LEGAL INFORMATION NEWSLETTER

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We are pleased to provide you with the new issue of our legal information newsletter.

Topical legal questions are discussed and those related to issues that you might encounter.

We hope that you will find it of interest.

We would welcome any comment you might have.

OVERVIEW OF THE MAIN LABOUR LAW STATUTORY REGULATIONS IN ITALY AND THE 2003 *"LEGGE BIAGI"* LEGISLATIVE REFORM

INTRODUCTION - Domestic statutory regulation enacted in 2003, the so called *"Legge Biagi"*, substantially amended the previous statutory regulations on labour relationships.

Legislative Decree 276/2003 (so-called "Legge Biagi") introduced major changes to the existing employment rules, by increasing flexibility in the market to the extent of reducing unemployment and of promoting the hiring of young workers.

The two major amendments of the reform may be summarized as follows:

- New categories of contractual relationship were created to allow companies to upfront special needs of business-growth over a limited periods of time, and to allow them to contain labour costs during the periods of business-reduction.
- New regimes for independent contractors were established to allow job placements only when needed for the performance of a specific project.

SOURCES OF STATUTORY LAW - Employment relationships are regulated by the Constitutional principles, the provisions of the Civil code, those of the so-called "Statuto dei Lavoratori" (Statute of Workers – Law nr. 300/70) and by other statutory regulations.

Terms and conditions of employment are also periodically established by the so called Collectively Bargained Labour Agreements (CCNL) that have been entered for the different professional categories.

In case of conflict between the provisions of an employment contract and the provisions of law, those of law always prevail.

CONSTITUTIONAL LABOUR RIGHTS - The Constitution contains several general principles of labour law. Among these are Article 1 that states that "Italy is a democratic Republic founded on labour", Article 4 that sets forth "the Republic recognises to every citizen the right to work", Article 35 "the Republic protects work in all its forms and applications".

Some more specific constitutional principles of law, largely used by the Courts, are:

- Article 36 about fair remuneration, maximum working hours, weekly and annual paid vacation
- Article 37 about protection of women and minors on the job
- Article 38 about social insurance for old age, illness, invalidity, industrial diseases and accidents
- Article 39 on Freedom of Association
- Article 40 on the right to strike.

THE CURRENT TYPES OF EMPLOYMENT THAT LEGISLATIVE DECREE Nr. 276/2003 SETS FORTH - There is no general requirement for an employment contract to be in writing. The Law sets forth that contracts of employment are deemed for an indefinite period of time, unless the statutory regulations provide otherwise (Law nr. 230/1962).

Several new categories of employment contractual relationship were established and regulated through D.Lgs. nr. 276/2003.

The new categories of relationship are as follows:

- Job Sharing, whenever two or more employees sharing joint & several liability for a single worker. Job sharing workers are entitled to set their own schedules at their own discretion. Each worker's pay is directly proportional to his/her own performance.

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- Job on Call that relates to a professional activity performed on a discontinued or intermittent basis.
Regardless of the nature of the professional activity it may be entered into by employees younger than 25 years and older than 45 years also retired.
Job on Call contracts must be put in writing, and may be on fixed or open duration.
They must also make provisions for a stand-by allowance which must be equal to at least 20% of the salary envisaged by the applicable collective labour agreement.

- Staff Supply , where the employment agencies are authorized to supply to their client companies the labour activity of workers who have entered into an employment agreement with an employment agencies. The clients and the employment agencies are jointly and severally responsible towards the employee for settlement of wage and social security contributions and for compliance with the employee's safety regulation (L. 626/94).
Staff Supply contracts set forth the rights and obligations of the employment agencies and their clients. They may be either open term or fixed-term contracts.

- Staff leasing contracts (open term contracts) that are generally used for freight and warehouse services, managerial consultancy services (including the human resources sector), call-center management, porter and cleaning work. The agreement between the employment agency and the employee they may be either a job sharing, part-time, job on call, training employment or an entrance contract.
Fixed term contracts are generally used for technical, manufacturing-related, organizational and stand-in positions.

- Ancillary Work, that may cover either the no-profit sector, the occasional work by those at risk of social exclusion, or regularly-performed domestic help.

