

LEGAL INFORMATIVE NEWSLETTER

No. 3

September 2014

We are pleased to provide you with the new issue of our legal information newsletter.

Topical legal questions are discussed and those related to issues that you might encounter.

We hope that you will find it of interest. We would welcome any comment you might have.

THE NEW ITALIAN LABOUR LAW SYSTEM AT A GLANCE AFTER THE ENACTMENT OF THE JOB ACT

Law Decree N° 34 of 20.3.2014
Act N° 16.5.2014 N° 78

§ 4.01 Introduction - Employment relationships are regulated by the Constitutional principles, the provisions of the Civil code, those of the so-called “Statute of Workers” (“*Statuto dei Lavoratori*”)¹ and by other statutory regulations.

Terms and conditions of employment are also periodically established by the so-called Collectively Bargained Labour Agreements (CCNL) that have been entered for the different professional categories.

In case of conflict between the provisions of an employment contract and the provisions of law, those of law always prevail.

In addition, the Italian Constitution contains several general principles of labour law. Among these are Article 1 that states that “Italy is a democratic Republic founded on labour”, Article 4 that sets forth “the Republic recognises to every citizen the right to work”, Article 35 “the Republic protects work in all its forms and applications”.

Some more specific constitutional principles of law, largely used by the Courts, are:

[A] Article 36 about fair remuneration, maximum working hours, weekly and annual paid vacation

[B] Article 37 about protection of women and minors on the job

[C] Article 38 about social insurance for old age, illness, invalidity, industrial diseases and accidents

[D] Article 39 on Freedom of Association

[E] Article 40 on the right to strike.

Among the relevant statutory regulations, the Parliament passed on May 13th, 2014 a brand new legislation, officially referred to as the Act N° 78/2014, which amends some of the statutory regulations currently governing the Italian labour market.

This new Job Act comes as a partial amendment to the Matteo Renzi’s Law Decree No. 34, which was enacted on March 20th, 2014.

§ 4.02 The current types of employment relationship - There is no general requirement for an employment contract to be in writing. Statutory law sets forth that contracts of employment are deemed to be for an indefinite period of time, unless the statutory regulations provide otherwise.²

The new Job Act provides for fixed terms employment contracts. These contracts are subject to the following rules:

[A] The 20% Rule: Any company in Italy will only be able to have 20% of their workforce on fixed terms contracts.

[B] Exempt from this regulation will be employers with under 5 staff members and those companies operating in the research field.

<p>Cajola & Associati Via G. Rossini, 5 20122 Milan – Italy Phone: +390276003305 Fax: +3902780177 E-mail: law@cajola.com Web site : www.cajola.com</p>

¹ Act No. 300/70.

² Act No. 230/62.

For businesses that do not currently comply with this new regulation there is a grace period ending on December 31st, 2014.

As of January 1st, 2015 if a company is over the 20% limit then:

[A] The company will be unable to hire new employees on fixed term contracts. (They will be able to once they are within the legal limits)

[B] There will be financial sanctions equivalent 20% of the salary for the 1st fixed time worker breaching the threshold, increasing to 50% of the salary for each additional breach. The sanction applies for each contractual month.

The 20% limit number will be calculated from January 1st of the year the Fixed Term contract employees were taken on.

Regarding renewal of Fixed Term contracts the following "5 x" rule applies: Fixed Term Contracts can only be extended 5 times within any given 36 month period including any renewals or extensions of contracts.

Italian Employers will no longer be required to provide a technical, organizational and productive reasons for hiring staff with fixed term contracts or for renewing or extending them.

With the new Labour Decree public and private companies operating in the scientific research field will be able to renew Fixed Term Employment Contracts on an indefinite basis – even beyond the 36 month period limit set for all other companies.

Women on fixed term contracts will be entitled to the same maternity leave rights as permanent female employees. In addition, women on fixed term contracts – who have taken maternity leave in the midst of their contract – will have their maternity leave counted as 'working months'.

Regarding apprenticeship contracts, companies in Italy with more than 50 employees cannot have more than 20% of their workforce employed on apprenticeship contracts. A written training schedule is a requirement for all apprenticeship contracts.

§ 4.03 Collective Bargaining Agreement - Unions can freely negotiate collective agreements at provincial, regional and national

levels. Collective agreements and accords must be registered with the National Council of Economy and Labour - CNEL within 30 days after they have been entered by the parties.

The provisions of the collective agreements are binding for the employers of the category of workers falling into the agreement³ and prevail over the employment agreement that the employer and the employee have entered, save for those contractual provisions more favourable to the employee.

The so-called economic agreements are instead those covering some categories of self-employed (i.e. commercial agents, some doctors working for the National Health Service, etc, also known as *lavoratori parasubordinati*).

Collective bargaining can regulate all aspects of the employer-employee relationship, except those that the law sets forth.

Collective agreements do not entitle the workers' representatives to any co-determination right, but only to the right to be informed and consulted about the most important decisions of the company.

