ITALY: *Legale Failla Rotondi & Partners (LABLAW)*

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EMPLOYMENT AND LABOR OVERVIEW

1. General

1. Brief introduction

In Italy individual contracts of employment and labor relationships are governed in order of priority by:

- the Constitution;
- the Civil Code;
- laws enacted by Parliament;
- regulations issued by authorities other than the Parliament and the government;
- National Collective Bargaining Agreements (hereinafter "collective agreements") and
- custom and practice.

The close interaction of collective agreements and laws as regards individual contracts of employment is perhaps unique to Italy, and is evidenced by the numerous requirements discussed below, which can be modified by collective agreements.

2. Legal framework

The Italian Constitution, which has been in force since January 1, 1948, sets forth general principles and regulates some issues concerning employment.
Pursuant to article 1 of the Italian Constitution, Italy is a democratic Republic founded on work. This provision summarizes in a few words the fundamental concept that, in Italy, the right to work is of crucial importance. The Italian Republic recognizes the right to work for all Italian citizens and promotes the proper conditions for making this right effective. It is a specific obligation of the Italian Republic to eliminate any obstacles that prevent citizens from participating effectively in the political, economic and social structures of the Country.

The Italian Constitution aims at protecting employees, as the weak party of the employment relationship, as well as at achieving the commitment of public institutions to the emancipation of those belonging to lower social classes.

Based on this, the Italian Constitution promotes the following principles and governs the following aspects:

- equality (article 3);
- right to work (article 4);

- right to a fair and reasonable remuneration, annual holidays and weekly days off (article 36);
- protection of women and young workers (article 37);
- trade union freedom and collective bargaining (article 39); and
- right to strike (article 40).

The Civil Code, enacted in 1942, regulates employment and labor matters under Section III ("On the employment relationship"), articles 2094-2134. However, under Section I ("On the entrepreneur") there is a specific provision of interest, article 2087 ("Protection of work conditions"), which provides that the entrepreneur shall undertake all necessary measures to protect the health and the moral personality of its employees, taking into account the nature of the work, the level of experience of the employee, and the necessary skills required.

Moreover, Italy has always had rather extensive employment and labor legislation, whose objective has traditionally been to protect employees.
Several laws regulate the essential aspects of the employment relationship; the most important, among others, are:

- Law no. 300 of May 20, 1970[1] — ("*Statuto dei Lavoratori*" or the "Workers' Statute");
- Law no. 604, July 15, 1966 (amended by Law no. 108, May 11, 1990) — relating to individual dismissal;
- Law no. 223 of July 23, 1991 — relating to collective dismissals;
- Legislative Decree no. 368 of November 6, 2001 (as amended by Law no. 247 of December 24, 2007 and Law no. 133 of August 6, 2008) — concerning fixed-term employment contracts;
- Legislative Decree no. 61 of February 25, 2000 (as amended by Legislative Decree no. 100 of February 26, 2001 and Legislative Decree no. 276 of September 10, 2003) — relating to part-time employment;
- Legislative Decree no. 276 of September 10, 2003 (as amended by Legislative Decree no. 251 of October 6, 2004, Law no. 133 of August 6, 2008, and Law no. 191 of December 23, 2009) — introducing an important reform of the labor market by providing and reviewing new and old contractual forms of work agreements;
- Legislative Decree no. 66 of April 8, 2003 (as amended by Legislative Decree no. 213 of July 19, 2004 and Law no. 133 of August 6, 2008) — relating to the working time;
- Legislative Decree no. 81 of April 9, 2008 (as amended by Legislative Decree no. 106 of August 3, 2009) — on health and safety at the workplace.

[1] The provisions of Statute No. 300 of May 20, 1970, are organized as follows:

- Title I: On the Freedom and Dignity of Employees;
- Title II: On the Freedom of Trade Unions;
- Title III: On Trade Union Activity;
- Title IV: On Miscellaneous and General Provisions;
- Title V: On Recruitment Provisions;
- Title VI: On Final and Criminal Provisions.

In addition to the general principles established by the Constitution, the Civil Code and legislation, individual and especially collective agreements play a key role in the employment relationship as nearly all employees in Italy are covered by some kind of collective agreement.

Many employment-related issues are governed by the collective agreements, as well as by those agreements that are signed with Trade Unions at company level.

Collective agreements are negotiated by employers' associations and by Trade Unions, in connection with employees working in particular business sectors (*i.e.*, metal, mechanical, commerce, chemical and pharmaceutical, food, etc.). These collective agreements establish the minimum economic and legal standards to be applied to the employees working in a specific business sector.

Bargaining agreements can also be entered into at company level. These agreements normally govern the various aspects of the employment relationship in order to provide employees with more favorable conditions.

Pursuant to article 1 of the preliminary provisions to the Italian Civil Code, sources of employment law are found not only in the laws and regulations but also in customs and practices. Customs and practices consist in the continuous and uniform repetition of a certain behavior, supported by the belief that such behavior is mandatory.

Customs and practices are particularly important in labor law. Pursuant to article 2078 of the Italian Civil Code, customs and practices apply where the issue is not governed by legal provisions or by the provisions of the collective agreement. Moreover, those customs and practices that are more favorable to employees prevail over legal provisions, but they do not prevail over individual employment agreements.

3. Recent developments

Italian labor and employment law has undergone severe amendments over the last two years, following to Law no. 183 of November 4, 2010 (so called "*Collegato Lavoro*") and Law no. 92 of June 28, 2012 (so called "*Riforma Fornero*").

The above mentioned laws of reform provide several important amendments to the rules applicable to employment, both with private companies and with public entities.

The most significant amendments are related to the employment with private companies (both with regard to its formalization and its termination) and to the employment trial. Overall, the changes carried out are aimed at speeding the dismissal procedure and trial duration, as well as promoting out-of-court settlement and alternative solutions to litigation.

4. Recent amendments to the law

Several amendments have been recently made to Italian law. Here follows a brief overview of the most interesting innovations.

Invention of the employees

The Italian Industrial Property Code, (Legislative Decree no. 3 of February 10, 2005) which governs, amongst other things, the economic and proprietary rights related to the inventions of the employees, has been recently amended by Law n. 99 of July 23, 2009, effective from September 2, 2010.

Article 64 of the Industrial Property Code provided, before the mentioned amendment, that if a specific compensation for the invention was not indicated in the employment contract and the invention was created in the performance of the employment relationship, the invention, if patented, belonged to the employer but a fair consideration must be paid to the employee ("*equo premio*").

The recent amendments provide that the employee is entitled to the *equo premio* also if the invention is not patented but it is used by the employer within the purview of industrial confidentiality agreements. The second innovation concerns the timing of the payment due to the employee. Indeed, the new provision establishes that the employer is entitled to require an earlier examination of the patent's request in order to avoid that the slowness of the procedure to obtain the patent affects the employee's right to the *equo premio*.

Health and safety at the workplace

Starting from August 1, 2010, article 28 of Legislative Decree no. 81 of April 9, 2008, as amended by Legislative Decree no. 106 of August 3, 2009, came into force. The mentioned article provides that the employer must compile the "Health and Safety Risk Evaluation at work" taking into account also the risks related to the employees' work-related stress.

For the first time in the Italian legislation, the protection granted to the employees will not only cover the physical, chemical and biological risks but also those risks strictly related to the psychological aspects concerning the work organization. All companies must comply with the related rules within December 31, 2010.

Bonuses and stock options granted to executives and collaborators operating in the financial sector

Law no. 122 of May 31, 2010, which introduced urgent measures in the matter of financial stabilization and economic competitiveness, provides that bonuses and stock options granted to the employees qualified as executives and to independent collaborators, both operating in the financial sector, which exceed three times the amount of their fixed salary will be subject to an additional taxation equal to the 10%.

2. Employment Contracts

1. Minimum requirements

European Union Directive No. 533/91 has been implemented through Legislative Decree no. 156 of May 26, 1997, which requires that information on the main terms and conditions of employment relationships must be evidenced in writing in the employment contract to be handed to the employee within 30 days of hiring. In general, individual employment contracts must specify:

- the parties to the employment agreement;

- the starting date of the employment and the duration of the trial period, if any;
- the expiration date, if the employment is for a fixed term (where these contracts are permitted by law);
- the salary, method for calculation of the salary, frequency of payment, and any particular term or condition related to the salary and fringe benefits;
- the working hours;
- the annual entitlement to paid holiday leave;
- the employee's duties and the related work "category" established by the Civil Code under article 2095 (all employees are divided into levels by collective agreements).

For any further matter, reference is made to the applicable collective agreement.

2. Fixed / unlimited contracts

Employment contracts can have a fixed-term or an open-term duration.