- Training Employment Contracts. There are three kinds of training contracts ("contratti di apprendistato") covering:

1. Training and learning rights and duties obligations
2. Apprenticeship aiming at a professional qualification as a result of on-site training and professional skills learning
3. Training in connection with a diploma or other types of professional qualification.

- Entrance Contracts ("contratti di inserimento") that may apply to single projects for developing the skills of a worker within a specific field for his/her later reintegration in the job market. Employers must grant to the worker a salary scheme at least not lower than the two levels that the applicable collectively bargained labour agreements (CCNL) provide for those workers having a qualification corresponding to the qualification that the worker is aiming to through the project.

- Part-Time Work that must be a working week of shorter duration than the full working week. It may be carried out for a reduced daily working time or full time in which latter case it must be for a limited period of time. It can be a combination of both as well.
If the relevant CCNL does not provide otherwise, the prior consent of the worker is mandatory for part-time work.

- Secondment that means the transfer of an employee to another manufacturing unit, situated beyond 50 kms from his usual work site. It is a practice permitted only if motivated with needs relating to productivity, business organization or replacement of another worker.

- Coordinated and continuous collaboration relationships (so-called "*collaborazioni coordinate e continuative*"), that may be adopted for one or more specific projects, work plans or development phases that the independent worker manages on a free-lance basis to achieve a specific result.
Collaboration contracts for specific projects must detail in writing:

(i) the duration of the relationship, that can be either fixed or for an indeterminate period of time, and
(ii)the overall remuneration package, which must be proportional to the quantity and quality of the work performed.

COLLECTIVELY BARGAINED ACCORDS
Unions can freely negotiate collective agreements at provincial, regional and national levels. Under Article 17 of Law nr. 936/86, collective agreements and accords must be registered with the National Council of Economy and Labour - CNEL within 30 days after they have been entered by the parties.

The so-called economic agreements are those that cover some categories of self-employed (i.e. commercial agents, some doctors working for the National Health Service, etc, also known as lavoratori parasubordinati).

Collective bargaining can regulate all aspects of the employer-employee relationship, except those that the law sets forth.

Collective agreements do not entitle the workers' representatives to any co-determination right, but

only to the right to be informed and consulted about the most important decisions of the company.

STAND-BY OF THE EMPLOYMENT CONTRACT - Civil code, Article 2110 establishes the suspension of the employment relationship, occurring the following circumstances:

1. Industrial accident sustained by the worke
2. His/her illness
3. Maternity of the worker (two months before and three months after childbirth).

Sick employees are entitled to retain their job position and seniority, as well as their salary for a period of up to six months or more, depending on their job category and the related applicable CCNL.

DISCHARGE – A preliminary distinction must be made between fixed-term and indefinite term contracts. As far as fixed-term contracts are concerned, termination is automatic at the end of the specified duration or on completion of the specified task (Law nr. 230/62).

Nevertheless, according to provision of Civil Code, Article 2119, the employer may terminate the contract earlier for "just cause".

The Civil Code provides that each contracting party (the employer and the employee) of a contract of indefinite duration can terminate it, provided the notice period is respected (Article 2118), or without any notice in case of just cause (Article 2119).

According to domestic Law an employee can be dismissed for the following reasons:

(1) Just cause (*Giusta Causa*) meaning a serious breach of the employee by his/her duties or other behaviour that prevents the working relationship to be carried forward
(2) Justified Grounds (*Giustificato Motivo*) meaning either:

- A subjective reason, that is a breach by the employee of his/her duties, which is not as substantial as to constitute Just Cause. The breach may consist, for instance, in failure to follow important instructions given by the management, material damages to machinery and equipment, low performance (the grounds for dismissal being "subjective reason")

- An objective reason whereby the employer needs to reorganize the manufacturing process or the workforce through redundancies.

Dismissals must always be in writing and detail the reasons for dismissal. Failure to do so makes the dismissal ineffective.

Should the employee believe to have been unfairly dismissed, he/she can challenge the decision in court and the employer must observe the following rules:

If the company employs up to 60 workers in total throughout Italy, or up to 15 in a single working unit, the employer may chose between reinstating the dismissed employee or paying an indemnity (between two and half, and six months pay).

