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Italy

EMPLOYMENT AND LABOUR LAW

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This country-specific Q&A provides an overview of employment and labour laws and regulations applicable in Italy.

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ITALY
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1. Does an employer need a reason to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

Over the trial period, any employment relationships may be legitimately terminated by the employer even if neither a "cause" for termination nor other specific reasons allowing employees' dismissal occur.

Once the trial period ends, employment contracts executed with employees holding the qualification of middle-manager ("quadro"), white-collar or blue-collar may be lawfully terminated by the employer only where any out of the reasons detailed below occurs:

- a cause for termination ("giusta causa"), this being a breach by the employee whose seriousness prevents the continuation, even on a temporary basis, of the employment relationship (for example, the theft of the employer's goods);
- subjective justified grounds ("giustificato motivo soggettivo"), these being a less serious breach by the employee (for example, unjustified absences from work);
- objective justified grounds ("giustificato motivo oggettivo"), which qualify as those reasons relating 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 the 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, the dismissal of an executive 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? How many employees need to be affected for the additional considerations to apply?

A specific procedure (the "collective dismissal procedure") within which the employer is charged with information and consultation obligations towards the external trade unions/internal works councils has to be triggered in advance 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.

For details about such procedure, please refer to question no. 7 below.

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) having taken place do qualify as being null and void.

In such a case, the relevant employees are entitled to have their employment relationship continuing with the transferee (or, at their own choice, to the payment of an indemnity in lieu of reinstatement amounting to 15 months of total compensation) as well as to be paid 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 amounting to 5 months of overall compensation is provided for). However, this does not prevent the transferor (until the transfer date) and the transferee (once the transfer takes place) from dismissing

employees according to the general rules governing such matter, whereby the employer is allowed to legitimately terminate the employment relationship whenever 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? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?

Employees are entitled to the notice period only in the event that the dismissal:

- is served within a collective dismissal procedure;
- relies on justified grounds, either subjective or objective ("giustificato motivo soggettivo o oggettivo");
- is grounded upon their absences from work due to illness or accident having exceeded the relevant maximum threshold set forth by the applicable national collective bargaining agreement;
- relies on their 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 length of service.

Generally speaking, based on the most common national collective bargaining agreements, the term of the notice is in the range between 15 days and 6 months.

Individual agreements whereby the notice period in case of dismissal not for cause as per the applicable national collective bargaining agreement is increased may be legitimately executed; such kind of agreement are rather common in the practice in case of top managers.

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 of the relevant indemnity-in-lieu.

This indemnity has to be calculated by 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 the 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, garden leave is not permitted (in other words, the employer is prevented from unilaterally putting employees on garden leave, albeit a paid leave of absence during the term of the notice may be agreed between the employer and the relevant employees).

Therefore, where the employer wants its employees not to participate in any work over the notice, it must exempt them from working over such notice, thus paying them the relevant indemnity-in-lieu, and the employment relationship definitely terminates starting from the date on which the dismissal letter is served.

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 which the termination relies on.

Disciplinary dismissals – namely, those relying on a cause for termination ("*giusta causa*") or on subjective justified grounds ("*giustificato motivo soggettivo*") – have to be served, regardless the relevant employee's qualification and his/her date of hiring as well as the size of the employer's business – by complying with a specific procedure, whose main steps are detailed below:

- 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 notice of dismissal (the applicable national collective bargaining agreement may provide for a term within which the employer must serve it).

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

- the dismissal is to be served to employees hired as from 7 March 2015 or to those who are assigned with the executive status ("*dirigenti*");
- the dismissal relies on the relevant employee's absences from work due to illness or accidents having exceeded the relevant maximum threshold set out by the applicable national collective bargaining agreement;
- the employer qualifies as a "small company" as this is staffed with up to 60 employees in Italy or employs 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") applies 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 a procedure are the following:

- the employer must notify in advance both the internal works councils 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 – the reasons which the redundancy relies on, the number of both the redundant employees and the other employees in force at the employer, together with the positions covered by them, as well as those technical, organizational and production-related grounds due to which no alternative organizational measures other than the employees' dismissal may be adopted;
- upon request by the internal works councils and/or the external trade unions, a meeting between these and the employer has to be scheduled;
- if no agreement is reached over such meeting or the following ones, 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 over a 120-day term running as from the date on which the procedure ends or the one on which an agreement with the works councils/trade unions is reached (a longer term may be set out under such agreement);
- employees to be actually dismissed among those redundant must be identified by applying the selection criteria contemplated under the agreement executed with the internal works councils/external trade unions, if any, or – alternatively – the statutory ones (namely, number of dependant relatives, length of service as well as technical, production-related and organizational needs).