Specific rules are provided by the law for the fixed-time contract[2].

First, the duration of an employment contract can be validly fixed only if the contract itself is stipulated in the written form. Otherwise, the clause regarding the fixed term of employment is null and void, and the relationship is considered as an open ended employment.

Moreover, the employment contract can be entered into for a fixed period of time provided that technical, productive, organizational or substitutive reasons ground the fixed-term employment and are expressly specified and referred to in the written hiring letter.

The execution of a fixed-term contract is not allowed in the following hypotheses:

- to substitute employees on strike;
- unless a different agreement has been reached with the Trade Unions, in the productive units in which – within the previous six months – employees carrying out the same duties as the ones hired with fixed-term contracts have been collectively dismissed according Law no. 223 of July 23, 1991;
- in the productive units in which employees carrying out the same duties of the ones hired with fixed-term contracts are suspended from working activity;
- if the employer omitted to compile the Health and Safety Risk Evaluation at work according to article 4, Legislative Decree No. 626 of September 19, 1994 (currently, Legislative Decree No. 81/2008).

If the above mentioned requirements and conditions are complied with, employees can be hired with fixed-term contracts.

[2] Legislative Decree no. 368 of September 6, 2001.

The rules on fixed-term employment, as set forth in Legislative Decree 368/2001, were amended by Law Decree no. 112 of June 25, 2008 (Law Decree 112/2008), which was converted into Law no. 133 of August 6, 2008.

Under the new system, the permissible reasons for entering into a fixed-term contract of employment remain the same. However, the new rules provide that the technical needs, or needs related to production, organization, or employee replacement may also refer to the ordinary activity carried out by the employer.[3] This specification entails that, contrary to the past, such reasons should not be necessarily related to exceptional or unexpected situations.

Moreover, the regulation of fixed-term agreements has been amended by Law no. 92 of June 28, 2012. Under the new system , a fixed-term employment contract may now be entered into also lacking whatsoever specific grounding reason, provided that:

- no prior work relationship was established between the same employer and employee (also with regard to duties other than the ones to be discharged according to the fixed-term employment contract);
- the duration of the fixed-term contract does not exceed twelve months .

Such type of fixed-term contract may not be extended nor renewed. Thus, in case a further fixed-term contract was entered into between the same parties, it would have to be grounded on either of the specific reasons, foreseen by Legislative Decree 368/2001.

After the expiration of the fixed-term, the employment can continue for a limited period of time, provided that the employer preliminarily (i.e. prior to the expiry of the fixed-term) informs the "*Centro per l'impiego*" (employment office) of the intention to exceed the contractual term. Such grace period must not exceed 30 or 50 days, depending on the length of the fixed term contract (less/more than six months, respectively). Having lapsed the grace period, the employment is automatically regarded as an open-term one.

Legislative Decree 368/2001 allows for an extension of the initial term agreed to by the parties under the following conditions:[4]

- an extension is allowed only once;
- the extension must be due to objective reasons;
- the extension must be for the same duties; and
- the total duration of the fixed-term relationship, inclusive of any extension, may not exceed three years.

According to Legislative Decree 368/2001, as amended by Law no. 92 of June 28, 2012, a fixed-term contract of employment may be renewed between the same parties and for the same duties on

[3] Law Decree 112/2008, art. 21.

[4] Legislative Decree 368/2001, art. 4.

condition that a certain period passes between the two contracts: 60 days if the previous contract had a duration shorter than six months; or 90 days if the previous contract had a duration longer than six months. Where the applicable interruption periods are not observed, the new contract will be considered an open-term one.

Where the total duration of the fixed term contract, inclusive of extension and renewals, exceeds 36 months, it will be considered a contract of employment of undetermined duration after the 36th month[5]. This rule is subject to the following exceptions.

First, article 21 of Law Decree 112/2008 provides that a term in excess of 36 months may be established by collective agreements entered into at a national level or at a company level with the most representative unions.

Second, Law no. 247 of December 24, 2007 (the so-called *Protocollo Welfare*) provides that, as temporary rules, fixed-term contracts entered into before January 1, 2008 that exceed a total period of 36 months, and that are still in effect after that date, may last until their termination without being converted into open-ended relationships. Also, fixed-term contracts entered into between January 1, 2008 and March 31, 2009 will not be added to previous fixed-term contracts for purposes of calculating the 36-month duration. However, beginning April 1, 2009, all fixed-term contracts entered into between the same parties and for the same duties must be added, regardless of their initial date.

The third exception, and apart from any other rules, Law Decree 112/2008 provides that a new fixed-term contract may be entered into between the same parties for a period exceeding 36 months if the following conditions are met:

- only one additional contract is allowed;
- it is entered into before the Local Labor Bureau; and
- it is entered into with the assistance of a union representative.

In any event, the duration of a contract concluded under this exception must be that agreed to by the unions and the employers' associations concerned[6].

At any rate, to the extent of calculating the 36 months cap, also possible employment relationships, in the field of a staff leasing contract, between the same parties (employee and employer/user) and for the same duties, have to be taken into account[7].

Moreover, Law 98/2012 has set new terms for raising challenges vis-à-vis the employer, which are now equal to 120 days (from 60) for the out-of-court challenge and subsequent 180 days (from 270) for filing the claim by the Labor Court.

[5]Legislative Decree 368/2001, art. 5, para. 4 *bis*, introduced by Law no. 247 of Dec. 24, 2007, art. 1, para. 40.

[6]Leg. Decree 368/2001, art. 5, para. 4 *bis*, introduced by Law no. 247 of Dec. 24, 2007, art. 1, para. 40, further amended by Law Decree 112/2008, art. 21, para. 2.

[7] Article 5, paragraph 4-*bis* of Legislative Decree 368 of September 6, 2001, as amended by Article 1, paragraph 9, letter i) of Law no. 92 of June 28, 2012

Fixed-term contracts stipulated with executives are not subject to the above mentioned rules; they can be hired for a period not longer than five years, and they have the right to resign after three years of employment relationship.

Italian legislation provides for other employment relationships characterized by a fixed or temporary duration, the main of which are:

- the so called fixed-term "staff leasing"[8], whereby an employee is hired and paid by an agency (expressly authorized by the Italian Authorities) and he/she is placed for a limited period of time at the disposal of different employers, called the users, who avail themselves of his/her work performance;
- the "job on call" [9,] whereby an employee is hired directly by the employer for an intermittent activity;
- the so called "integration contract"[10], whereby the contract aims at introducing an employee, through a specific project of work, in the employer's organization;
- apprenticeship[11].

In the cases described above, if the user/employer infringes the limits established by the law for such categories of (temporary) workers, the employee may file a claim to obtain the conversion of his/her relationship into an open-ended employment agreement.

3. Trial period

Employment contracts can provide a trial period (*periodo di prova*). During this period each party is free to terminate the contract without notice and without the payment of any indemnity in lieu of such notice. The duration of the trial period is set by the applicable collective agreement and varies according to different categories of employees (maximum duration being 6 months for highest level employees). Article 2096 of the Civil Code requires that the trial period is written in the employment contract and must be entered into on the first day of the employment at the latest. Failing to meet this requirement renders the trial period null and void and the employment is considered, from the start, as an open-term employment contract.

4. Notice period

Upon termination of an open-ended employment contract, unless the contract is terminated for "just cause" (*i.e.*, if a cause occurs that does not allow the continuation of the employment relationship not even on a temporary basis) both the employers and the employees are entitled to a notice period, the duration of which varies according to the employees' length of service and professional level and is established in the applicable collective agreement.

[8] Articles 20 *et seq.*, Legislative Decree no. 276 of September 10, 2003.

[9] Articles 33 *et seq.*, Legislative Decree no. 276 of September 10, 2003.

[10] Articles 54 *et seq.*, Legislative Decree no. 276 of September 10, 2003.

[11] Articles 47 *et seq.*, Legislative Decree no. 276 of September 10, 2003.

In case of termination due to a decision of the employer, it can exempt the employee from working during the notice period paying a corresponding payment in lieu of notice, which is equal to the normal salary (plus social security charges thereon) that would have been paid during the notice period.

In case of termination due to a decision of the employee, if he/she resigns without giving the notice period provided by the applicable collective agreement (with the exception of resignation for "just cause", where the notice is not due by the employee) the employer has the right to withhold the amount of the indemnity in lieu of notice from the payments that the employee is entitled to receive as a consequence of the termination of the employment relationship (such as "*Trattamento di Fine Rapporto*" (TFR), payment in lieu of any unused holiday and leave accrued at the termination date, rates of supplementary monthly salary until such date and other minor indemnities).

