The Legal 500 Country Comparative Guides

Italy: Employment & Labour Law

This country-specific Q&A provides an overview to employment & labour law laws and regulations that may occur in Italy.

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1. **Does an employer need a reason in order to lawfully terminate an employment relationship? If so, describe what reasons are lawful?**

   Over the trial period, the termination of the employment relationship has not to rely on a “cause” or other specific reasons.

   After the end of the trial period, employment contracts of employees holding the qualification of middle-manager (“quadro”), white-collar or blue-collar may be lawfully terminated by the employer only in the presence of:

   - a cause for termination (“giusta causa”), which is a breach by the employee whose seriousness prevents the continuation, even on a temporary basis, of the employment relationship (for example, theft of the employer’s goods);
   - subjective justified grounds (“giustificato motivo soggettivo”), which are a less serious breach by the employee (for example, unjustified absences from work);
   - objective justified grounds (“giustificato motivo oggettivo”), which relate to the production, the work organization or its regular operation (namely, individual redundancies).

   Employment contracts executed with executive status employees (“dirigenti”) are governed by specific rules set forth by national collective bargaining agreements applicable to such category of employees, which generally provide for that their dismissal must be “justified” (according to case-law precedents hereof, an executive’s dismissal is “justified” whenever it relies on reasons other than false, arbitrary, discriminatory or unfounded grounds).

2. **What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned?**

   A specific procedure (the “collective dismissal procedure”) within which the employer is charged with information and consultation obligations towards the trade unions/works councils apply whenever an employer staffed with more than 15 employees, due to reduction, transformation or shutdown of activities, intends to dismiss – within a 120-day term – at least 5 employees employed at the same production unit or at different production units within the same province.

3. **What, if any, additional considerations apply if a worker’s employment is terminated in the context of a business sale?**

   Under Italian law, dismissals relying on a transfer of a business (or a part hereof) are considered as being null and void, so that the relevant employees are entitled to have their employment relationship continuing with the transferee as well as to be paid with an indemnity amounting to those salaries which would have been accrued over the period as from the dismissal date until the date of actual reinstatement (a minimum floor of 5 months of salary is provided for).
However, this does not prevent the transferor/transferee from dismissing employees according to general rules governing such matter (namely, if a cause for termination ("giusta causa") or justified grounds, either subjective or objective ("giustificato motivo soggettivo o oggettivo"), occurs/occur).

4. **What, if any, is the minimum notice period to terminate employment?**

Employees are entitled to the notice period in any of the following circumstances:

- dismissal notified within a collective dismissal procedure;
- dismissal for justified grounds, either subjective or objective ("giustificato motivo soggettivo o oggettivo");
- dismissal notified since the relevant employee's absences from work due to illness or accident exceed the relevant maximum threshold set forth by the applicable national collective bargaining agreement;
- dismissal notified due to the employee’s supervening professional unsuitability.

The actual term of the notice period is set out by the applicable national collective bargaining agreement and depends on the qualification (executive "dirigente", middle-manager ("quadro"), white-collar or blue-collar) assigned to the relevant employee and his/her company seniority. Generally speaking, its term is in the range between 1 and 6 months.

5. **Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?**

The employer, at its own discretion, is entitled to exempt employees from working over the notice period, conditional upon payment to them of the relevant indemnity-in-lieu. This has to be calculated taking into account – in addition to the base annual gross salary paid to the relevant employee – also the additional monthly salary/salaries provided for by the applicable national collective bargaining agreement, the variable compensations paid over the last 3 years as well as the value of those fringe benefits granted to the employee.

6. **Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to stay at home and not participate in any work?**

Under Italian law, the employer is not allowed to require employees to be on garden leave over the notice period (in other words, garden leave is not permitted according to Italian law).

If employees are exempted from working over the notice period, the employment relationship has to be considered as definitely terminated as from the date on which the dismissal letter is served and the relevant employee is to be granted with the relevant indemnity-in-lieu (or a portion hereof, if he/she has been partially exempted from working over the notice period).
7. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.

Under Italian law, dismissals have to be notified in writing and the relevant notice must include specific indication of those reasons upon which the termination is grounded.