Under all other circumstances, the employee is entitled to reinstatement and compensation for damages amounting to five months salary at least.

Failure to reinstate an unfairly dismissed employee usually results in an award of 15-month salary plus compensation for damages against the employer.

Employees dismissed for reasons other than Just Cause are entitled to a notice period. Employers may exempt the employee from working during the notice period by paying him/her an indemnity equal to the salary payable during the notice period. Such an indemnity is liable to social security charges.

Under the provisions of the "collective dismissal procedure", whenever redundancy involves five employees at least within a 120 day period of time and an employer with fifteen or more employees, the company must preliminary consult with the trade unions.

Termination without grounds is limited to trial periods, domestic workers, employees who have reached retirement age and directors.

Dismissals on the grounds of political opinion, trade union membership, sex, race, language or religious affiliation are null and void. Furthermore, members of workers' committees may not be dismissed or transferred for one year following termination of their duties on the committee without the authorization of the relevant regional trade union organization. This provision applies to directors and domestic workers as well.

Dismissal on the grounds of pregnancy, if the dismissal takes place between the conception and the end of the female employee's statutory period of absence on confinement leave or unpaid leave, until the child reaches one year of age, is also expressly prohibited.
Dismissal on the grounds of marriage is also prohibited. Protection against unfair dismissal of

managerial employees is regulated by collective agreements.

In case of unjustified dismissal, remedies are different according to the size of the firm: employers having more than 15 employees (or five in the agricultural sector) in anyone establishment, branch, office or autonomous department, and employers having more than 60 workers, wherever located, are required to reinstate the dismissed employee, and to pay damages at a rate of not less than five monthly salary payments.

Alternatively, the employee can refuse reinstatement and request payment of damages equal to 15 monthly pay. If the employer invites the employee to return to work and the employee does not take up the offer within 30 days, the contract is automatically terminated.

Where there are fewer than 15 employees in a unit or fewer than 60 employees in total, the employee unfairly dismissed has no right to reinstatement, but is entitled to compensation ranging from 2,5 to six times the monthly pay.

The employees of charity, union or political organizations are not entitled to be reinstated (Law nr. 108/90).

The contract of employment may also be terminated by the resignation of the employee, provided a notice period is respected.

However, an employee may resign with immediate effect in circumstances that Civil code Article 2119 specifies, like:

- Non-payment of wages or social security contributions
- Closure of the enterprise
- Failure to be included within the category or grade corresponding to the work effectively being undertaken
- Refusal to grant due holidays
- Unilateral changing of the employee's duties with a corresponding reduction in wages
- Offences by the employer against the duty to safeguard the physical and psychological well-being of the employee (Civil code, Article 2087).

Law nr. 223/91, on collective dismissals, provides for special procedures of information and bargaining with unions before terminating contracts, and special indemnities for the employees that are to be made redundant, according to EU directives.

SEVERANCE PAYMENTS (TFR) - For any termination of the contract of employment, on whatever ground, even for dismissal for just cause or resignation, the employee is entitled to receive from the employer a severance payment, that is usually referred to as TFR - Trattamento di Fine Rapporto.

TFR is deemed to be a part of salary, must be set aside every year and kept by the employer, based on the formula of 7,5% of every year's salary, plus revaluation according to a composed index of 75% of price index increase +1,5% (Law nr. 297/82).

The TFR may be partially paid off in advance, upon occurrence of the following two conditions:

a) The employee has reached eight years of service

b) He/she intends to purchase his/her household's residence, or needs to withdraw the TFR for health care (Law nr. 297/82), extended leave for child care or educational leave (Law nr. 63/2000).

HOURS OF WORK - Article 36 of the Constitution establishes that maximum working time must be fixed by law.

Law nr. 196/97 provides that the hours worked by employees ought not to exceed 8 hours a day or 40 hours a week. All these limitations are applicable for effective working time, that is not calculating overtime.

Self-executing limitations of EEC Directive nr. 14/93 must be taken into account in domestic law.

CCNL sets forth the normal weekly working time, that is no more than 40 hours.