3. Authorizations for foreign employees

1. Requirement for foreign employees to work

Foreign employees could be EU citizens or non-EU citizens.
There are no specific rules related to the employment of EU citizens: they can move and work in every EU Country without limitations or necessity of any visa or work permit according to Section 45 of Treaty on European Union and the Treaty on the Functioning of the European Union.

On the other hand, limitations are provided by the law with respect to non-EU citizens. Law no. 298 of July 25, 1998 and Decree no. 394 of August 31, 1999 regulating immigration law provide that specific visas and different work permits are necessary in the following situations:

- hiring of non-EU citizens: their employment can start only after a specific immigration procedure is completed, which includes complying with the limitation of the annual quotas (Ministry Decree April 21, 2010 - for 2010). After the annual quotas are established, a non-EU citizen must request a work visa, assuming that they have been offered employment in Italy.

- Secondment in Italy of non-EU citizens: it is not subject to annual quota limitations but it should be activated on the basis of a special and more simplified procedure strictly related to the purposes of the secondment in Italy.

4. Working Conditions

1. Minimum working conditions

In Italy the most important provisions included in an employment contract are provided by the law and by the collective agreement applicable. In particular, as indicated under previous paragraph 1.2., collective agreements set the terms and conditions of employment, amongst which: categories and related job descriptions; duties and obligations; minimum wages; job retention rights during absences due to illness; salary increases due to length of service; termination, resignation, criteria for calculation of the severance pay; night work; maternity leaves; holidays and so on.

2. Salary

Salaries are usually paid at the end of the working month, as established in the company policies or by the collective agreements.

Salaries are paid to employees on a net basis; this means that all social security charges and withholding taxes have already been deducted by the employer.

Italian Law (Decree no. 1124 of June 30, 1965, so called "*T.U. I.N.A.I.L.*") explicitly provides that salaries paid to employees must be stated in a specific pay slip (produced by the employer or by a third party on the employer's behalf) specifying the period of service which the salary refers to, the amount and the value of any overtime, together with all the elements that constitute the amount paid as well as all withholdings made in accordance with Italian law.

Moreover, Italian law provides an additional fixed item of remuneration, namely the annual 13th monthly installment, which is paid once a year on the occasion of the Christmas holidays and usually corresponds to one month's remuneration. In addition, the collective agreements or even individual contracts may establish the payment of the 14th installment, usually paid in July.

3. Maximum working week

Article 4 of Legislative Decree no. 66 of April 8, 2003 provides that the maximum length of the working week is established by the collective agreements and that the average weekly working time cannot exceed 48 hours, inclusive of overtime. In this respect, Legislative Decree 66/2003 provides that the average working time must be calculated over a term of 4 months; however, the collective agreement applicable could extend that term up to 12 months with respect to objective, technical or organizational reasons.

4. Overtime

The needs of a particular company may, in exceptional circumstances or on an occasional basis, require employees to work beyond their "usual working hours." These overtime services are regulated by law and by the applicable collective agreement.

The legal principle set forth by the article 5 of Legislative Decree 66/2003 provides that the recourse to overtime must be limited.

Article 5 of Legislative Decree 66/2003 provides that normally it is the collective agreement that governs the conditions for performing overtime work and that, in the absence of any provisions of the collective agreement, overtime is only permitted subject to the agreement between the employer and the employee and for a period not exceeding 250 hours per annum.

Finally, the law provides that overtime is calculated separately and paid by way of an increase in salary pursuant to the collective agreement, which may in any case permit that overtime is compensated with time off in addition or as an alternative to the salary increases due for it.

Increases in salary as a result of the overtime worked vary according to the applicable collective agreement, but in any case they cannot be lower than the legal limit of 10% (established in article 5 of

Royal Law Decree No. 692 of March 15, 1923). In any case and subject to a certain approximation, said increases result in an overall increase of between 15% and 20%[12] of the normal hourly wage.

5. Holidays

According to articles 36 of the Constitution and 2109 of the Civil Code the employees are entitled to annual holidays. Legislative Decree 66/2003 establishes that the minimum length of annual holidays is four weeks per year. The applicable collective agreement may provide more favorable conditions for the employees.

The four-week period must be used for at least two consecutive weeks during the same year, if requested by the employee, and the remainder of the weeks must be used within 18 months starting from the end of the year of accrual (by way of example, this means that two weeks of the leave regarding year 2010 have to be used before June 30, 2012).

Failure to comply with this provision is sanctioned with an administrative fine for the employer ranging from EUR 130 up to EUR 780 for each employee and for each period which the violation refers to.

The employer cannot replace the right of the employees to benefit from annual holidays with the payment of the indemnity in lieu of them, with the exception in case of termination of the employment, when the employee is entitled to receive the indemnity for accrued and unused annual holidays.

On the other hand, it is possible for the employer to pay the indemnity in lieu only with regard to the annual holidays exceeding the above-mentioned minimum legal period of four weeks.

There are approximately 11 public holidays in Italy and an additional four days that used to be public holidays, but are now working days on which workers are paid double time.

6. Restrictive Covenants

In general, an employee (as well as an employer) is bound to perform the labor contract according to the general civil law principle of good faith, set forth by articles 1175 and 1375 of the Civil Code. In addition, article 2105 of the Civil Code provides that an employee must not engage in business that is competitive with the employer's business or take any job that might damage this latter and that an employee must not disclose to any third party confidential information pertaining to the organization or methods of production of the employer, nor use such information to the detriment of the employer or to his/her own personal benefit.

Violation of these duties, in the course of the employment relationship, is ground for damage compensation as well as disciplinary sanctions and, in the more serious cases, may lead to dismissal for just cause ("*giusta causa*"), while, following to its ceasing, entitles the employer to claim for damage compensation.

(i) Confidentiality Clause

Article 2105 of the Civil Code (above recalled) establishes, during employment, the duty to respect trade and professional secrets, and in general the duty not to disclose information relating to the employer's business organization, including customers' lists, price list, manufacturing processes, etc. Such duty

[12] *See, e.g.*, the collective agreement for employees of the Trade sector and of the Industrial sector.

continues also after the employment has ceased, without any requirement for specific covenants to be entered into between the parties, as trade secrets, and in general all business related information, are considered property of the employer.

The unauthorized disclosure by the employee of trade secrets is regarded as a breach of the employee's obligations and entitles the employer to sanction the employer, as well as claim for damages. In the more serious cases unauthorized disclosure of industrial or scientific secrets is punishable with criminal sanctions. Of course, the duty to respect professional secrets does not mean that a worker cannot use the professional skills developed/acquired on the job.

Although it is disciplined by law, non disclosure duties may also be the subject matter of a specific covenant, entered into between the parties, covering both the employment period and the pre-post employment one. The main reason for such practice, is to provide a penalty in case of breach of the confidentiality cause.

(ii) Non Solicitation Of Customers Or Employees Clause

The matter of customer / employee distraction falls within the scope of the legislation on unfair competition and is not expressly disciplined by labour law provisions.

Of course, the parties of an employment contract may regulate the issue, especially to the extent of foreseeing a penalty for breach, thus avoiding the risks and time requirements connected with a damage compensation lawsuit.

More in details, the parties (either in the contract of employment or in the possible settlement and release agreement entered into at the time of its ceasing) may foresee:

- the undertaking of the employee not to induce or attempt to induce or entice away or engage (directly or indirectly) any client of the former employer in order to canvass it to enter into a supply/service agreement with the employee or any third subject, performing any kind of activity, even if not in competition with the one of the employer;

- the undertaking of the employee not to induce or attempt to induce or entice away or engage (directly or indirectly) any former colleague (director, officer or employee) to leave employment, in order to canvass them to enter into an employment/working relationship with the employee or any third subject, performing any kind of activity, even if not in competition with the one of the employer;
- the relevant penalty in case of breach.

As said, such covenant is not subject to specific restrictions by the Italian labor legislation, thus the general provisions of the Civil Code apply.

(iii) Covenant Not To Compete

Covenants not to compete must be in writing, explicitly approved by the worker and must recognize the employee a consideration during their term of duration (usually ranging between 15 to 20 percent of the employee pay). Moreover non-competition clauses must be limited in terms of:

1. time: the maximum duration being three years for white and blue collars and five years for executives ("dirigenti").
2. subject (i.e. activities prohibited to the employee): the activity covered by the covenant may also differ from the one actually discharged by the employee in the course of the employment relationship; and
3. territory: the area is strictly connected to the subject of the covenant.

As a general rule, the covenant, to be valid, must not be so wide as to prevent an employee from working at all (i.e. wholly impair his/her ability to earn pay during the term of duration of the obligation). Should the range of the covenant be so wide as to wholly refrain an employee from working, the non-compete covenant would be void.