Disciplinary dismissals – namely, those relying on a cause ("giusta causa") or on subjective justified grounds ("giustificato motivo soggettivo") – have to be served, regardless the relevant employee’s qualification and date of hiring as well as the size of the employer’s business – by complying with a specific procedure, as follows:

- the employer must promptly provide the relevant employee with a written notice specifying those misconducts which are objected to him/her;
- within the following 5 days (or the longer term which may be set forth by the applicable national collective bargaining agreement), the relevant employee is entitled to submit his/her justifications hereof, either in writing or orally;
- at the expiry of the above 5-day term (or the longer term which may be set forth by the applicable national collective bargaining agreement), if no justifications have been provided by the relevant employee, or – alternatively – upon receipt of the affected employee’s justifications, if these have been submitted, the employer is entitled to serve the dismissal.

In case of dismissals relying on objective justified grounds ("giustificato motivo oggettivo"; namely, dismissals due to individual redundancy), a specific procedure has to be triggered by the employer, except for those dismissals which are:

- to be notified to employees hired as from 7 March 2015;
- to be served to executive status employees ("dirigenti");
- grounded upon the relevant employee’s absences from work due to illness or accidents exceeding the maximum threshold set forth by the applicable national collective bargaining agreement;
- to be notified by “small companies” (namely, those staffed with up to 60 employees within the Italian territory and employing up to 15 employees at each production unit/within each municipality).

Under this procedure, the employer must notify in advance its intention to dismiss the relevant employee, thus explaining reasons grounding the dismissal, to both the latter and the Labour Office. Then, within the following 7 days, a meeting aimed at a settlement agreement being reached by the employer and the relevant employee is scheduled before the Labour Office. After the meeting, if no agreement is reached, or – alternatively – upon expiry of the above 7-day term, if no meeting is scheduled, the employer is allowed to actually serve the dismissal.
A specific procedure (the “collective dismissal procedure”) apply whenever employers staffed with more than 15 employees, due to reduction, transformation or shutdown of activities, intend to dismiss – within a 120-day term – at least 5 employees employed at the same production unit or at different production units within the same province.

The main steps of such procedure are the following:

- the employer must notify in advance both the works councils established within its premises and the external territorial trade unions;
- the relevant notice, copy of which is to be sent to the labour office as well, must include indication of – among others – reasons which the redundancy relies on, the number of both redundant employees and other employees in force at the employer as well as positions covered by them, those technical, organizational and production-related grounds due to which no alternative measures in respect to the lay-offs can be implemented, etc.;
- upon request by the works councils/trade unions, a meeting between the latter and the employer has to be scheduled;
- if no agreement is reached over such meeting, an additional meeting before the Labour Office is to be scheduled;
- after such additional meeting, even if no agreement is reached, the employer is allowed to serve the dismissals (these are to be served in the following 120 days from the conclusion of the procedure or from the agreement if reached before the maximum duration of the procedure, unless the agreement reached with the works councils/trade unions within the collective dismissal procedure, if any, provides for a longer term);
- employees to be actually dismissed among those redundant must be identified by applying statutory selection criteria provided for by Italian law (namely, number of dependant relatives, company seniority as well as technical, production-related and organizational needs) or, alternatively, those under the agreement executed with the works councils/trade unions within the framework of the collective dismissal procedure, if any.

The maximum duration of the collective dismissal procedure is 75 days (to be decreased by half whenever the collective dismissal procedure concerns up to 10 employees). This procedure also applies to executive status employees (“dirigenti”).

8. **If the employer does not follow any prescribed procedure as described in response to question 7, what are the consequences for the employer?**

Whenever the dismissal is orally served, this as to be considered as being null and void, thus being the relevant employees entitled – regardless the number of employees dismissed (individual or collective dismissals), their qualification and date of hiring or the size of the employer’s business – to be reinstated in their previous position as well as to be granted with an indemnity amounting to those salaries which would have been accrued as from the dismissal date until the date of actual reinstatement (a minimum floor of 5 months of salary is
provided for).

Otherwise, remedies which apply when dismissals are found to be unfair due to an employer’s breach of rules governing the statutory procedure to be mandatorily complied with when serving dismissals vary depending on the number of employees dismissed (individual dismissals or collective ones), affected employees’ qualification and date of hiring as well as the breach by the employer and the size of its business, as follows.