Work performed in excess of 40 hours a week is considered payable overtime.

Different overtime limits can be established through CCNL.

Overtime has to be occasional or due to exceptional reasons which cannot be met by the hiring of new workers and cannot exceed 4 months.

Law nr. 196/1997 requires a specific authorization by the Inspectorate of the Department of Labour for work exceeding 48 hours a week (in practice: more than 8 hours overtime).

According to Law 623/23, overtime must be paid at a rate not lower than the basic salary augmented by 10%.

Domestic Courts ruled out that such provision applies to the entire remuneration an employee earns from his/her employer, that is to say basic salary plus any bonus such as cost of living bonus, allowances for night work, etc.

Thus, overtime pay is in practice calculated in an amount of about 30% beyond the basic salary.

Some collective agreements provide that overtime pay cannot be less than 30 per cent over the basic salary, though they also often state that this bonus has to be calculated on a narrower basis.

There may be as well other costs, like a higher rate of compulsory contributions to the Public Fund for Unemployment Benefits.

Special pay increases are fixed by collective agreements for overtime worked on Sundays, on other holidays and night work. Night work has been recently settled by Law nr. 25/99.

Working time is usually established by the employer, within the limitations cited above, and can be changed.

For part-time work, distribution of the working hours is established by an individually written contract which cannot be unilaterally amended by the employer. Law nr. 63/2000 gives the employer the right to change the part-time scheduled hours, under two conditions: prior consent by the worker, and increasing in hourly wage.

Special provisions in favour of student workers are established by Sect. 10 of Act 300/1970 (Statute of the Workers' Rights). Workers attending regular courses, in State or publicly certified schools or in schools issuing officially recognised study certificates, are entitled to a working schedule which favours attending courses and the preparation of examinations.

Student workers cannot be compelled to work overtime or on Sundays and must be given paid days off work to take exams.

PAID LEAVE – All workers are entitled to rest one day a week (Constitution, Article 36) normally on Sunday (Civil Code, Article 2109).

The 24 hour weekly rest period can be changed only for special activities, as Law nr. 370/34 provides for. Workers are entitled to a compensatory rest.
Laws nr. 260/1949 and nr. 90/1954 recognise four national holidays and other holidays. During these days, workers must receive regular pay.

If for specific reasons they have to work, workers have to receive double pay and a further increase (about 50% of normal pay).

All workers have the right to annual paid leave (art. 36 of the Constitution).

The Civil code provides for a statutory minimum leave of eight days, for domestic workers only.

Minimum leave of all other workers is determined by collective agreements, which generally provide for paid annual leave of not less than four weeks per year.

Some agreements provide for additional vacation based on the ground of seniority. During their vacation, employees receive normal pay, save for the indemnities connected to the actual work performed.

Italy has ratified the ILO Holidays with Pay Convention (Revised), 1970 (nr. 132) which provides for a minimum leave of not less than three working weeks for one year of service.

The employee is generally entitled to choose the period of time for his/her holiday. However, the employer may schedule different dates for his/her vacation, if the business needs of the enterprise require so.

WEDDING, MATERNITY AND OTHER LEAVES – Within a year, the employees are entitled to 15-days, fully-paid leave for getting married and occasional days off for family responsibilities, including the death of a relative or a child's sickness.

According to Civil Code, Article 2110 and Law nr. 1204/71, female workers have special protection in case of pregnancy and maternity.

From the beginning of pregnancy to one year after the child's birth, the employee cannot be dismissed (except for just cause) and during this period, a woman who resigns has the right to the same indemnities due for dismissals (provided she gives due notice).

Maternity leave is compulsory for female workers, from two months before until three months after childbirth.

Pre-childbirth leave can start at an earlier date than two months, if the worker's work is dangerous for her health or that of the unborn child. On the other hand it is possible to postpone pre-childbirth leave

in order to increase the leave granted after childbirth.

Subsequent parental leave has now the same economic treatment for both parents: 30% of regular pay (form Social security) for six months.

For additional time there are different indemnities depending on the family income.

Working mothers, during the first year, are entitled to an additional two hours of daily rest, initially intended for breast-feeding. In case of twins or multiple births, they are entitled to supplementary time.