The maximum duration of this collective dismissal procedure is 75 days, to be decreased by half whenever redundant employees are less than 10.

It is worth-mentioning that this procedure also applies to executive status employees ("*dirigenti*").

It is possible that the applicable national collective bargaining agreement may provide an additional consultation to be implemented before the one provided by the law (e.g., banking sector).

Moreover, an additional information and consultation procedure – to be triggered 180 days before the statutory one by employers staffed with 250 or more employees – has been recently established.

This procedure applies whenever they intend to:

shutdown a production unit, thus fully decommissioning the relevant activities; and

dismiss at least 50 employees owing to the above shutdown.

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 qualifies as null and void.

In such a case, the relevant employees – regardless their qualification and date of hiring as well as the size of the employer's business – are entitled to be reinstated in their previous position or – at their own choice – to be paid an indemnity in lieu of reinstatement amounting to 15 months of total compensation as well as, in any case, 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 total compensation is provided for).

These regulations governing dismissals orally served also apply in the event that the dismissal is served within a collective dismissal procedure.

Otherwise, remedies which apply where the dismissal is found to be unfair due to an employer's breach of the applicable notification procedure vary depending on the number of employees dismissed (individual or collective dismissal), the relevant employees' qualification and date of hiring as well as the size of the employer's business, as follows.

Please note that such remedies only apply in case that the dismissal is deemed fair by the Labour Court from a substantial standpoint, albeit a breach of the procedural rules is detected to have occurred.

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 total compensation;
- middle-managers ("*quadri*"), white-collars and blue-collars hired as from 7 March 2015: payment of an indemnity whose amount is in the range between 2 and 12 months of total compensation;
- middle-managers ("*quadri*"), 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 or employ 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 total compensation (to be increased up to 10 or 14 months where the relevant employees have accrued a certain rather long length of service, to the extent that they are in force at employers which are staffed with overall 16 or more employees in Italy);
- 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 or employ 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 total compensation;
- executive status employees ("*dirigenti*"): payment of the so-called "supplementary indemnity" established by the applicable national collective bargaining agreement. Generally speaking, the longer is the executive's seniority, the higher is the amount of this indemnity, which is usually in the range between 4 and 24 months of total compensation (certain increases due to the executive's age may be provided for).

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 total compensation whenever the selection criteria to identify employees to be dismissed 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 total compensation in case of breach of the statutory collective dismissals procedure other than the failure to comply with the above selection criteria;

- employees hired as from 7 March 2015: payment of an indemnity whose amount is in the range between 6 and 36 months of total compensation, in case of breach of either the above selection criteria or the statutory collective dismissals procedure;
- executive status employees ("*dirigenti*"): payment of a specific indemnity against unfair collective dismissals established by the applicable national collective bargaining agreement, if any, or – alternatively – payment of the statutory indemnity, whose amount is in the range between 12 and 24 months of total compensation.

It is worth-mentioning that other remedies apply where the dismissal qualifies as being unfair due to reasons other than the breach by the employer of the applicable notification procedure (these varies depending on the relevant employee's qualification and length of service as well as the size of the employer's business and may include the employee's reinstatement in his/her previous position, together with the payment of a monetary compensation).

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 in case of dismissal not for cause;
- set forth the duration of the notice period to be given by employees 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);
- where the dismissal relies on a cause for termination ("*giusta causa*") or subjective justified grounds ("*giustificato motivo soggettivo*"), may provide for a term within which the relevant employee has to submit his/her justifications within the grievance procedure other than the 5-day statutory one (generally speaking, where such term is set out, this is longer than that under Italian law);
- where the dismissal relies on a cause for termination ("*giusta causa*") or subjective justified grounds ("*giustificato motivo soggettivo*"), may provide for a term within which the employer has to actually serve the dismissal following to the receipt of the employee's justifications within the grievance procedure (no terms hereof are set forth under Italian law).

In addition, national collective bargaining agreements may provide for a sort of "list" of misconducts, thus setting forth – for each of them – the disciplinary sanction which shall be applied to the employee who put the relevant misconduct in place.

In case of dismissal owing to a misconduct which – according to the applicable national collective bargaining agreement – should have entailed a disciplinary sanction other than the employee's dismissal, the dismissal is considered unfair, thus being the relevant employee entitled to be reinstated in his/her previous position or, at his/her own choice, to be paid an indemnity in lieu of reinstatement amounting to 15 months of total compensation as well as, in any case, to be paid an indemnity amounting to those salaries which would have been accrued as from the dismissal date until the date of actual reinstatement, within a maximum cap amounting to 12 months of total compensation (this protection only applies to middle-managers ("*quadri*"), white-collars and blue-collars in force at employers which are staffed with more than overall 60 employees in Italy or employ more than 15 employees at each production unit/within each municipality).