**Individual dismissals:**

- middle-managers ("quadri"), white-collars and blue-collars hired before 7 March 2015: payment of an indemnity whose amount is in the range between 6 and 12 months of salary;
- middle-managers ("quadri"), white-collars and blue-collars hired as from 7 March 2015: payment of an indemnity equal to 1 month of salary per each year of service, within a minimum and a maximum floor of – respectively – 2 and 12 months of salary;
- executive status employees ("dirigenti"): payment of the so-called “additional indemnity” established by the applicable national collective bargaining agreement (the longer is the executive’s seniority, the higher is the amount of the indemnity: the actual amount of this indemnity is generally in the range between 2 and 24 months of salary; certain increases in light of the executive’s age may be provided for);
- middle-managers, white-collars and blue-collars hired before 7 March 2015 who are in force at employers which are staffed with up to overall 60 employees in Italy and employs up to 15 employees at each production unit/within each municipality: payment of an indemnity whose amount is in the range between 2.5 and 6 months of salary (to be increased up to 10 or 14 months for employees having accrued a rather long seniority);
- middle-managers, white-collars and blue-collars hired as from 7 March 2015 who are in force at employers which are staffed with up to overall 60 employees in Italy and employs up to 15 employees at each production unit/within each municipality: payment of an indemnity whose amount is in the range between 1 and 6 months of salary;

**Collective dismissals:**

- middle-managers, white-collars and blue-collars hired before 7 March 2015: reinstatement and payment of an indemnity up to 12 months of salary whenever selection criteria are breached;
- middle-managers, white-collars and blue-collars hired before 7 March 2015: payment of an indemnity whose amount is in the range between 12 and 24 months of salary in case of breaches of the statutory procedure for collective dismissals other than the failure to comply with selection criteria;
- executive status employees ("dirigenti"): payment of a specific “additional indemnity” against unfair collective dismissals established by the applicable national collective bargaining agreement, if any, or - alternatively – payment of an indemnity whose amount is in the range between 12 and 24 months of salary;
employees hired as from 7 March 2015: payment of an indemnity whose amount is in the range between 6 and 36 months of salary, either in case of breach of selection criteria or in case of other breaches of the statutory collective dismissal procedure.

9. How, if at all, are collective agreements relevant to the termination of employment?

Generally speaking, national collective bargaining agreements:

- provide for the duration of the notice period to be given by the employer to the relevant employee in case of dismissal not for cause;
- set forth the duration of the notice period to be given by the relevant employee in case of resignation not for cause (which is generally lower than the one to be given by the employer in case of dismissal not for cause);
- as far as procedure to serve dismissals relying on a cause for termination ("giusta causa") or grounded upon subjective justified grounds ("giustificato motivo soggettivo") are concerned, may provide for a term within which the relevant employee has to submit his/her justifications other than the 5-day one under Italian law (generally, these set forth a term which is longer than the statutory one);
- as far as procedure to serve dismissals relying on a cause for termination ("giusta causa") or grounded upon subjective justified grounds ("giustificato motivo soggettivo") are concerned, may provide for a term within which the employer has to actually serve the dismissal following to the receipt of the employee’s justification (no terms hereof are set forth under Italian law).

10. Does the employer have to obtain the permission of or inform a third party (eg local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?

Under Italian law, there is no legal requirement for the employer to inform in advance third parties before terminating its employees’ employment relationship, except for:

- collective dismissals, as these are to be served within the framework of an information and consultation procedure with the trade unions/works councils, which is to be mandatorily triggered in advance by the employer;
- dismissals relying on objective justified grounds ("giustificato motivo oggettivo"), which – conditional upon these being served to middle-managers ("quadri"), white-collars and blue-collars hired before 7 March 2015 by employers which are staffed with more than overall 60 employees in Italy or which employs more than 15 employees at each production unit/within each municipality – must be notified in advance to the labour office (as this has to schedule a meeting before the settlement committee).

11. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?

Under Italian law, those discriminations which rely on employees’ political views, religious beliefs, race, nationality, citizenship, language, gender, disability status, age, sexual
orientation, personal opinions, affiliation to the trade unions and/or participation in a strike are prohibited, so that dismissals grounding upon any out of the above reasons shall qualify as null and void.

Likewise, are to be considered as being null and void those dismissals which rely on retaliation against those employees who had been harassed and then have reported this harassment having taken place.

Due to the invalidity of such dismissals, affected employees are entitled to be reinstated in their previous position (or, at their own choice, to be granted with an indemnity amounting to 15 months of salary) as well as to be paid with an indemnity amounting to those salaries which would have been accrued over the period as from the dismissal date until the date of actual reinstatement (a minimum floor of 5 months of salary is provided for).