According to Law nr. 388/2000, both parents have the right to leave for no more than a total of 10 months during the first eight years of a child's life.

A longer period is possible (up to two years) in case of children with handicaps.

Women are entitled to maternity leaves with 80 per cent pay during the two months before delivery and the three months afterwards. In this case, the social security system bears the cost relating to.

In case of death or serious illness of their wife, fathers may get paternity leave upon the same conditions of the maternity leaves.

Here the employee is entitled to an allowance from his social insurance, which is paid in advance by the employer. The allowance covers about 2/3 of the salary. CCNL usually provide for the employer paying the remaining 1/3 of the employee's salary.

STUDENT WORKERS LEAVE - Student workers are entitled to off-work paid days to take exams. According to Law nr. 53/2000 those workers with a minimum of 5 years seniority can request a maximum of 11 months unpaid leave (all together or at intervals) to attend schools, universities or other educational training.

Other benefits promoting the education of workers were introduced by CCNLs.

The workers are entitled to a number of paid hours off work (150 in general, up to a maximum of 250 for employees who have to obtain a basic level of compulsory education) to attend, at public or certified schools, courses related or not to their professional activity.
During military service, job security and seniority are guaranteed to all workers pursuant to provisions of Civil Code, Article 2111 and Laws nr. 653/1940, 303/1946 and 370/55.

Law nr. 300/70 provides for unpaid leave of persons holding public offices or for elected trade union representatives. Law nr. 300/70 also guarantees to trade union officials and union members different possibilities of leave, with or without pay, in order to fulfil their duties, tasks or rights.

Special leave (with or without pay) or unpaid absences are granted to workers by collective agreements on the occasion of important family events.

For his/her wedding a worker usually has the right to 15 days of paid leave.

PROTECTION OF YOUNG WORKERS – Article 37, second paragraph, of the Constitution provides that the minimum age must be settled by Statutory Law.

Law nr. 345/99 implementing the EC Directive no. 33/94 and Law nr. 262/00, establishes the minimum age at which a person may be employed at the end of compulsory schooling, however not less than 15 years of age (ILO Minimum Age Convention, 1973 no. 138).

The capacity to conclude a labour contract is related to the age of legal capacity in civil law (settled by Law nr. 39 /75 at 18 years). Whereas the minimum age of employment is lower, the minor can anyway enforce the rights and actions arising from a labour relationship (Civil Code, Article 2).

Law nr. 977/67 and nr. 345/99 introduced a special regulation to protect the work of minors, such as special medical certificates guaranteeing their physical fitness for work, periodical medical check-ups, limits on working hours, prohibition of night work and so on.

Law nr. 148/00 is intended to meet the obligations arising out of the ILO Worst Forms of Child Labour Convention, 1999, nr.182, in the fight against the exploitation of minors.

It also draw guidelines from ILO Recommendation nr. 190/99, that supplements the said Convention.

EQUALITY – The Italian Constitution (Article 3) sets forth the principle of equality of all citizens before the law "*without difference of sex, race, language, religion, political views, personal and social position*".

Italy has also ratified the International Agreement of Economic, Social and Cultural Rights (New York, 16 December 1966) through the enactment of Law nr. 88/77.

Law 300/70, so called "Statute of Workers", sets aside - at Article 15 - any agreement or action by the employer, constituting discrimination for reasons of sex, race, language, religion, political opinion. Equality between men and women at work is specifically recognised and guaranteed by Law nr. 903/77.

Law nr. 125/1991 provides for affirmative action to encourage equal opportunity for women in accessing to employment and during employment. Law nr. 604/1966 prohibits dismissal for discriminatory grounds as such as political and union views, religion, participation in union activities.

Law nr. 108/90 states that dismissal for discriminatory reasons, such as race, sex, language, political and union views, religion are null and void and requires always the reinstatement of the dismissed worker.

Further Law nr. 135/90 prohibits AIDS discrimination. Likewise, other kinds of discrimination as such as age discrimination and handicap discrimination (Law nr. 104/1992) are forbidden.