The covenant may recognize the employer the right to unilaterally terminate such agreement. Should this be the case, the relevant communication must be effected within the ceasing of the working relationship, to be effective. Should the employer waiver to the covenant not to compete after the termination of the employment, the worker would nonetheless be entitled to the relevant consideration.

In case of breach of the covenant not to compete, an employer is entitled to be returned the consideration paid the employee, as well as to damage compensation. To this extent, non competition clauses usually provide a penalty for breach of contract.

5. Rights of Employees in case of a Transfer of Undertaking

1. Employees' rights

Transfer of undertakings is governed by article 2112 of the Italian Civil Code and article 47 of Law no. 428 December 29, 1990, which implemented the EC Directives no. 98/50/EEC of June 29, 1998 and no. 2001/23/EEC of March 12, 2001, as well as by Legislative Decree no. 18 of February 2, 2001which implemented the EC Directive no. 98/50/EEC of June 29, 1998.

The seller and the purchaser must inform in writing of the planned transfer of undertaking the following entities:

- the local branches of the trade unions; and
- internal union councils, as per article 19 of Law no. 300 of May, 20, 1970, ("Rappresentanza Sindacale Unitaria", or R.S.U.), if set up by the employees of both the seller and the purchaser.

The notice must be delivered to the R.S.U. and trade unions at least 25 days in advance of (i) the execution of the deed of transfer, or (ii) any agreement binding the parties to execute the transfer, and it must include:

- the date of the transfer or the scheduled date for the transfer;
- the reasons of the transfer;
- the legal, economic and social implications of the transfer for the employees, if any; and
- the measures envisaged to mitigate the implications of the transfer for the employees, if any.

The information supplied to the R.S.U. and the trade unions must be as complete as possible.

According to Article 47 of Law no. 428/90, both the R.S.U. and the trade unions have the legal right to be informed by the seller and the purchaser on:

- the intention to carry out a transfer of business (as mentioned in 2., above); and
- the terms, conditions and consequences of such operation.

In particular, within seven days of receipt of the aforementioned notice, the R.S.U. and the union representatives may ask to consult with both the seller and the purchaser jointly. Such joint consultation must be commenced within a term of seven days running from the receipt of the unions request.

The consultation process usually pushes the parties to negotiate and jointly determine the terms and conditions of the transfer of the business with respect to the employees involved.

After 10 days from the commencement of the consultation process, in the event that the parties have not been able to reach an agreement on the transfer of the business, the requirements concerning the consultation process are regarded as fully accomplished and the transfer of the business can be freely carried out. This is because the purpose of Law no. 428/1990 is not to limit the freedom to transfer a business, but rather to ensure that the trade unions are fully informed in advance of any transfer of a business and of any possible consequences it may cause on existing employments.

The grounds on which the law permits the transfer of an undertaking must be viewed in the context of the strong protections granted to Italian employees under article 2112 of the Italian Civil Code. Indeed, Article 2112 of the Italian Civil Code provides that, in case of transfer of business, the staff involved in the transfer continues its employment by the purchaser, at the same terms and conditions existing at the time of the transfer.

In particular the following provisions apply:

- contracts of employment continue with the purchaser and employees retain all individual rights arising from their employment with the past employee;
- the employment relationship continues to be regulated on the basis of the economic and regulatory terms of the collective bargaining agreement—whether at a national, local, or company level — applied at the time of the transfer, up to the expiration of such bargaining agreement, unless said agreement is substitutes by the one applied to the transferee area of business (in such latter case, the substitution of the bargaining agreement bears no retroactive effect); and
- white or blue-collar employees, should their conditions of employment undergo a significant detrimental change as a consequence of the transfer, are entitled to resign and receive compensation equal to the amount of the payment in lieu of notice (i.e. resignation for cause).

For executives (dirigenti) similar provisions are included in the applicable collective bargaining agreements.

Article 2112 of the civil code, as amended in 2003, provides that, should a transfer involve only a portion of the seller's business, upon transfer, the seller and the purchaser may define the transferred portion as a branch of the business, provided that it can indeed be regarded as an independent part of the seller's operations. According to the former regulation, the branch of business had to exist as an autonomous portion of the seller's operation prior to the transfer. The amendment helps employers to separate activities that are not directly related to the core business of the company.

Following to the execution of the transfer of undertaking, transferor and transferee are jointly liable for all outstanding claims (e.g. payment of non enjoyed holidays-leaves of absence, etc.) the transferred employee may have accrued prior to the execution of the transfer. Thus employees may decide to promote possible challenges vis-à-vis the purchaser only. Such joint liability arises regardless the knowledge or lack of knowledge by the transferee of the existence of such claims. Of course, the liability of the purchaser is limited to employment contracts still in force at the time of the transfer (i.e. no employment relationship already ceased).

Employees may furthermore release the transferor from any liability/undertaking arising from the past employment relationship, in the field of a settlement and release agreement entered into in front of the competent bodies (local labour bureau/union settlement committees).

Note that, as expressly foresaw by Directive 2001/23/EC of March, 12 2001, such joint and several liability does not apply to employees' rights to old-age, invalidity or survivors' benefits under supplementary company or company or intercompany pension schemes outside the statutory social security schemes.

Failure to comply with the obligations set forth by Law no. 428/1990 is considered "anti-union conduct" and allows union representatives to file a complaint with the appropriate labor court to obtain a judge's order against the purchaser and/or the seller, which, in case of assessment, would be ordered to cease such anti-union conduct. However, failure to comply does not affect the validity and effectiveness of the transfer.

2. Requirements for take over party

Italian law does not provide any specific requirement for take over party.

6. Termination of Employment Contracts

1. Grounds for termination (list)

Under Italian law any termination of employment must be justified. The reasons to terminate an employment contract can be divided in three main categories:

- ***objective justified reasons*** - which are related to the elimination of a job position due to a company's economic situation regarding its production activity, work organization, or proper functioning;
- ***subjective justified reasons*** - which occur when the employee commits any breach of his or her contractual obligations or the employee is guilty of negligence in the performance of his/her duties, but the behavior is not so serious to determine the dismissal for just cause; or
- ***just cause (giusta causa)*** – that indicates any serious misconduct or breach that renders the continuation of the employment impossible, including, for instance, theft, riot, and serious insubordination and any other employee's behavior that seriously undermines the fiduciary relationship with the employer.

2. Collective dismissals

According to Law no. 223 of July 23, 1991 and following amendments, a collective dismissal occurs when at least five dismissals are served in the same province and in the time frame of 120 days, due to reduction, transformation, or ceasing of activity. Law 223/1991 is applicable only to companies with more than 15 employees.

According to Law 223/1991, the employer should follow a specific consultation procedure involving the Trade Unions.

The employer must notify the competent employment office, the employees' staff representatives (RSA - "*rappresentanze sindacali aziendali*" or RSU - "*rappresentanze sindacali unitarie*") and the respective Trade Unions of the decision to proceed to the collective dismissal. In the absence of the above-mentioned employee representative bodies, notice shall be given to the "comparatively more representative" trade associations.

The written communication to be notified should explain:

- the reasons for the redundancy;
- the technical, organizational or productive reasons which render impossible to avoid, completely or partially, the redundancy;
- the number of the redundant employees;
- the timetable of the redundancy plan;
- possible measures planned for the occupational consequences of the redundancy plan; and
- the calculations of economic awards in addition to those provided by the law or by the applicable collective agreements.

The company must also pay to the INPS (Italian Institute of Social Security) as a contribution, in 30 monthly instalments, an amount equal to nine times the monthly unemployment benefit for each redundant employee. The amount of this contribution is set forth yearly by the Welfare Ministry. This sum may be reduced to one-third in the event the employer and the Trade Unions reach an agreement. A copy of the contribution payment should be sent together with the written communication notifying the beginning of the consultation procedure.

