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Employment Law in Italy: main topics

Andrea Piermartini Rosi
Orrick Herrington & Sutcliffe, Rome, Italy
arosi@orrick.com

I. Overview

Employment relationships are regulated in Italy by the provisions of the civil code, as well as by laws and regulations and, for many issues regarding individual contracts (such as wages, duties, working time, probation period), by the applicable collective bargaining agreements ("CBA").

A contract of employment is always considered as an open-ended one, except in cases specified by the law, so that fixed-term contracts are an exception to the ordinary scheme that is an open-ended contract.

I. Overview

Special employment contracts are regulated by appropriate legislation and are permissible either as part of a job-creation scheme or because they are inherent to the nature of the work involved. The main types of special contracts of employment are as follows:

a) apprenticeships;
b) part-time;
c) solidarity contracts (these are intended to assist in maintaining employment levels during periods of business difficulties);
d) work-training (allowed for young workers only – age depending on the activity), for a duration of up to 2 years;
e) fixed-term; and
f) contracts for executives (*dirigenti*).

II. Open-ended and fixed-term contracts

Open-ended contracts

As a sole remark, we would point out that the termination of an open-ended contract may be up to the employee (resignation) or the employer (individual dismissal): the employer's power to dismiss is, however, subject to limits imposed by law and by the applicable CBA.

II. Open-ended and fixed-term contracts

Fixed-term contracts

According to Legislative Decree 368/2001, the employer is generally allowed to enter into fixed-term contracts upon the occurrence of the following business reasons: (i) technical reasons (i.e. a temporary employer's need for skilled workers); (ii) production and organizational reasons (i.e. a particular market demand); and (iii) replacement reasons (i.e. the employer's need to replace an employee who is temporarily absent due to maternity leave).

A fixed-term contract can be renewed (or extended) only if the initial term is no longer than 3 years and only with the employee's consent.

II. Open-ended and fixed-term contracts

New Discipline

According to Law Decree no. 76 of June 28, 2013, technical, production, and organizational needs, as well as the need to temporary replace employees, are no longer required to execute a fixed-term employment agreement in the event of:

- a first fixed-term agreement having a duration no higher than 12 months for any kind of duty; and
- any other situation provided by the main CBAs (this implies the possibility for negotiation between employers and unions, also at the company's level, to agree on specific situations taking into consideration currents scenarios, thus granting a higher level of flexibility).

II. Open-ended and fixed-term contracts

There is so the possibility to execute a fixed term agreement with no specific cause or justification, so called "*acausale*".

This kind of agreement can be prorogated as allowed for the other kinds of fixed term agreements.

A fixed term agreement will be considered as (transformed into) an open end agreement in the event it continues to be executed by the parties after the expiry of its term for a period of, respectively, 30 days if the original agreement had a duration lower than 6 months or after 50 days if the original duration was higher, this also in the event of an "*acausale*" agreement.

II. Open-ended and fixed-term contracts

Moreover the “stop and go” period between a fixed term agreement and a new fixed term agreement is reduced to 10 or 20 days (as originally provided before the Fornero reform) depending on as to whether the duration of the first fixed term agreement was lower than 6 months or higher. Such provision does not apply to seasonal activities or if a lower “stop and go” period is provided by the national collective bargaining agreements.

III. Termination of employment

Dismissal of employees

According to Italian employment law, dismissals can be performed only if:

- a just cause occurs, i.e. a serious violation of the employee's contractual obligations capable of compromising the fiduciary relationship with the employee (stealing, insubordination, acting with willful misconduct, etc.);
- a justified subjective reason occurs, i.e. a less serious behavior than the just cause, capable, however, of being detrimental to continue the employment relationship (disciplinary violations, acting with gross negligence, etc.); or

III. Termination of employment

- a justified objective reason occurs, i.e. a reason out of the control of both the employer and the employee, hence not related to the employee's behavior but due to reasons related to the production/operational activity of the employer (closure of the activity, automation of the production, outsourcing, etc).

In all cases of termination, either for dismissal (including for just cause) or resignation, the employee is entitled to receive the so-called "statutory indemnities" (i.e. severance pay, the accrued additional monthly salaries, namely the pro rata 13th and 14th months' installments, unused holidays).

The employee is entitled to a notice period (or an indemnity), the length of which is provided for by the CBA applicable to the employment.

III. Termination of employment

In the event the employee deems the dismissal is wrongful, he/she can go before the Court to have the dismissal declared unlawful. According to the Legge Fornero, four different scenarios apply:

a) full reinstatement regime (*reintegra piena*): this applies in the event of discriminatory or null and void dismissal. The employee has the power to decide as to whether: (i) to be re-hired; or (ii) to be compensated with an indemnity equal to its last 15 monthly salaries. Moreover, the employee will have the right to receive his/her salary from the date of the dismissal until the date of the re-hiring (including social security contributions), even if the employee opts for the payment of the indemnity;

b) soft reinstatement regime (*reintegra attenuata*): this applies in the event of the inexistence of facts on which the dismissal was allegedly based should a just cause or a subjective justifiable reason be claimed, or in the event that the dismissal is completely groundless (e.g. the employer claimed economic reasons for justifying another kind of dismissal). The employee has the power to decide as to whether: (i) to be re-hired; or (ii) to be compensated with an indemnity equal to its last 15 monthly salaries. Moreover, the employee will have the right to receive his/her salary from the date of the dismissal until the date of the re-hiring (including social security contributions), and in any case up to 12 monthly salaries, even if the employee opts for the payment of the indemnity;