A law on sexual harassment at work does not exist, theoguh, there is case law on unfair dismissal based on this ground.

The Constitutional Court has ruled that equality is a fundamental right of foreigners as well.

For citizens of European Union countries, Article 48 of the EEC Treaty abolishes all discrimination at work, wage and other conditions of work. Law nr. 40/98 establishes equality between other foreign workers legally resident in Italy and Italian workers.

Legal procedure for individual labour disputes is applied to combat discrimination at work. There is a fast track procedure on following grounds:

(i) Discrimination for union views - Article 28 of the Workers' statute
(ii) Race, ethnical, national or religious discrimination - Article 44 of Law 286/98)
(iii) Men-women discrimination at work (Sect. 15 of Act 903 of 1977).

For other kinds of discrimination there is the general fast track procedure (Sect. 700 of Civil procedure Code).

SOCIAL SECURITY SYSTEM - The Cassa Integrazione Guadagni is a state Fund within the scope of the National Social Security Institute. It was established by Act 788 of 1954, with a view to protecting the workers' earnings in the event the enterprise has difficulties.

The Italian social security, managed by INPS, is compulsory and provides comprehensive benefits for all employees.

The social security costs, which are calculated on gross earnings, are jointly financed by the contributions of employees and employer.

Employers have to pay two-thirds of contributions and employees are responsible for the remaining third.

As far as wage compensation funds are concerned, domestic labour law sets forth special provisions for guaranteeing workers wages in case of a temporary lay-off or temporarily reduced company activity not attributable to the employer or to the employees or caused by the general economic situation.

A Wage Compensation Fund (CIG - *Cassa Integrazione Guadagni*) is available to industrial workers.

The employer provides 80% of gross wage for hours not worked, and is subsequently reimbursed by INPS.

An Extraordinary Wage Compensation Fund (CIGS - *Cassa Integrazione Guadagni Straordinaria*) helps to secure employment once production resumes in a restructured, reorganized or converted company.

Only companies employing 15 or more employees are eligible for CIGS. Compensation equals 80% of the worker's gross wage for hours not worked, and is payable in a 12 month continuous period.

The Cassa Integrazione Guadagni is mostly used in cases of suspension or temporary reduction of business activity of a company for reasons beyond market fluctuations and includes suspension of activity in the building industry due to weather damages.

PENSION SYSTEM - The Italian compulsory state pension system is financed by social contributions paid by the employer during one's working life, and is based on actuarial fairness.

The retirement age ranges between 57 and 65 years. On 28 July 2004 the Italian Parliament approved a new regulation envisaging substantial changes to the present pension system.

Starting from January 2008, retirement will be possible:

a. After 40 years of contribution
b. At 65 years of age for males and 60 years for the women.

Such years of age requirement shall be increased of one year in 2010 and of an additional year in 2014.

The reform includes incentives for workers who decide to continue working, although currently eligible for a public pension.

Such incentives provide for a compensation equal to 32.7% of the salary of the worker who has decided to continue working.

Integrative pension schemes in Italy are voluntary for workers and companies alike.

The law guarantees freedom for individuals to subscribe to supplementary pension schemes, while leaving companies are free to chose whether to set up their own funds.

Nearly all funds are based on a fixed contribution rate.

Regarding disbursement, beneficiaries can generally withdraw up to 50% as a lump sum then the entire or remaining amount as an annuity.

On 5 December 2005 the Italian Government passed the Legislative Decree nr. 252 to the purpose of redefining, starting from January 1, 2008 the entire statutory regulation applicable to supplementary pension schemes for employees of private companies.

The main features of the new regulation are the following:

- Increasing the amount of financing flows dedicated to supplementary pension schemes
- Harmonization of the supervision system applicable to the entire supplementary pension sector
- New taxation regime applicable to pension funds
- Monitoring of the management of the financial resources arising from the workers contribution
- New financing system though the contribution by the employee of its severance pay-TFR.

Specifically, the new statutory regulation provides that, starting from January 1 2008, the employee shall be entitled to choose within a six months term, at his discretion, as whether:

- Leaving the accrued severance pay within the employing company; or
- Contributing it to a pension fund.