The above mentioned INPS contribution requirement, however, is applicable only to those companies that are governed by the rules on the intervention of the wage integration ("cigs"), generally the companies belonging to the industrial sector. At any rate, Law no. 92 of June, 28th 2012, has set up a new safety valve, the "Assicurazione Sociale per l'Impiego" ("ASpI"), which shall replace the CIG and the mobilità indemnity, starting from January, 1st 2013. Such new endowment measures, which will be awarded to all employees belonging to the private sector, shall be applicable to situations of unemployment that took place following to its establishment (January 1st 2013), in favour of subjects that comply with the following requirements:

(i) involuntary loss of employment (i.e. no resignation or termination or just cause) or mutual termination of the employment relationship as an outcome of the justified-objective-reason-dismissal procedure;

(ii) deposit of at least one year worth of social contributions and of at least two years worth of insurance in the two year period preceding the dismissal

The duration of the ASpI safety valve treatment is equal to twelve or eighteen months, depending on the age of the employee (below or above fifty-five years of age). The amount of the ASpI indemnity is calculated on the basis of the global consideration for social contributions purposes recognized the relevant employee in the two year period preceding the dismissal and it is roughly equal to 75% of the monthly consideration previously recognized the employee. At any rate, the ASpI indemnity cannot exceed a maximum amount, determined on an yearly bases (currently equal to gross Euro 1.119,32 per month).
Within seven days from the date when the notice has been received by the relevant addressees, the parties meet to discuss and analyze the possibility to avoid dismissals.

The first phase of the procedure must be completed within 45 days (23 days if the number of employees involved is less than 10). If the parties do not reach an agreement, the company must give written notice to the competent employment office regarding the results of the negotiations, specifying the reasons for the negative outcome. Consequently, the competent employment office should convene the parties for a further negotiation, which cannot last longer than 30 days (15 days if the number of employees is less than 10).

If the company and the Trade Unions do not reach an agreement within 75 days, or if they reach an agreement before the expiring term, the employer is allowed to serve the dismissals by giving written notice to each of the involved employees, whose length is determined by the applicable collective agreement, taking into account the contractual level and the concerned employee's length of service. The dismissal may be served within a period of 120 days unless the parties have agreed on a longer term.
Moreover, the employer must, within seven days from the serving of the dismissals[13], provide the competent employment offices and the Trade Unions with a written list of the dismissed employees, stating their names, place of residence, qualifications, length of service, age, family charges, and a detailed description of the selection criteria applied for the dismissal of each employee.

Regarding this last requirement, it should be pointed out that the selection of the employees to be dismissed should follow the criteria provided by the agreement reached during the procedure or, in the event of a negative outcome, the criteria indicated by Law 223/1991 (family conditions; length of service; technical, productive or organizational requirements).

Upon dismissal, all employees are entitled to the payment of the usual termination indemnities, (*i.e.*, the TFR, and in the event they are not requested to work during the notice period, the indemnity in lieu of notice).

The failure to apply the selection criteria renders, pursuant to art. 1, paragraph 46 of Law no. 92 of June, 28th 2012 and to art. 18, paragraph 4, of Law no. 300, of May, 290th 1970, n. 300 as amended by L. 92/12., the dismissal ineffective, entitling the employee to be reinstated and to be recognized as damage compensation an amount that, at any rate, cannot exceed 12 months of consideration. Should the employer be found not to have adhered to the selection criteria, if a former employee is reinstated

[13] Article 4, paragraph 9 of Law 223 of July 23, 1991, as amended by Article 1, paragraph 44 of Law 92 of June 28, 2012.

pursuant to article 18 of the Workers' Statute, the employer can proceed with the dismissal of another employee without starting a new procedure (however informing the Unions is required).

Also the failure to activate the trade unions joint exam procedure renders the dismissal unlawful, indeed, following to the amendments set forth by L. 92/12, the dismissal – otherwise valid as issued in compliance with the selection criteria, but – failing to apply the consultation procedure, entitles the employee to be awarded a compensation for an amount ranging between 12 and 24 monthly instalments of salary. However, possible procedural defects in the communication opening the mass layoffs procedure may be corrected in the field of an agreement entered into to such extent with the trade unions.

Collective dismissals are usually implemented through the payment of incentives to employees who, in their turn, accept to sign individual agreements whereby they officially and finally waive to challenge their dismissal. The amount of the incentives depends on many factors and on the legal and contractual position of the employer.

3. Individual dismissals

The dismissal must be ordered in writing and must indicate the reasons on which it is based. Indeed, the grounds of the dismissal must be communicated to the employee in the termination letter. Failing to state the grounds of the dismissal in the relevant termination letter renders the dismissal ineffective[14].

Moreover, whenever a dismissal is due to the employee's conduct (constituting either just cause or justified grounds, depending on the gravity), the employer must follow a specific disciplinary procedure set forth by law so that the employee is given the opportunity to defend his or her position before being dismissed.
Upon termination of their employment employees are entitled to:

(a) the payment of the TFR;

(b) the payment of some minor termination indemnities (payment in lieu of unused holidays and in lieu of unused paid leaves of absence, accrued pro-rata 13th month's salary, and so on); and

(c) a notice period, the duration of which varies according to the employees' length of service and professional level and is established in the applicable collective agreement. In case the employer exempts the employees from working during the notice period, the employees must receive a corresponding payment in lieu of notice, which is equal to the normal salary (plus social security charges thereon) that would have been paid during the notice period.

Payments under (a) and (b) above are always due in case of dismissal, while the notice period payment outlined in (c) above is not due in case of a dismissal for "just cause."

Different rules apply to the dismissal of *dirigenti* (executives). Firstly, it should be taken into consideration that when assessing the ground on which a *dirigente*'s dismissal is based, Italian labor courts apply criteria that are more flexible than the strict statutory principles used in connection with the dismissal of lower employees, in the light of the peculiar "fiduciary relationship" that characterizes

[14] Article 2, paragraph 2 of Law July 15. 1966, no. 604, as amended by Article 1, paragraph 37 of Law no. 92 of June 28, 2012,

the employment of *dirigenti*. According to these criteria, the *dirigente*'s dismissal is deemed to be justified only if it falls within the scope of the following conceptual areas:

(i) objective reasons related to the employer's economic, organizational and production-related needs (in such case the employer must demonstrate the existence of a causal link between a necessary reorganization process and the termination of the *dirigente*'s position); or

(ii) subjective reasons related to the *dirigente*'s behavior (*i.e.*, facts relating to the *dirigente*'s professional performance and/or private life capable of undermining the necessary fiduciary relationship). In case of particularly serious misconduct (which renders the prosecution of the employment impossible), the *dirigente* can be dismissed for just cause. In this event, the dismissal is immediately effective and the *dirigente* is not entitled to any notice period. Moreover, whenever a dismissal is due to subjective reasons, a specific disciplinary procedure must be followed by the employer before ordering the dismissal, as it is for regular employees.

By way of example, pursuant to the provisions of the collective agreement for managers of industrial companies, the notice due to a *dirigente* is 8 months for the first two years of seniority. It is increased by 15 days for each year of seniority after the first two years, up to the maximum notice, which is 12 months (*i.e.*, where a *dirigente* has more than 10 years length of service within the company).

4. Severance payment

Italian law[15] provides for the payment of a deferred form of remuneration, otherwise known as the severance indemnity ("*Trattamento di Fine Rapporto*" or TFR). Along with other minor statutory termination indemnities, the TFR must be paid to employees whenever an employment contract is terminated, irrespective of the cause of termination.

The amount of the TFR varies depending on the employee's salary and length of service. Typically, the TFR is equal to about 7.4% of the total amount of salary received during the entire relationship. The aggregate TFR, accrued in favor of all the employees, is allocated in the company's balance sheet year-by-year.
Employees who have worked at least eight years in the same company can ask for an advance payment of up to 70% of the TFR accrued in their favor if such amount is to be used for paying extraordinary health expenses, purchasing a first home or, in the event of a parental leave, to pay the expenses associated with a child's birth.

Each employee (except domestic workers and most public workers) can choose to refer their accruing TFR to a complementary pension fund, or alternatively, they may choose to keep it with the employer.
Six months after the date of hiring, employees who did not make any choice in this respect will, by default, have their TFR paid into the pension fund provided by the applicable collective agreement or such other agreed upon collective fund arrangement, if any, or alternatively, to a private pension fund set up by INPS.

5. Options for employee

The employee is entitled to resign from his/her employment contract giving the notice period provided by the collective agreement applied to his/her employment relationship.

[15] Article 2120 of the Italian Civil Code.

The employee can resign without reason of for just cause. In the latter case, the employee is entitled to resign with immediate effect asking for the payment of the indemnity in lieu of notice plus any potential damages derived from the cause.

6. Unfair dismissal (consequences)

Any employee dismissed may bring a legal action if he/she deems that his or her dismissal was not properly justified. The action before the labor court must be preceded by an out-of-court challenge of the dismissal (within 60 days of the dismissal) and by a mandatory attempt to reach a settlement before the local Labor Office.

In the event that the absence of justified grounds is confirmed by the labor court, the consequences for the employer differ, according to whether that employer exceeds the "15 employees' threshold."