12. **What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?**

Under Italian law, whenever the dismissal is ascertained to be null and void as relying on discriminatory reasons (which include employees’ political views, religious beliefs, race, nationality, citizenship, language, gender, disability status, age, sexual orientation, personal opinions, affiliation to the trade unions and/or participation in a strike) or on retaliation against those employees who had been harassed and then have reported this harassment having taken place, the employer may be ordered by the Labour Court to:

- reinstate affected employees in their previous position or, at their own choice, grant them with an indemnity amounting to 15 months of salary; and, in addition,
- pay to the relevant employees an indemnity amounting to those salaries which would have been accrued over the period as from the dismissal date until the date of actual reinstatement (a minimum floor of 5 months of salary is provided for).

13. **Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?**

Under Italian law, dismissals are to be considered as being null and void whenever these:

- are grounded upon employees’ marriage - the dismissal is considered as being notified due to the employee’s marriage whenever it is served over the period as of the date on which the banns are publicly put up until 1 year running as from the marriage date, unless it relies on: (i) a misconduct by the relevant employee which qualifies as a cause for termination ("giusta causa"); (ii) the company’s shutdown; or (iii) the expiry of the term under a fixed-term agreement;
- are served to female employees over the period as from the beginning of the pregnancy until the date on which the child turns 1, to male employees who have taken a paternity leave over the period as from its starting date until the date on which the child turns 1 or
to female employees over a 1-year term starting from the date on which the adoption/custody takes place, unless the dismissal relies on: (i) a misconduct by the relevant employee which qualifies as a cause for termination ("giusta causa"); (ii) the company’s shutdown; (iii) the expiry of the term under a fixed-term agreement; or (iv) unsuccessful trial period;
  - rely on parental leaves or leaves for child illnesses having been taken by the relevant employee;
  - solely rely on an unlawful reason, this including retaliation grounds;
  - fall under the other cases of invalidity contemplated under Italian law (for example, dismissal relying on a transfer of business having taken place).

If the dismissal is found to be null and void, affected employees are entitled to be reinstated in their previous position (or, at their own choice, to be granted with an indemnity amounting to 15 months of salary) as well as to be paid with an indemnity amounting to those salaries which would have been accrued over the period as from the dismissal date until the date of actual reinstatement (a minimum floor of 5 months of salary is provided for).

Moreover, as per Italian law provisions, individual dismissals relying on objective justified grounds ("giustificato motivo oggettivo") served to disabled employees who have been hired by the employer to comply with its mandatory hiring obligations under Italian law or those notified to the same category of employees within a collective dismissal procedure are invalid whenever the overall number of disabled employees in force after the dismissal is below the statutory threshold established by Italian law.

14. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?

Under Italian law, whenever an employee’s dismissal relies on retaliation grounds as he/she has made disclosures in the public interest ("whistleblowing"), this has to be considered as being null and void and the relevant employee is entitled to be reinstated in his/her previous position (or, at his/her own choice, to be granted with an indemnity amounting to 15 months of salary) as well as to be paid with an indemnity amounting to those salaries which would have been accrued over the period as from the dismissal date until the date of actual reinstatement (a minimum floor of 5 months of salary is provided for).

15. What financial compensation is required under law or custom to terminate the employment relationship? How do employers usually decide how much compensation is to be paid?

Upon termination of the employment relationship, regardless reasons grounding such termination, employees are entitled to the following mandatory severance payments:

  - the end-of-service allowance ("trattamento di fine rapporto"), which represents a deferred form of remuneration equal to the sum resulting from adding up – for each year
of service – the all-inclusive annual remuneration paid to the employee divided by 13.5 (therefore, this amounts to 7.41% sums paid to the relevant employee). The end-of-service allowance shall be, at the relevant employee’s choice, (i) paid to a specific fund managed by the Italian Social Security Authority (whenever the employer is staffed with 50 or less employees, the end-of-service allowance has to be set aside in its financial statement and yearly revaluated); or, alternatively, (ii) transferred into an additional pension fund, which may be the one chosen by the employee or, in the absence of any choice, the one established by the applicable national collective bargaining agreement;
- the indemnity in lieu of accrued and unused holidays and leaves, whose duration is set forth by the applicable national collective bargaining agreement;
- pro rata additional monthly salary/salaries set forth by the applicable national collective bargaining agreement.

Moreover, in case of dismissal not for cause, employees who are exempted from working over the notice period are to be granted with the relevant indemnity-in-lieu. This has to be calculated taking into account – in addition to the base annual gross salary paid to the relevant employee – also the additional monthly salary/salaries provided for by the applicable national collective bargaining agreement, the variable compensations paid over the last 3 years as well as the value of those fringe benefits granted to the employee.

16. Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, describe any limitations that apply.

Under Italian law, settlement agreements whereby employees waive any claims arising from the employment relationship and its termination may be lawfully executed.

However, whenever these settlement agreements include employees’ waivers of rights established by mandatory provisions of law or under collective bargaining agreements (as the right to challenge the dismissal is), such waivers are invalid unless the settlement agreement is executed before certain bodies (namely, the trade unions, labour offices or labour courts).

If the parties fail to execute the agreement before the above bodies, the waiver is to be considered as being null and void and the employee may challenge it within a 6-month term running as from the date of termination of the employment relationship or the date on which the agreement is executed, whichever occurs later.

17. Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.

Under Italian law, post-termination covenants not to compete – in order to be valid and effective – shall meet all the following requirements:
the covenant is executed in writing;
- the term of the covenant does not exceed 3 years (this term is increased up to 5 years as far as employees holding the qualification of executive (“dirigente”) are concerned);
- the covenant duly specifies its scope;
- the non-competition obligations only apply within a given geographical area;
- the relevant employee is granted with a specific consideration, which is “fair” taking into account the actual extent of the non-competition obligations.

Whenever even one out of the above requirements is not met, the covenant is to be considered as being null and void (this does not apply if a term longer than the above maximum statutory ones is established as, in such a case, this is automatically “reduced” by operation of law).

Moreover, the covenant has to be deemed as being null and void whenever the actual extent of the non-competition obligations (in terms of their duration, scope and geographical area) is as such as to actually prevent the employee from finding an alternative job position.

18. **Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?**

Under Italian law, employers’ confidential information is granted with a specific protection – which is effective also after the termination of the employment relationship – to the extent it qualifies as a “trade secret”. This only happens when all the following requirements are met:

- the information is secret, as it is not widely known or easily accessible by experts who operates in the sector within which the information is relevant;
- it has an economic value to the extent it is secret;
- specific measures aimed at ensuring the secrecy of the information have been adopted by the employer.

There are no rules ensuring a consistent protection to employers' confidential information which does not qualify as a “trade secret”, except for the general employees’ obligation not to disclose proprietary information of the employer, which is effective over the employment relationship (however, the employer and the relevant employee may execute an agreement whereby it is agreed that such confidentiality obligations are effective also after the termination of the employment relationship).

19. **Are employers obliged to provide references to new employers if these are requested?**

Under Italian law, there is no legal requirement for employers to provide references to new employers if requested to do so by affected employees.
20. **What, in your opinion, are the most common difficulties faced by employers when terminating employment and how do you consider employers can mitigate these?**

Under any dismissals other than those for cause ("giusta causa"), the most common difficulty which employers may have to face is the risk that the relevant employee falls sick over the notice period.

This as, in such a case, the effectiveness of the dismissal is temporarily suspended until the end of the sickness or the expiry of the term set forth by the applicable national collective bargaining agreement over which employees absent from work due to illness are entitled to keep their job position (whose average duration is 180 days, to be increased up to 6 months as far as executive status employees ("dirigenti") are concerned).

21. **Are any legal changes planned that are likely to impact on the way employers approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?**

In Italy, there are no legal changes planned which are likely to impact termination of employment.

However, the Italian Constitutional Court has recently (namely, in November 2018) declared the invalidity of the “arithmetic rule” to quantify indemnities against unfair dismissals.

As far as employees not holding the qualification of executive ("dirigente") hired by “big” companies as of March 7, 2015 are concerned, law regulations – as it was in force before the ruling at issue – set forth that employees unfairly dismissed, except for very limited cases, were entitled to the payment of an indemnity amounting to 2 months of salary per each year of service, within a minimum and a maximum floor equal to - respectively – 6 and 36 months of salary.

The above statutory “arithmetic rule” (2 months of salary per each year of service) has been declared invalid by the Italian Constitutional Court, so that this is no longer effective: therefore, the actual amount of indemnities against unfair dismissals is now established by the Judge within the above floors (6-36 months of salary), thus taking into account general criteria provided for by Italian law such as the relevant employee’s company seniority, the size of the employer’s business, the overall number of employees with whom the latter is staffed as well as conditions and behaviours of both the employer and the employee.

As before the case-law precedent at stake the actual amount of employers’ liabilities associated with the termination of the employment relationship were quantifiable in advance and, in any case, rather low, while now this cannot be quantified in advance and may be significant also with respect to “newly-hired” employees, it is likely that employers will adopt a careful approach when dismissing employees.