If such six months period elapses without any election by the employee, the accrued severance pay shall be contributed by the employing company to the pension fund mentioned in the relevant labour agreement based on his/her implicit consent.

TRANSFER OF THE BUSINESS ASSETS OF A COMPANY – Accordingly to provisions of Civil code, Articles 2558 and 2112 and with provision of Article 47 of Law nr. 428/1990, the employment relationships continue with the buyer in case of sale of assets and the employees transferred preserve any of their rights and claims.

Seller and buyer are jointly and severally liable for the overall credits that the employees transferred had at the time of the sale of assets.

The buyer has to apply the economical and regulatory treatment that the Collective Bargain Agreements (CCNL) and the eventual corporate agreements set forth at the time the sale took place and up to their expiration.

To be noticed that, in accordance with Article 19 of Law 300/70, if the employees of the company are more than 15, the seller and the buyer must serve written notice to the representatives of the trade unions and of the respective labour associations about the prospective sale within 25 days at least before the date scheduled for the sale, with mention of the juridical and economical reasons underlying the sale of the business.

The transferral does not constitute itself reason for the termination of the employment relationship.

However, the business seller may motivate a discharge with the need of reducing the workforce due to a decreasing in the business activity and due to the impossibility of useful employment.

Whenever the transferral regards companies or manufacturing units on which the CIPI has acknowledge a status of economical crisis (Law nr. 675/77, Article 2) or enterprises declared insolvent by the Tribunal, Civil code, Article 2112 would not apply to those employees whose relationships continue with the buyer company, save that the agreement sets forth more favourable conditions.

Trade unions may request both the transferor and the transferee to provide them with an assessment about the possible outcome of the business transfer towards the employees.

Non-compliance of the above request constitutes an "unfair unions practice" and may cause workers' representatives to take legal action before the Labour Court.

The Court can impel the transferor and/or the transferee to comply with the consultation requirement.

PROTECTION OF WORKERS IN CASE OF INSOLVENCY BY THE EMPLOYER – The insolvency of a company does not terminate the employer-employee relationships, provided that the company continues to operate.

According to Civil Code, Article 2777, the workers' claims are second in order of priority, after taxes and court fees, over the insolvency estate.

However, secured creditors are paid before workers in respect of the employer's assets that are affected by mortgage or liens. Only for employees of shipping and aviation companies the Navigation Code provides that shipping and flying personnel have priority even over mortgage creditors, after court fees (Article 552, 575 for ship crew members, and 1023, 1036 for flying crew members).

Civil Code, Article 1676 about procurements, entitles the contractor's employees to claim against the employer within the limit of the amounts due by this latter towards the contractor.

Law nr. 80/92 implemented EU Directive 80/987 on the protection of claims of workers in case of insolvency of their employer. Under this law there is a Wage Guarantee Fund administered under the National Social Security Institute, which takes up the payment of some specified workers' claims in the event that they have been left outstanding because of the insolvency of the employer.

Protected claims are the working salaries corresponding to the three final months of the employment relationship, within a time limit of one year before the declaration of insolvency. Such payment is, however, limited to three times the ceiling of the *Cassa Integrazione Guadagni Straordinaria*.

The insolvency is defined as in the bankruptcy law, which calls for a formal declaration of insolvency being made by the competent judge.
However, the Guarantee Fund also pays in case of non enforcement of a judgement (for small enterprises that in Italian law cannot go bankrupt).
Pursuant to Article 2 of Law nr. 297/82, the Guarantee Fund also protects severance pay (trattamento di fine rapporto), in case of the insolvency by the employer.

COMPULSORY HIRING OF PERSONNEL WITH DISABILITIES – Business undertakings with 15 or more employees are required to recruit personnel from "protected categories" like widows, orphans, refugees and disabled persons.

TRADE UNION REGULATIONS AT A GLANCE – The Italian Constitution recognises the right of citizens to associate freely (Article 19) and the right of employers and employees to join associations or unions.

Article 39 of the Constitution regulates trade unions and specifies that only the registered ones can obtain legal status and can make collective agreements, that are valid and enforceable for all the employers and the employees.