10. Does the employer have to obtain the permission of or inform a third party (e.g 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 any third parties before terminating its employees' employment relationship or to obtain in advance their permission hereof, unless in case of:

- collective dismissals, as – in such a case – an information and consultation procedure with the trade unions/works councils is to be mandatorily triggered in advance by the employer (an additional consultation may apply pursuant to the applicable national collective bargaining agreement or where certain statutory requirements are met);
- dismissals relying on objective justified grounds ("*giustificato motivo oggettivo*"; namely, individual redundancy), where these are to be served to employees who are

assigned with the qualification as middle-manager ("*quadro*"), white-collar or blue-collar and have been hired before 7 March 2015 by an employer which is staffed with more than overall 60 employees in Italy or which employs more than 15 employees at each production unit/within each municipality, as – in such a case – the intention to dismiss must be notified in advance to the Labour Office and a meeting before its settlement committee has to be scheduled.

For further details about the above procedures, please refer to question no. 7 above.

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.

Therefore, where the dismissal is grounded upon any out of the above reasons, this qualifies as being null and void.

Also those dismissals which rely on retaliation reasons against an employee who had been harassed and then has reported the harassment having taken place qualify as being null and void.

The invalidity of such dismissals entails that the relevant employees are entitled to be reinstated in their previous position or, at their own choice, to be paid an indemnity in lieu of reinstatement amounting to 15 months of total compensation as well as, in any case, to be granted 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 total compensation 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 grounds (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 reasons against those employees who had been harassed and then have reported the harassment having taken place, the employer may be ordered by the Labour Court to:

- reinstate the relevant employees in their previous position or, at their own choice, grant them with an indemnity in lieu of reinstatement amounting to 15 months of total compensation; and, in addition,
- pay them 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 total compensation 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 qualify 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 employment 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 employment 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 by Italian law (for example, dismissals relying on a transfer of business having taken place or which were served in breach of the prohibition of collective dismissals/dismissals relying on objective justified grounds ("giustificato motivo oggettivo") which were established by the emergency regulations enacted following the spread of the covid-19 pandemic).

In the above cases, the relevant employees are entitled to be reinstated in their previous position or, at their own choice, to be granted with an indemnity in lieu of reinstatement amounting to 15 months of total compensation as well as, in any case, to be paid 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 total compensation is provided for).

Moreover, according to Italian law provisions, individual dismissals relying on objective justified grounds ("giustificato motivo oggettivo"; namely, individual redundancy) which are served to disabled employees who have been hired by the employer to comply with its mandatory hiring obligations 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 once the dismissal is served 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 in lieu of reinstatement amounting to 15 months of total compensation as well as, in any case, to be paid 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 total compensation is provided for).

It is worth mentioning that, so far, the Directive (EU) 2019/1937 of the European Parliament and of the Council on the protection of persons who report breaches of Union law has not been still implemented in Italy. However, a draft of legislative decree implementing the said Directive has been approved by the Council of Ministers on Friday 9 December 2022.

15. In the event of financial difficulties, can an employer lawfully terminate an employee's contract of employment and offer re-engagement on new less favourable terms?

Under Italian law, in the employee's interest in the preservation of employment it is possible for the parties to execute – before specific authorities specified by law – an individual agreement to change in pejus the duties, the legal category and level of classification and the relevant remuneration.

On the other hand, dismissal of the employee for economic reasons followed immediately by the offer of a new job but with less favourable conditions is not possible. Where, in fact, that kind of dismissal is served in the presence of job positions in which the employee could be re-employed (even if it is for inferior duties), the dismissal would be judged unjustified for lack of one of the conditions for its legitimacy (the so-called obligation of "repechage").

16. What, if any, risks are associated with the use of artificial intelligence in an employer's recruitment or termination decisions?

Employers nowadays are more and more relying on artificial intelligence in order to conduct their business. However, as companies start to effectively use new artificial intelligence technologies to carry out human resource functions demanding a high level of judgement (i.e. to hire, check on employee's productivity or recommend termination of employment) it is important for the employers to ensure that such tools do not execute and/or perpetuate existing imbalances.

