid to the employee during his or her last year of work. The system introduced by Law no. 335/95, which provides for only one kind of pension (“pensione di vecchiaia contributiva”), has been further amended by Law no. 122/10 of July 30, 2010, that introduced the “floating window” which means that, effective as from January 1, 2011, the government will start paying the pension to a retired employee only 12 months after the date on which such individual achieved the requirement for retirement eligibility and actually elects to retire. In 2011, another reform to the pension system was enacted (Law No. 214/2011) that redefined the

pre-existing systems introduced by Law 335/95, providing for the following:

#### A. FOR INDIVIDUALS WORKING PRIOR TO JANUARY 1, 1996

**“Pensione di vecchiaia”** – termination of employment (possibility to work as self-employed); attainment of age 65 and 7 months for women or 66 and 7 months for men (from January 1, 2016); and a minimum period of contributions paid over 20 years.

**“Pensione anticipata”** – Law No. 214/2011 changed the requirement for length of contributions with the pensions system to achieve the pensione di anzianità, providing a minimum contribution of 41 years and 10 months for women and 42 years and 10 months for men.

#### B. FOR INDIVIDUALS WHO STARTED WORK ON OR AFTER JANUARY 1, 1996

**“Pensione di vecchiaia”** – termination of employment; attainment of age 66 and 7 months for men or 65 and 7 months for women, along with a minimum contribution term of 20 years; or attainment of age 70 and 7 months for both women and men, along with a minimum effective contribution term of 5 years.

**“Pensione anticipata”** – a minimum contribution of 41 years and 10 months for woman and 42 years and 10 months for man; or attainment of age 63 and 7 months for both women and men, along with a minimum effective contribution term of 20 years.

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# LABLAW — STUDIO LEGALE

## L&E GLOBAL ITALY

LABLAW is an award winning Italian employment and labour law boutique, which was founded in 2006. LABLAW advises national and international companies on a wide range of complex HR management and industrial relations issues such as employment contracts, executive benefits, stock option schemes, pensions, health and safety in the workplace, privacy, personnel matters related to mergers and acquisitions, as well as with individual dismissals, litigation, collective dismissals, downsizing projects, transfer of undertakings, procedures for the constitution of European Work Councils, collective bargaining and trade union negotiations.

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