If the employer is staffed with fewer than 15 employees, the employer will be required to pay the employee an indemnity ranging between 2.5 and 6 months' salary. For the purposes of calculating such indemnity reference has to be made to the so-called global salary of the employee (*i.e.* the annual base salary, including fringe benefits, divided by 12, plus the average of the bonuses paid during the three years preceding the termination of employment, if any).

If the employer is staffed with more than 15 employees per production unit (or more than 60 employees as a whole even split in production units, which do not exceed the 15-employee threshold each), following to Law no. 92 of June 28, 2012, the consequence in case the dismissal is determined unlawful by a labor court, very depending on whether the dismissal was issued or for justified objective reasons.

In case of dismissal for either justified subjective reasons or just cause determined unlawful, three alternative consequences apply, depending on the peculiarities of the dismissal, namely in case of:

- in case of inexistence of the fact grounding the dismissal or if the fact, according to the applicable bargaining agreement, could not be sanctioned with the ceasing of the employment relationship, reinstatement of the employee and payment to this latter of a compensation, whose maximum amount is equal to twelve months of global monthly consideration, without prejudicing the right to this indemnity, the employee can elect to waive reinstatement and ask for the payment of an additional 15 months' salary;.
- in case the sanction of the dismissal was not proportional to the severeness of the fact sanctioned or in case of untimely dismissal, payment to the employee of a compensation, whose amount ranges from a minimum of twelve and a maximum of twenty-four months of the last global monthly consideration (i.e. no reinstatement of the employee);
- in case of formal vices of the dismissal procedure (e.g. failure to state the reasons grounding the dismissal in the relevant communication), payment to the employee of a compensation, whose amount ranges from a minimum of six and a maximum of twelve months of the last global monthly consideration (i.e. no reinstatement of the employee).

In case of dismissal for justified objective reasons determined unlawful, four alternative consequences apply, depending on the peculiarities of the dismissal, namely in case of:

- dismissal based on the fact that the employee is unfit due to discharge the working activity to sickness/mental disease/work injury/professional disease or handicapped employee (should the minimum quota of employment of handicapped subjects not be complied) or issued prior to the expiration of the grace period (so called "comporto"), reinstatement of the employee and payment to this latter of a compensation, whose maximum amount is equal to twelve months of global monthly consideration;
- blatant inexistence of the economical reason grounding the dismissal, reinstatement of the employee and payment to this latter of a compensation, whose maximum amount is equal to twelve months of global monthly consideration, or, depending on the Judge's will payment to the employee of a compensation, whose amount ranges from a minimum of twelve and a maximum of twenty-four months of the last global monthly consideration (i.e. no reinstatement of the employee);
- insufficiency of requirements requested in case of dismissal for justified objective reason requirements (i.e. mainly in case of violation of the repêchage duty), payment to the employee of a compensation, whose amount ranges from a minimum of twelve and a maximum of twenty-four months of the last global monthly consideration (i.e. no reinstatement of the employee);
- failure to comply with the justified objective reason procedure, payment to the employee of a compensation, whose amount ranges from a minimum of six and a maximum of twelve months of the last global monthly consideration (i.e. no reinstatement of the employee).

Different rules apply to *dirigenti*, who are never entitled to reinstatement, unless they are dismissed for discriminatory reasons.

Should their dismissal be found to be unjustified by a labor court or a special arbitration panel, *dirigenti* are entitled to an additional indemnity by way of compensation for the damages suffered as a result of the unfair dismissal. The above additional indemnity is paid on top of the payments under paragraphs 6.3 (a), (b), and (c), above; it is not subject to social security charges, but is subject to taxation. The amount depends on the *dirigente*'s length of service and age.

By way of example, for *dirigenti* of the industrial sector, such indemnity ranges from a minimum corresponding to the number of months' worth of salaries of the notice period plus two, and a maximum of 20 months' salary. Moreover, if the *dirigente*'s age is between 50 and 59, such additional indemnity would be automatically increased as follows:

Age	Increase
50 or 59	3 months' salary
51 or 58	4 months' salary
52 or 57	5 months' salary
53 or 56	6 months' salary
54 or 55	7 months' salary

For the purposes of calculating the *dirigente*'s payment in lieu of notice and the additional indemnity, the overall economic treatment that he or she received over the three years preceding the termination of employment, must be taken into account, including fringe benefits, bonuses, stock options, and so on.

7. Void dismissal

As rule, a dismissal served orally is considered null and void.

Moreover, Italian Law provides several cases in which the employer is prevented from dismissing employees. In these cases, the dismissal, if communicated, is considered null and void and it is considered as it was never served. Consequently, the employment relationship cannot be terminated.
Here follows a list of hypotheses in which the dismissal cannot be served with the related consequences, among which:

- the dismissal of a female employee during the time from the beginning of pregnancy up to one year after the child's birth, except in the cases of: "just cause" according to article 2119 of the Italian Civil Code; termination of the operations by the enterprise; termination of the employment contract for expiration of the agreed fixed term; and termination of the employment relationship for unsuccessful result of the trial period;
- the dismissal of a father-employee who takes paternity leave for the whole length of such leave and up to the baby's first year of life;
- the dismissal served after the employee requests parental leave or leave to assist the baby during the baby's sickness;
- the dismissal of a female employee in the period between the request of publication of banns of marriage up to one year after the wedding date, unless the dismissal is grounded on: "just cause" according to article 2119 of the Italian Civil Code; termination of the operations by the enterprise; termination of the employment contract for expiration of the agreed fixed term; and termination of the employment relationship for unsuccessful result of the trial period;
- the dismissal is base on discriminatory reasons: in this case, the provisions set forth by article 18 of the Workers' Statute apply also in favor of dirigenti and even if the employer is staffed with a number of employees below the occupational limit requested by the law.

Discrimination laws are based on the constitutional principle of equality (art. 3) and, with regard to gender discrimination, on the principle of equality in the work place between man and woman (art. 37).

In general terms, the aim of anti-discrimination legislation is to forbid whatsoever practice that violates the principle of equality of treatment on the workplace, with regard to all aspects of the working activity (selection criteria and recruitment – employment and working conditions, including pay – dismissal).

A forbidden practice can be either

- Direct: whatever act or instruction to act that results in prejudicial treatment of an employee with respect to other employees (i.e. where one person is treated less favorably on discriminatory grounds than another person is, has been, or would be treated in a comparable situation);
- Indirect: whatsoever apparently neutral rule, criteria, standard procedure or understanding that puts persons of a particular category at a disadvantage when compared with others (e.g. minimum height for hiring purposes, to the extent of excluding the employment of women).

The Italian Legislation first regulated and sanctioned practices aimed at discriminating an employee due to his/her union enrollment/non-enrollment, deeming such discrimination acts as null and void (Law no. 300/1970, art. 15). Recently, under the impulse of the relevant EU regulation, the area covered by discrimination labour laws has been severely widened and now includes acts of discrimination due to gender, race, ethnics, language, religion, political and personal beliefs, handicap, age and sexual orientation, to name some (above all, see Decrees 215 and 216 of 2003).

At any rate, limitations due to gender, race, ethnics, language, religion, political and personal beliefs, handicap, age and sexual orientation grounds cannot be deemed as discriminatory acts provided that such limitations are:

- objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary;
- aimed at easing the employment of certain categories of subjects (e.g. employment of subjects with disabilities).

In case of discriminatory dismissal, the following remedies may be applied.

- Urgency proceeding against discrimination practices (decree 215 – 216/2003): the employee can promote such a claim in front of the Labour Court. The burden of proof on the petitioner is mitigated as the allegation of serious, specific and consistent facts (presumption with basic facts) shifts the burden to prove the non discriminatory nature of the practice on the defendant. To the extent of strengthening the care offered the employee, the proceeding under discussion can be activated also by the unions. Should the unlawfulness of the act be ascertained, the Court will order the immediate halt of the practice and the compensation of damages, including non-economic damages.
- Challenge of the dismissal due to discriminatory reasons (as amended by Law no. 92 of June, 28 2012): discriminatory dismissals (i.e. based on sexual, religious, ethnic, health, political, etc. grounds), dismissals for illicit grounds (i.e. coinciding with maternity – paternity – marriage leave) and oral dismissals (i.e. no written form) are null and void. The amendment law has not introduced any changes in the regulation of dismissal due to discriminatory grounds, save for the fact that now art. 18 of Law 300/1970 expressly includes such unlawful dismissals in the field of the so called "real protection", according to which the employee is entitled to the reinstatement in the workplace, plus the compensation of lost pay, equal to the last global consideration accrued from the date of the void dismissal to the one of the actual reinstatement (and, at any rate, not lower than five months of global monthly consideration).