As a matter of a fact, these instruments leave many unanswered questions about their accuracy and their ethical, legal and privacy implications. The complete automatization of the decision-making process through

AI-based systems can lead, in fact, to unsafe, unfair and/or discriminatory decisions, as well as may entail the inability of workers to challenge a decision regarding them, resulting inevitably in a loss of autonomy and control of the workers.

On this regard, please note that artificial intelligence is not without bias. AI algorithms in the evaluation and screening procedure, as a matter of a fact, rely on data obtained from successful candidates and current employees of a certain company in order to adjust their processes and look for correlations between several data, regardless of whether these may have a relation to the job in question or may be configured as legal. One can consider, for example, a workforce composed mainly of young men: an algorithm may, in this case, favour young male candidates which already represent the current employee workforce of the organisation. Thus, attempts by the algorithm to mimic the employer's past selection patterns may unintentionally perpetuate pre-existing biases or inequalities.

17. What financial compensation is required under law or custom to terminate the employment relationship? How is such compensation calculated?

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% of the overall 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 according to certain specific criteria set out by Italian law); 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 number is set forth by the applicable national collective bargaining agreement;
- the *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 by 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.

18. 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, including in respect of non-disclosure or confidentiality clauses.

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 contemplate waivers by employees 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, the labour offices, the labour courts and, effective from the 28th February, 2023, the so called lawyer-assisted negotiation ("negoziazione assistita". In particular, such procedure will be managed entirely by the parties' lawyers, without the need for the presence and formal control of a third party).

If the parties fail to execute the agreement before the above bodies, the waiver has 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.

Under such agreement, the parties may also provide for non-disclosure or confidentiality clauses, in respect of either the content of the agreement itself or the employer's confidential information of which the employee became aware during the employment

relationship.

19. 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 executive status employees ("*dirigenti*") 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, over and above his/her salary, whose amount 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, the longer term contemplated under the covenant is automatically replaced, by operation of law, with the shorter maximum one established by Italian law, while any other terms and conditions under the covenant remain fully effective and binding).

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.

20. 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 that this confidential information qualifies as a "trade secret".

This only happens where all the following statutory requirements are met:

- the information is secret, as it is not widely known or easily accessible by the experts who operates in the sector within which the information is relevant;
- it has an economic value to the extent that it remains 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 the employer's confidential information which does not qualify as a "trade secret", except for the general statutory obligation not to disclose proprietary information of the employer, which is effective over the employment relationship.

However, the above does not prevent the parties from lawfully executing an agreement whereby the employee agrees to comply with such confidentiality obligations over a certain term after the termination of the employment relationship.

21. Are employers obliged to provide references to new employers if these are requested? If so, what information must the reference include?

Under Italian law, there is no legal requirement for employers to provide references to new employers if requested to do so by employees.

22. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?

The most common difficulty which employers may have to face when dismissing employees for reasons other than for cause ("giusta causa") 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 leave of absence for sickness or the expiry of the maximum sick term set forth by the applicable national collective bargaining agreement (indeed, over such maximum sick term – whose average duration is 180 days, to be increased up to 12 months as far as executive status employees ("dirigenti") are concerned, employees are entitled to keep their job position), whichever occurs

first.

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

Effective as of 1 January 2022, an additional information and consultation procedure – to be triggered 180 days before the statutory one by employers staffed with 250 or more employees (except for those which meet certain requirements; for example, they are facing a financial crisis) – has been established.

This procedure applies whenever the above employers intend to:

- shutdown a production unit, thus fully decommissioning the relevant activities; and
- dismiss at least 50 employees owing to the above shutdown.

Within such a procedure, the employer – among others – must draft and supply to the unions and public bodies a plan whereby it has to specify those measures which are planned to be adopted to mitigate negative consequences on redundant employees (for example, recourse to social shock absorbers, payment of an incentive to leave to employees who "accept" to be dismissed, measures aimed at their professional requalification, etc.) and to clarify if there are potential acquirers for its business or an undertaking hereof.

A meeting among the employer, the unions and public bodies which is aimed at the joint examination of the plan must be scheduled.

Failure to trigger the above additional procedure entails the invalidity of the dismissals (either collective or individual ones) served by the employer.

Where such plan is not supplied to the unions and public bodies or this does not include information required by the law or the employer does not comply with provisions and obligations under the plan, the employer has to pay the so-called "dismissal ticket" in an amount equal to six times the "ordinary" one applicable in case of individual dismissal. Otherwise, where no agreement with the unions is reached within this procedure, the amount of the above so-called "dismissal ticket" is equal to 18 times the above "ordinary" one.

Considering the significant costs associated with this additional information and consultation procedure, it is likely that employers would refrain from shutting down their business in Italy to delocalise it abroad.

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