This provision, however, has not been enforced because a bill regulating the registration of unions has never been adopted. Therefore, in Italy unions do not need any recognition and can organize themselves without any pre-established legal model.

They can conclude collective agreements, which are legally enforceable under civil law rules, i.e. on the assumption that the parties to a collective agreement have stipulated on behalf of their respective membership.

Usually the employers abide by the collective agreements concluded by the most important unions and employers' associations and pay wages in accordance with them for all their employees.

Article 14 of Law nr. 300/70 codifies freedom of association and freedom of trade union activity at the workplace. The same rights are also guaranteed to public employees (except military staff, who have representatives not belonging to the unions).

Unions are financed by the workers' dues. Article 26 of the Workers' statute authorizes the unions to deduct union dues from the employee's wages (check-off).

Article 28 of Law nr. 300/70 provides that whenever the employer carries out actions at limiting the exercise of freedom of association and/or trade union activities, or the right to strike, the local representatives of the relevant national trade unions can plead the judge for issuance of an injunction against the employer to cease-and-desist from his illegal conduct and to redress any damage, eliminating the effects thereof.

Under case law a number of employers' actions have been deemed to be anti-union behaviour, and are therefore prohibited.

These include:

- Dismissal of workers on strike
- Hiring of third parties to replace workers on strike
- Retaliation against workers that undertake legal strike action
- Failure to inform the unions on issues regulated by collective agreements
- Direct bargaining with the workers, thus bypassing the unions

Under Article 28, the judge must summon the parties within the following two days and take a summary deposition of the facts at issue.

If he is satisfied that there has been anti-union behaviour on the part of the employer the judge shall issue an injunction against the latter by to stop such behaviour.

An employer who does not comply with a Court injunction to cease and desist from carrying out anti-union activity shall be liable of criminal law penalties.

STRIKES – The Italian Constitution recognises the right to strike, which must be exercised within the limits that the law sets forth (Article 40).

In practice, the only statutory regulation regards the right to strike for the public essential services (Law nr. 146/90).

Public essential services are defined as those related to certain rights protected by the Constitution like life, health, freedom, safety, freedom to circulate, social security, instruction and freedom of communication of the persons.

The law nr. 146/90 provides that when a strike occurs in such services, a minimum service shall be guaranteed, the modalities of which shall be agreed upon by either the public administration or the enterprise providing the essential service and the representation of the union at the enterprise level (or the workers' representatives where appropriate).

Furthermore, strike notice of not less than ten days must be given, indicating the duration of the strike action.

Law nr. 83/2000 has extended the above regulation to the public essential services fulfilled by a number of categories of self-employed workers, professionals and handcrafters, such as for instance lawyers, doctors, taxi-drivers and gas station workers.

Military personnel and policemen are prevented from striking.

For other categories of workers, the right to strike has some limitations like for instance seamen who cannot strike during navigation.

Unions have a self-regulation code of strike.

SETTLEMENT OF LABOUR DISPUTES – Law nr. 80/98 transferred jurisdiction to hear cases brought by workers and civil servants to the Labour Courts. The Labour Courts belong to the organization of the general civil court system, although they apply special rules of procedure.

Before lodging their complaint, plaintiffs are required to carry on an attempt to settle their dispute through conciliation before a public labour office, or through union procedure of dispute resolution.

There are not procedures for settling collective disputes, save for the possibility that Law nr. 8098 sets forth, of pleading the Supreme Court for an interpretation of the CCNL entered by the union of civil servants.

SAFETY AT THE LABOUR PREMISES – According to provisions of Law nr. 626/94, the employers must adopt all necessary measures, considering the specific features of the job and workplace, to preserve the physical integrity and personality of the employees.

In addition the employers must carry out dedicated risk assessments and organize prevention and protection systems. The employees and their representatives are entitled to check the effective implementation of the required health and safety standards.

INSURANCE DUTY – The insurance policies against accidents at work are compulsory. The National Institute for Insurance against Accidents at Work (*Istituto Nazionale Assicurazioni Infortuni sul Lavoro* - INAIL) provides for.

Compulsory insurance includes coverage against those damages occurred to the employee on the way between his/her abode and the workplace, or between different work places.

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