§ 4.04 Suspension of the employment contract - A provision of the Civil code⁴ establishes the suspension of the employment relationship, occurring under the following circumstances:

[A] Industrial accident sustained by the worker

[B] Her/his illness

[C] Maternity of the worker (two months before and three months after childbirth).

Sick employees are entitled to retain their job position and seniority, as well as their salary for a period of up to six months or more, depending on their job category and the related applicable CCNL.

§ 4.05 Discharge - A preliminary distinction must be made between fixed-term and indefinite term contracts. As far as fixed-term contracts are concerned, termination is automatic at the end of the specified duration or on completion of the specified task.⁵

Nevertheless, according to the provisions of Civil Code, the employer may terminate the contract earlier for "just cause".⁶

³ Act No. 936/86.

⁴ Civil code, Article 2110.

⁵ Act No. 230/62.

⁶ Civil code, Article 2119.

The Civil Code provides that each contracting party (the employer and the employee) of a contract of indefinite duration can terminate it, provided the notice period is respected, or without any notice in case of just cause.⁷

According to domestic Law an employee can be dismissed for the following reasons:

[A] Just cause (*Giusta Causa*) meaning a serious breach of the employee by her/his duties or other behaviour that prevents the working relationship to be carried forward

[B] Justified grounds (*Giustificato Motivo*) meaning with that either:

[1] A subjective reason that is a breach by the employee of his /her duties, which is not as substantial as to constitute Just Cause. The breach may consist, for instance, in failure to follow important instructions given by the management, material damages to machinery and equipment, low performance (the grounds for dismissal being "subjective reason")

[2] An objective reason whereby the employer needs to reorganize the manufacturing process or the workforce through redundancies.

Dismissals must always be in writing and detail the reasons for dismissal. Failure to do so makes the dismissal ineffective.

Should the employee believe to have been unfairly dismissed, he/she can challenge the decision in court and the employer must observe the following rules:

If the company employs up to 60 workers in total throughout Italy, or up to 15 in a single working unit, the employer may chose between reinstating the dismissed employee or paying an indemnity (between two and half, and six months pay).

Under all other circumstances, the employee is entitled to reinstatement and compensation for damages amounting to five months salary at least.

Failure to reinstate an unfairly dismissed employee usually results in an award of 15-month salary plus compensation for damages against the employer.

Employees dismissed for reasons other than Just Cause are entitled to a notice period. Employers may exempt the employee from working during the notice period by paying him/her an indemnity equal to the salary payable during the notice period.

Such an indemnity is liable to social security charges.

Under the provisions of the "collective dismissal procedure", whenever redundancy involves five employees at least within a 120 day period of time and an employer with fifteen or more employees, the company must preliminary consult with the trade unions.

Termination without grounds is limited to trial periods, domestic workers, employees who have reached retirement age and directors.

Dismissals on the grounds of political opinion, trade union membership, sex, race, language or religious affiliation are null and void. Furthermore, members of workers' committees may not be dismissed or transferred for one year following termination of their duties on the committee without the authorization of the relevant regional trade union organization. This provision applies to directors and domestic workers as well.

Dismissal on the grounds of pregnancy, if the dismissal takes place between the conception and the end of the female employee's statutory period of absence on confinement leave or unpaid leave, until the child reaches one year of age, is also expressly prohibited.

Dismissal on the grounds of marriage is also prohibited. Protection against unfair dismissal of managerial employees is regulated by collective agreements.

In case of unjustified dismissal, remedies are different according to the size of the firm: employers having more than 15 employees (or five in the agricultural sector) in anyone establishment, branch, office or autonomous department, and employers having more than 60 workers, wherever located, are required to reinstate the dismissed employee, and to pay damages at a rate of not less than five monthly salary payments.

Alternatively, the employee can refuse reinstatement and request payment of damages

⁷ Civil code, Articles 2118 and 2119.

equal to 15 monthly pay. If the employer invites the employee to return to work and the employee does not take up the offer within 30 days, the contract is automatically terminated.

Where there are fewer than 15 employees in a unit or fewer than 60 employees in total, the employee unfairly dismissed has no right to reinstatement, but is entitled to compensation ranging from 2, 5 to six times the monthly pay.

The employees of charity, union or political organizations are not entitled to be reinstated (Law nr. 108/90).

The contract of employment may also be terminated by the resignation of the employee, provided a notice period is respected.

However, an employee may resign with immediate effect in circumstances that Civil code Article 2119 specifies, like:

[A] Non-payment of wages or social security contributions

[B] Closure of the enterprise

[C] Failure to be included within the category or grade corresponding to the work effectively being undertaken

[D] Refusal to grant due holidays

[E] Unilateral changing of the employee's duties with a corresponding reduction in wages

[F] Offences by the employer against the duty to safeguard the physical and psychological well-being of the employee (Civil code, Article 2087).⁸

Specific provisions of statutory law⁹ on collective dismissals, provides for special procedures of information and bargaining with unions before terminating contracts, and special indemnities for the employees that are to be made redundant, according to EU directives.

§ 4.06 Severance pay (TFR) - For any termination of the contract of employment, on whatever ground, even for dismissal for just cause or resignation, the employee is entitled to receive from the employer a severance payment,

which is usually referred to as "*TFR - Trattamento di Fine Rapporto*".