8. Challenge of the dismissal

To the extent of challenging the dismissal, the employee must first object said measure out of court, within a term of sixty days of the termination of the employment (except for fixed-term contracts, for which a term of 120 days applies)[16].

Following to said out of court challenge, the employee is bound to file his/her claim by the labor court within a term of 180 days, running from the date in which the out-of-court challenge was received by the employer[17]. Such term applies to dismissals served following to the entering into force of the new

[16] Article 6 of Law July 15 1966 no. 604, as amended by Article 32 paragraph 1 of Law no. 183 of November 4, 2010.

[17] Article 6 of Law July 15 1966 no. 604, as amended by Article 1 paragraph 38 of Law no. 92 of June 28, 2012.

Law no. 92 of June 28, 2012. Indeed, the new legislation follows the path started by the *Collegato Lavoro* Law no 183/2010, that had already shortened the terms to claim in court the dismissal from five years to 270 days (9 months).

9. Binding waivers and releases of liability

A settlement agreement is an agreement according to which two or more parties, to the extent of avoiding possible future disputes or deciding existing disputes, mutually waiver to their respective claims or part of their respective claims one against the other.

To the extent of protecting employees, regarded as the weaker party of the employment relationship, labor law provisions may foresee:

- unbreakable provisions, i.e. law or CCNL provisions that cannot be departed from by the agreement between the parties (for example minimum pay, maximum working hours per day, etc.). Failing to comply, renders the relevant contractual clause void and ineffective; consequently it is regarded as non-existent and it is automatically substituted by the unbreakable provision.
- the unavailability of the rights arising from unbreakable provisions, i.e. the ineffectiveness of agreements according to which an employee disposes (e.g. waives) of rights arising from an unbreakable provision. Failing to comply, renders the act of disposal invalid and voidable.

In general terms, waivers and settlement agreements having object rights arising from unbreakable provisions are invalid and voidable, thus subject to claims from an employee.

Nonetheless, settlement agreements may indeed be validly entered into, provided that the waiver/liability release rendered by an employee is formalized in the field of a minutes of settlement collected by:

- the Court, in case of lawsuit (art. 185 civil procedure code);
- the settlement committee established by the Local Labour Bureau or "DTL"(art. 410 civil procedure code);
- the unions settlement committees (art. 412 civil procedure code).

In such instances the employee is assisted by a third party (be it a Judge, a public official or a unionist), thus failing the assumption of the worker as the weaker party of the agreement.

Any settlement formalized in the field of the above detailed procedure is not subject to Civil Code prohibitions on waivers and settlements of fundamental rights. Therefore, such settlement agreement is final and binding and may not be challenged.

Should the above mentioned procedure not be complied with, a settlement agreement may indeed be subject to claims by the employee. Such claim must be promoted within the mandatory term of six months, running from the formalization of the waiver/settlement agreement or from the ceasing of the working relationship (if subsequent). The challenge must be effected by the employee in the written form, i.e. court petition or mail (please note that sending a mere letter of challenge to the employer may suffice to meet said term, provided that the relevant claim in front of the Court is then commenced).

To sum up, waivers, releases of liability and settlement agreements, to the extent of being valid and binding, must be

- in the written form;
- certified, in the field of a minutes of settlement, by either one of the entities empowered by law to collect such declarations (Judge, DTL or union settlement committees);
- specific, i.e. the right/claim an employee is waiver/releasing must be thoroughly detailed (e.g. a generic waiver of whatsoever right/claim an employee may hold vis-à-vis his/her employer, present and/or future, may definitely be declared void).

7. Trade Unions and Employers Associations

1. Brief description of employees and employers organizations

In general, employees and employers organizations are structured as private associations governed by articles 36 through 38 of the Civil Code.

In Italy unions are primarily organized by industry according to the type of productive activity conducted by the firm in which their members are employed. All workers involved in a particular sector of activity belong to the same union regardless of the nature of their particular job or their occupational qualifications. For example, the metalworkers' union represents employees of metal working enterprises from all fields of production including shipyards, steel mills, automobile factories, and precision mechanics plants, and from all employment levels, including blue collar laborers, trades people, and ordinary employees.

Employees' organizations

Unions are either independent or associated with one of the three union confederations. The three union confederations have differing ideological and political orientations, as noted below:

- The Italian General Confederation of Labor (*CGIL*) is left-wing-inspired.
- The Italian Confederation of Trade Unions (*CISL*) is center-inspired.
- The Italian Labor Union (*UIL*) is left-wing with a small center-inspired component.

The relative strength of the different national confederations is commonly known. It is also commonly known which of the three unions is most prominent in its representation of a given industry (e.g., *CGIL*'s metalworkers union, *CISL*'s trades union, and *UIL*'s transportation sector union).

There are also unions organizations structured in different ways. The most prominent exceptions to this confederation structure are the National Federation of Managers in Industrial Enterprises (*FNDAI*) and the National Federation of Managers of Commercial and Related Services Enterprises (*ManagerItalia*). Such nationwide structure has also been adopted by various associations representing mid-level management and by the independent unions, sometimes called "autonomous unions" (namely, those that do not belong to one of the three major union confederations, described above).

Employers' Associations

As said before, employers are also organized into unions, or associations. These are established as private associations that are grouped into confederations according to the type of enterprise represented:

- *Confindustria* represents industrial employers.
- *Confcommercio* represents commercial employers.
- *Confagricoltura* represents agricultural employers.

These confederations are composed of the various employer associations each of those represents a specific industry (*e.g.,* the Italian Federation of the Metal Industry and the Industrial Association of Building Contractors).

2. Rights and importance of trade unions

Unions are not recognized by the Italian State as entities with legal personality, and are free to regulate their internal activities as they deem appropriate. The most important result of the failure to implement article 39 of the Constitution[18] is that, legally, collective agreements only bind individuals who are actually members of the union that is a signatory to the agreement. Like all private law contracts, only the signatories are bound and, therefore, only those employers and workers who have specifically given a mandate to an employers' association or a union to represent them, may benefit from the collective agreement concluded on their behalf.

Although this is the legal rule, it should be noted that in practice, once a collective agreement is concluded, even non-union members accept its terms.

Since collective bargaining is subject to private law, collective agreements are regulated by the laws applicable to private contracts in general[19].

Concerning the rights of the trade unions, please consider that they are entitled to sign collective agreements and that they are the addressees of the specific employers' obligations to inform and consult with them (*i.e.* with reference to the decision to proceed with a collective dismissal and in case of transfer of a business (or a branch of a business) employing more than 15 employees[20].

8. Employee Representation

1. Types of representations

The Workers' Statute grants to all the employees the right to form or become a member of labor associations as well as the right to perform labor- related activity.

[18] Which provides an obligation for the Unions to be enrolled into a specific register in order to give the authorization to carry out unions activities. This Article of the Constitution has never been implemented in the Italian system.

[19] Articles 1321 *et seq*., of the Italian Civil Code.

[20] As provided by article 47 of Law no. 428 of December 29, 1990.

Article 19 of the Workers' Statute states that the work councils ("*Rappresentanze Sindacali Aziendali*" (RSA) and "*Rappresentanze Sindacali Unitarie*" (RSU)) may be formed through the initiative of the employees in every plant with more than 15 workers within the Trade Union's associations that have executed the collective agreement applied in the company.

The members of the staff representatives are granted some rights, such as the right to have paid and unpaid leaves for performing labor-related activity[21]; to be not transferred from one place of work to another[22], and to be not dismissed without having previously obtained the consent of the territorial Trade Unions association[23].

2. Number of representatives

No limit of numbers is provided for the RSA.

In case of presence of RSU, for each union, there shall be:

1. in units employing up to 200 workers, 1 union representative;

2. in units employing from 201 to 3,000 workers, 1 union representative for each 300 workers or fraction thereof; and

3. in units employing over 3,000 workers, 1 union representative for each 500 workers or fraction thereof, in addition to the minimum number of representatives provided for under 2. above.

3. Nomination of representatives

The terms and conditions of the nomination of the representatives are different for RSA and RSU.

RSA are nominated directly by the employees who participate to Unions representations which signed the collective agreement applied by the employer. No formalities and limits are provided by law with respect to their nomination.

On the other hand, RSU are nominated upon the initiative of the Unions representations and their nominations follow a formal election. 2/3 of the RSU are nominated by all the employees and 1/3 by the Unions representations.

Date and place of the election must be noticed to the employees no later than 8 days before the election.

4. Tasks and obligations of representatives

The representatives are entitled to carry out any typical activity of unionization, like propaganda and promotion of the unions. In particular, where there are more than 200 workers at a given plant or unit, the employer is required to provide space, free of charge and exclusively for the use of the union, within

[21] Workers' Statute, article 23.