III. Termination of employment

c) full indemnity regime: this applies in the event of the occurrence of a just cause or a subjective justifiable reason other than those indicated under letter b. The employee is not entitled to be reinstated in his/her job position, but only to receive an all-inclusive indemnity of an amount ranging between 12 and 24 last monthly salaries;

d) soft indemnity regime: this applies in the event the reasons for the dismissal have not been properly specified in writing, unless such lack of detail could constitute a more significant violation under the above-mentioned cases. The employee is not entitled to be reinstated in his/her job position, but only to receive an all-inclusive indemnity of an amount ranging between 6 and 12 last monthly salaries.

III. Termination of employment

Dismissal of Executives ("*Dirigenti*")

With regard to executives ("*dirigenti*"), the main CBAs for Executives provide that the reasons for dismissal of an executive shall be communicated by the employer in the written notice of termination and that, at termination, the employer shall pay, inter alia: (i) the seniority indemnity or severance indemnity fund ("TFR"), regularly accrued by the employee during the employment relationship and set aside by the employer in the accounts; (ii) the accrued additional monthly salary; (iii) the indemnity for unused holidays; and (iv) the amount in lieu of the notice of termination. This latter amount is payable if the employer decides to dismiss the executive forthwith, without giving the statutory notice. The payment in lieu of notice of termination depends on the seniority of the executive, and can vary from a minimum of 6 months up to a maximum of 12 months, according to the applicable CBA.

III. Termination of employment

Applicable Laws provide for the dismissal of an executive to be motivated and "reasonable" (this being a different and less stringent concept from the one of just cause and justifiable reason as outlined for dismissal of employees). According to the most recent interpretation provided by the Italian Courts, the concept of "reasonable dismissal" is to be evaluated along with the following criteria: (i) whether or not the dismissal was made on a discriminatory basis; (ii) whether or not the reasons outlined and indicated by the employer in the letter of termination were real and true, as well as consistent with the company's general needs, and not only used as a pretext; and (iii) more generally, whether or not the employer has behaved towards the employee in good faith and in a fair manner.

III. Termination of employment

If the executive objects that the dismissal is not reasonable, or in the event the motivation itself has not been given at the time of the notice of dismissal, he/she may be entitled to bring a claim before an arbitration panel. If such arbitration panel rules that the dismissal is unreasonable, the employer may be ordered to pay the dismissed executive an indemnity for damages. Such indemnity can range, according to the applicable CBA, between a minimum amount equal to the indemnity in lieu of the notice of termination and a maximum amount equal to 29 times the last monthly salary.

As an alternative to the arbitration panel, the executive can sue the employer before the ordinary Court (but a special and faster proceeding applies).

IV. Other main issues

Collective Dismissals

In cases of collective redundancies, specific rules must be followed. These rules generally require the employer to notify the trade union about the technical, organizational and production factors that have prevented alternatives to the redundancy and the planned measures to reduce the social impact arising from the reduction in staff. The union can require the employer to hold a meeting to discuss the reasons for the dismissals. If no agreement is reached within the period set by law, mediation may be used. Employees who are made redundant are entitled to an indemnity.

IV. Other main issues

Cassa Integrazione

In case of suspension or reduction of work (lay-offs and short time) for economic reasons, Italian Law allows employers to request the intervention of a special public fund run by the Italian National Social Security Institute, INPS ("Cassa Integrazione Guadagni" or "C.I.G.", hereinafter the "Fund"), financed with the contribution of both employers and employees, to guarantee a percentage (80%) of the income to blue-collar and white-collar workers during the period of the abovementioned suspension or reduction of work.

The Fund intervention is of two kinds: the so-called ordinary intervention ("C.I.G.O.") and the extraordinary intervention ("C.I.G.S.").

IV. Other main issues

The C.I.G.O. occurs in cases of: (i) temporary market difficulties of the firm; and (ii) difficulties due to transitory events not attributable to the employees or to the employers. It applies to industrial sectors and building constructions and has a duration of 3 months, which can be extended up to 12 months. The C.I.G.O. intervention is granted, on employers' request, by a special commission of INPS.

The C.I.G.S. operates in cases of: (i) firm restructuring, reorganization or reconversion; (ii) economic crisis of the enterprise (whose importance must be evaluated by the Committee of the Ministries for the co-ordination of industrial policy) and; (iii) bankruptcy and liquidation of the firm. It applies to all industrial units employing more than 15 employees and to large commercial firms (more than 200 employees) and its intervention is granted, always on employers' request, by Ministerial Decree.

IV. Other main issues

Simplified Limited Liability Companies

Simplified limited liability companies can now be set up by individuals of any age (originally the individuals cannot be older than 35 years). Moreover, directors can also be not shareholders of the company.