TFR is deemed to be a part of salary, must be set aside every year and kept by the employer, based on the formula of 7,5% of every year's salary, plus revaluation according to a composed index of 75% of price index increase +1,5%.¹⁰

The TFR may be partially paid off in advance, upon occurrence of the following two conditions:

[A] The employee has reached eight years of service

[B] She/he intends to purchase her/his household's residence, or needs to withdraw the TFR for health care, extended leave for child care or educational leave.¹¹

§ 4.07 Equality - The Italian Constitution¹² sets forth the principle of equality of all citizens before the law "*without difference of sex, race, language, religion, and political views, personal and social position*".

Italy has also ratified the International Agreement of Economic, Social and Cultural Rights (New York, 16 December 1966).¹³

Statutory law also sets aside any agreement or action by the employer, constituting discrimination for reasons of sex, race, language, religion, political opinion.¹⁴ Equality between men and women at work is specifically recognised and guaranteed by the Law.¹⁵

Other provisions of statutory law provide for affirmative action to encourage equal opportunity for women in accessing to employment and during employment. Dismissals for discriminatory grounds as such as political and union views, religion, participation in union activities are prohibited.¹⁶

Likewise, dismissals for discriminatory reasons, such as race, sex, language, political and union views, and religion are null and void and requires always the reinstatement of the dismissed worker.¹⁷ Other kinds of discrimination as such

⁸ Civil code, Article 2087.

⁹ Act No. 223/91.

¹⁰ Act No. 297/82.

¹¹ Act No. 63/00.

¹² Italian Constitution, Article 3.

¹³ Through the enactment of Act No. 88/77.

¹⁴ Act No. 300/70.

¹⁵ Act No. 903/77.

¹⁶ Acts No. 125/91 and 604/66.

¹⁷ Act No. 108/90.

as age discrimination, handicap discrimination and AIDS base discrimination are forbidden.¹⁸

A law on sexual harassment at work does not exist, though, there is case law on unfair dismissal based on this ground. The Constitutional Court has ruled that equality is a fundamental right of foreigners as well.

For citizens of European Union member Countries, Article 48 of the EEC Treaty abolishes all discrimination at work, wage and other conditions of work. Law nr. 40/98 establishes equality between other foreign workers legally resident in Italy and Italian workers.

§ 4.08 Social Security System - The “*Cassa Integrazione Guadagni*” is a State fund within the scope of the National Social Security Institute. It was established in 1954¹⁹, with a view to protecting the workers’ earnings in the event the enterprise has difficulties.

The Italian social security, managed by INPS, is compulsory and provides comprehensive benefits for all employees.

The social security costs, which are calculated on gross earnings, are jointly financed by the contributions of employees and employer.

Employers have to pay two-thirds of contributions and employees are responsible for the remaining third.

As far as wage compensation funds are concerned, domestic labour law sets forth special provisions for guaranteeing workers wages in case of a temporary lay-off or temporarily reduced company activity not attributable to the employer or to the employees or caused by the general economic situation.

A Wage Compensation Fund (“*CIG – Cassa Integrazione Guadagni*”) is available to industrial workers.

The employer provides 80% of gross wage for hours not worked, and is subsequently reimbursed by INPS.

An Extraordinary Wage Compensation Fund (“*CIGS - Cassa Integrazione Guadagni Straordinaria*”) helps to secure employment once production resumes in a restructured, reorganized or converted company.

Only companies employing 15 or more employees are eligible for CIGS. Compensation equals 80% of the worker's gross wage for hours not worked, and is payable in a 12 month continuous period.

The “*Cassa Integrazione Guadagni*” is mostly used in cases of suspension or temporary reduction of business activity of a company for reasons beyond market fluctuations and includes suspension of activity in the building industry due to weather damages.

§ 4.09 Pension System - The Italian compulsory state pension system is financed by social contributions paid by the employer during one's working life, and is based on actuarial fairness.

The retirement age ranges between 62 and 66 years. Starting from January 2013, retirement in the private sector is possible for workers after 20 years of contribution and at 66 years and 3 months of age for male workers. Employed female workers retirement age is currently 63 years and 3 months. It will be however 66 years and 3 months from 2018 on.

It is possible to retire anyway, if 42 years and one month for males and 41 years and one month for females of social security contribution have been achieved.

The reform includes incentives for workers who decide to continue working, although currently eligible for a public pension.

Such incentives provide for a compensation equal to 32.7% of the salary of the worker who has decided to continue working.

Integrative pension schemes in Italy are voluntary for workers and companies alike.

The law guarantees freedom for individuals to subscribe to supplementary pension schemes, while leaving companies are free to choose whether to set up their own funds.

Nearly all funds are based on a fixed contribution rate.

Regarding disbursement, beneficiaries can generally withdraw up to 50% as a lump sum then the entire or remaining amount as an annuity.

Avv. Riccardo G. Cajola

¹⁸ Acts No. 104/92 and 135/90.

¹⁹ Act No. 788/54.