[22] Workers' Statute, article 22.

[23] *Accordo Interconfederale*, April 18, 1996.

the workplace or nearby, for holding meetings and conducting other union activity. Where there are fewer workers, space must be made available for these purposes upon the union's request.

Plant or unit union representatives also have the right to affix, in properly designated places, union publications and information regarding the union, its activities, and workers' rights and interests.

5. Employees representation in management

Italian law does not contain any specific provisions allowing the employees and /or their representatives to participate in the management of the company.

9. Social Security

1. Legal Framework

In Italy pensions are operated and run by INPS.

Pension schemes run by INPS are fed by contribution paid by both the employer and the employee that are calculated on the salary paid to the employee. For employees who started working after January 1, 1996, the amount of salary to be taken into account for the purposes of calculating the pension contributions is capped to an amount that varies each year based on the inflation rate (for 2012 the cap is equal to Euro 96.149).

Article 38 of the Constitution provides that the protection of all citizens in need is the responsibility of the Italian State and is to be fulfilled through institutions established especially for this purpose. All citizens have the right to the means necessary to live and workers have the right to have their basic needs fulfilled in case of accident, illness, disability, old age, or involuntary unemployment. Furthermore, invalids and the disabled have the right to an education permitting them to commence a productive occupation. In addition to being regulated by the Constitution, the Italian social security system is regulated by law and the requirements of the public institutions that manage and control social security funds and the dispensation of benefits, as noted below.

2. Contributions

Payment of the social contributions provided for by the law represents the condition that entitles workers to receive the pension payment. For employees the pension is linked to the amount of contributions paid as a percentage of the global salary and for the self-employed as a percentage of the global self-employment income, during an entire working life.

As to employment, the percentage of the contribution (approximately 35 percent) is shared between the employer and the employee: the higher quota is borne by the employer who, however, is also responsible for sending payment for the portion (which at 2012 is equal to 9.49%) belonging to the employee.

In certain specific cases provided for by law (military leave, maternity leave, sickness leave, etc.), in order to allow the employee to reach the minimum pension performance, the contribution is directly paid by the government. In other cases, such as the interruption or the termination of working activity

(from lack of working during one's working life or retirement before retirement age) the contribution due by law can be directly paid by the employees.

The law grants the employee the possibility of collecting the contributions paid, depending on the working activity, from different Italian social security entities. Equally the employee may collect the contributions paid to foreign social security entities, in the event of employment by foreign companies or of secondment to foreign subsidiaries of the employing company, for periods that exceed the terms provided for under the applicable international convention with Italy (such conventions specify that social contributions for Italian citizens working abroad are to be paid to the Italian Social Security Authority).

3. Insurances

Protection of workers who suffer accidents or occupational illness is primarily controlled by the INAIL (National Institution for Insurance against Work Related Accidents) created in 1898[24].

Accidents

The right to payments arises in cases of a violent accident that occurs during working hours, resulting in

- death, or
- permanent total or partial disability, or
- the temporary inability to work, which lasts longer than three days.

Payments are made even in cases where the worker is at fault and are only excluded in cases of willful misconduct by the worker.

Illness

Benefits available to those suffering occupational illnesses are generally restricted to a specific list of such illnesses. The Constitutional Court, however, has held that workers suffering from all occupational illnesses, even if not originally listed, are eligible to apply for benefits.[25] In case of dispute following the rejection of an application for benefits by the medical committees of INAIL, the labor judge will appoint an expert witness to determine whether there is sufficient connection between the illness and the job performed in order to merit the payment of benefits. The right to benefits only arises when the occupational illness manifests itself within a given period of time, from the worker's ceasing to perform the job from which the illness is claimed to arise and if the disability resulting from the illness is greater than 10 percent.

Moreover, some collective agreements also provide for the employer's obligation to enter into specific insurance policies covering accidents, death and disabilities of its employees.

4. Maternity leave

As per the "Maternity Protection" provided by Legislative Decree no. 151 of March 26, 2001, employees are entitled to specific rights during the maternity leave.

[24] Law no. 80 of March 17, 1898.

[25] *Corte Costituzionale*, no. 179 of February 10, 1988.

During the period of prohibition to work (five months), the employee is entitled to an indemnity equal to 80% of the salary which is paid by the INPS. Depending on the collective agreement applied, the employer might be obliged to integrate the remaining part of salary in order to reach the 100% of it.

For a further ten-month total period (which can be used uninterruptedly or discontinuously), during the baby's first year of life and during any periods of illness of the child while the child is under eight years of age, the employee may choose not to work. This optional leave can be extended to the working mother or father (including an adoptive mother or father) of a severely disabled child.

During this period, the employee is entitled to an indemnity equal to 30% of the salary paid by the INPS. Also in this case, Depending on the national collective bargaining agreements applied, the employer might be obliged to partially integrate the remaining part of salary in order to reach the 100% of it.

5. Pension

Law no. 335 of August 8, 1995 (Law 335/95) reformed and redefined the Italian pension system. There are two kinds of pension schemes (plans):

- compulsory pension schemes, managed on a public basis; and
- complementary pension schemes, managed by private funds;

The first pension scheme is based on the so called "contribution system", which grants to workers a pension in proportion to the contributions made by the worker during the worker's entire working life and therefore guarantees a minimum pension level to all workers, both employees and the self-employed. Law 335/95 consolidated two separate schemes. The two schemes remain in effect, as discussed below, for those who started working before January 1, 1996.

The second pension scheme is based on the so called "remuneration system" and is aimed at increasing the minimum pension so as to result in payments as close as possible to the level of salary received by the worker during his or her last working years.

As mentioned above, the pension system was redefined by Law 335/95, which has put in place a substitute for the two previous kinds of pension schemes alternatively based, depending on the choice of the employee, on the attainment of a certain age (*pensione di vecchiaia*, or old age pension) or on a minimum period of contribution paid (*pensione di anzianità*, or seniority pension). This later pension system was based on the remuneration paid during the last year of work.

The new discipline of Law 335/95 has provided for one kind of pension scheme only (*pensione di vecchiaia contributiva*), which has combined the two previous pension schemes and which is in the process of being implemented through a transitional period regulated by specific provision of law and aimed at gradually implementing the reform of the social security system.

The two different pension schemes apply to all workers, employees and self-employed, who began working before January 1, 1996, unless they exercised the option to enter into this new pension system.

Law no. 122/10 of July 30, 2010 introduced the "*floating window*," which means that, effective January 1, 2011, the date that the government will actually start to pay the pension to a retired employee is 12 months after the date that the employee meets the pension requirement and actually elects to retire.

The pension system was again partially amended by Law No. 214 of December 22, 2011 (Law No. 214/2011), which redefined the pre-existing systems introduced by Law 335/95.

The requirements currently in force, which entitle an employee or a self-employed individual to retire and receive pension payments are the following.

(i) For individuals who started work before January 1, 1996

Pensione di vecchiaia:

- termination of employment (possibility to work as self-employed);
- attainment of age 62 for women or 66 for men (from January 1, 2012); and
- a minimum period of contributions paid over a number of years.

The pensionable age for the *pensione di vecchiaia* will increase as per the following system:

- from January 1, 2013, attainment of age 62 and 3 months for women and 66 and 3 months for men;
- from January 1, 2014, attainment of age 63 and 9 months for women and 66 and 3 months for men;
- from January 1, 2016, attainment of age 65 and 7 months for women and 66 and 7 months for men;
- from January 1, 2019, attainment of age of 66 and 11 months for women and 66 and 11 months for men;
- from January 1, 2021, attainment of age 67 and 2 months for women and 67 and 2 months for men.

Pensione di anzianità:

Law No. 214/2011 changed the requirement for length of contribution with the pensions system to achieve the pensione di anzianità as follows:

- from January 1, 2012, attainment of a minimum contribution of 41 years and 1 month for women or 42 years and 1 month for men;
- from January 1, 2013, attainment of a minimum contribution of 41 years and 2 months for women or 42 years and 2 months for men;
- from January 1, 2014, attainment of a minimum contribution of 41 years and 3 months for women or 42 years and 3 months for men.

(ii) For individuals who started work on or after January 1, 1996

For all workers who commenced working on or after January 1, 1996, only the new pension system will apply. The changes introduced by Law No. 214/ 2011are the following:

Pensione di vecchiaia contributiva:

- termination of employment (possibility to work, after termination, either as an employee or as self-employed);
- from January 1, 2012, attainment of age 66 for men or 63 and 6 months for women, along with a minimum contribution term of 20 years; or
- attainment of age 70 for both women and men, along with a minimum effective contribution term of 5 years.