

Going forward on employment.

Italy's new labour reform, at a glance.

Contents

1. Exit flexibility: dismissals
2. The new code of contracts
3. Amendments to duties/job position
4. Remote-monitoring of employees

Over the past months, Italy has restructured several aspects of employment life.

The following commentary provides a brief overview of the essential parts of these new Labour regulations (the “Jobs Act”).

1. Exit flexibility: dismissals

March 7, 2015 becomes the break date for the new dismissals regulations, applicable only to (i) employees hired as of March 7, 2015, (ii) employees on fixed-term contracts or apprenticeships converted into open-term contracts as of March 7, 2015, (iii) employees within companies whose workforce – as a consequence of new hires – cross the threshold of no. 15 individuals in the same business unit or municipality (or exceeding no. 60 individuals in total). Individuals who do not fit in such criteria are subject to previous regulations, creating a *de facto* binary system.

1.1 Individual dismissals

Depending on the kind of dismissals served, the new regulations drastically change – and finally clarify – the consequences to unlawful dismissals. In particular:

- a. **Dismissal for economic reasons:** in case of dismissals for economic reasons deemed as unlawful, no reinstatement applies and the new sanction is only a seniority-based indemnity *i.e.* 2 months' salary per each year of service, with a minimum of 4 and a maximum of 24 months.
- b. **Dismissal for subjective reasons:** the same seniority-based indemnity applies to unlawful dismissals based on justified subjective reasons or just cause, *e.g.* should the dismissal be deemed as not proportioned to the employee's breach grounding the dismissal. The employer may be in any case condemned to reinstate the dismissed employee – and pay an indemnity equal to the salaries due from the date of dismissal up to the reinstatement (with a maximum cap of 12 months), plus social charges – if the facts allegedly causing the dismissals are proven as non-existent (alternatively to reinstatement, the employee can choose an indemnity of 15 months' salary).
- c. **Other hypothesis of dismissals:** the employee's right to reinstatement – together with an indemnity equal to the salaries due from the date of dismissal until the reinstatement (with a minimum of 5 months), plus social charges – is also applicable in cases of dismissals deemed null and void, *e.g.* verbal dismissals, dismissals based on discrimination or retaliation, dismissal during maternity leave, *etc.* The employee can opt for a 15 months' salary indemnity as an alternative to reinstatement.
- d. **Dismissal affected by formal irregularities:** a lower seniority-based indemnity is due, consisting of 1 month's salary per each year of service, with a minimum of 2 and a maximum of 12 months.
- e. **Small companies and executives:** companies staffed with up to 15 employees are only liable for half of any of the above seniority-based indemnities (*i.e.* 1 month's salary per each year of service, with a

minimum of 2 and a maximum of 6 months). The new rules are not applicable to executives (“*dirigenti*”).

1.2 New and “quick” settlement procedure

The settlement procedure has now a bounded scope and timeline. The employer has in fact the opportunity to offer, within 60 days from any kind of dismissal, a settlement lump-sum to the employee equal to 1 month’s salary per each year of service, with a minimum of 2 and a maximum of 18 months. If the offer is accepted, the employee will waive all rights connected to the termination of his/her employment.

The settlement lump-sum is exempted from tax and social security contributions and is immediately paid to the employee by cash check. Additional sums paid as part of the settlement agreement (e.g. compensation for all of the employee’s waivers related to any potential claims he/she may rise in relation to the employment) will be subject to the ordinary tax and social security treatment.

1.3 Collective dismissals

According to the new rules, employers who perform collective dismissals in breach of the mandatory procedure and/or disregarding the criteria to be complied with when dismissing the redundant employees are due to pay a seniority-based indemnity equal to 2 months’ salary per each year of service, with a minimum of 4 and a maximum of 24 months.

The employee’s right of reinstatement – together with an indemnity equal to the salaries due from the date of dismissal up to the reinstatement (with a minimum of 5 months), plus social security charges – will be applicable only in case of a dismissal not served in writing.

Quite interestingly: new rules on collective dismissals are applicable within the same scope of individual dismissals. During a collective dismissal procedure, therefore, there will likely be two different dismissal regimes in place, depending on the hiring date of the concerned employees.

It is worth to mention, lastly, that executives (“*dirigenti*”) now fall within the scope of the collective dismissal procedures.

1.4 Mutual terminations and resignations

Employees who decide to resign or to terminate their employment relationship by mutual consent, must now undertake an online process – directly or through the assistance of an authorized subject – in order to make their exit fully effective. The process implicates the submitting of an online form confirming the resignation/mutual termination to both the competent Labour Office (DTL) and the employer.

2. The new code of contracts

A new code of contracts has been introduced, dealing with the reorganization and rationalization of several types of atypical contracts.

In brief, with effect from January 1, 2016, the so called “*co.co.pro*” (“*contratto di collaborazione a progetto*”) has ceased to be applicable, although existing contracts may continue until their expiration.

A new bill on self-employment regulations – which aims at clarifying this kind of collaborations – is now currently under scrutiny by the Parliament and is expected to come into force in the following months.

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It does not constitute a reference for agreements and/or commitments of any nature.

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3. Amendments to duties/job position

Employees may now unilaterally be assigned to duties belonging to a lower contractual level within the same contractual category: (i) in case of reorganization processes that affect the employee's job position or (ii) in any other case provided by collective bargaining agreements (applied at national or plant level).

However: amendments to an employee's duties will have to be set out in writing and the employee shall be entitled to formally hold the previous contractual level and the actual remuneration granted to him/her before the amendment was made, except for any compensation related to specific activities and modalities of performance of his/her previous duties.

In any case, individual agreements with employees may amend assigned tasks, professional status, contractual level (possibly lowering the category) as well as the salary (possibly reducing it), only if agreed upon – and necessarily formalized before Trade Union representatives or before a Certification Committee – in order to (i) avoid the employee's dismissal, (ii) guarantee the acquisition of a different professional qualification or (iii) improve the employee's work-life balance.

4. Remote-monitoring of employees

Remote monitoring of employees – even if just potential – is normally permitted only if:

- a. the employer reaches an agreement with its works council / Trade Unions or – should they be lacking – with the local Labour Office (DTL), and
- b. the rationale of such monitoring falls within the scope of: (1) organizational or productivity reasons, (2) safety at work or (3) protection of the company's assets.

Under the new regulations, the agreement under letter a. above is no longer needed in case remote monitoring occurs via tools which have been granted to employees to perform their working activity (neither they are needed for attendance recording systems), given that the employees themselves have been made aware – by means of specific policies – that such control may apply and how. Due to the lack of a consolidated best practice and case-law, however, it is highly suggested to have a prudential approach on this matter at least in this initial application phase.

The Jobs Act – and, particularly, these new regulations – are certainly having a strong impact on the Labour market, possibly loosening the ties that prevent Italy's employment from going forward. Some grey areas persist although, likely, the next following months and the practical application of the new rules will clear any significant issue.

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