

Basics Of Employment Law In Italy: Part III

Insights

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This article is the third in a series which provides a brief overview of some of the key elements of employment law in Italy. This article will cover terminations, including a summary of the sources of law governing terminations, the types of dismissals permitted under the law, notice provisions and other procedures applicable to terminations and the manner in which employees can contest a termination decision. Given the intricacies and constant evolution of the law in Italy relevant to this area of employment law, it is increasingly critical for employers doing business in Italy to be aware of and compliant with the law in order to avoid liability and facilitate the overall success of the company.

I. Sources of Law Governing Terminations in Italy

There are an array of laws governing the termination of employees in Italy including: the Italian Constitution; the Workers' Statute, Law No. 300 of 1970; Law No. 604 of 1966 relevant to employer's obligations to terminated employees; Law No. 223 relevant to collective dismissals; and Law No. 92/2012 referred to as Fornero Reform, which amended the employers obligations to terminated employees.

II. Types of Dismissals in Italy

In Italy, there are vast limitations on an employer's ability to terminate employees. Some of the limitations are based upon the country's antidiscrimination laws and prohibit the termination of employees based upon protected characteristics such as those applicable to pregnant women, employees on parental or family leave, employees who are unable to work due to illness or accident and employees belonging to unions.

Employers are generally only permitted to terminate employees in the following circumstances: (1) individual dismissals without just cause or a valid reason referred to as "giusta causa"; (2) individual dismissals for just cause; (3) individual dismissals without just cause but for just motive, also referred to as summary dismissals for subjective just motive ("giustificato motivo soggettivo"), (3) individual dismissal for objective just motive ("giustificato motivo oggettivo") and; (4) collective dismissals which occur when an employer of more than 15 employees dismisses at least 5 individuals employed in one or more departments with a period of 120 days as a result of either a reduction in force or transformation of the type of work performed.

Individual dismissals without just cause apply only to employees who qualify for pensions and who did not advise the employer of their intention to continue working as required by law, employees who are employed pursuant to a probationary term and employees who are considered managers, executives and directors under the law.

Individual dismissals for just cause apply when an employee is dismissed for serious reasons such as misconduct, violations of the employer's disciplinary policies and insubordination. Individual dismissals for subjective just motive occur when the employee engages in less serious conduct that breaches the employment contract such as non-performance of duties, damaging company property or exhibiting poor attendance. Dismissals for objective just motive relate to terminations due to the employer's organizational requirements or economic distress. The burden of proving just cause or just motive lies with the employer.

Employers should be aware that employees can terminate the employment relationship through voluntary resignation or via mutual agreement with the employer but only if there is an express declaration by the employee of his/her wish to terminate the employment relationship.

III. Required Notice Provisions

Except with regard to the termination of fixed term contracts and the termination of an employee for just cause as set forth above, employers doing business in Italy are required to provide an employee with a written notice of dismissal pursuant to Article 2118 of the Italian Civil Code. Additionally, pursuant to the Fornero Reform, the grounds for the dismissal must be included in the notice. Whenever a dismissal is due to an employee's conduct (constituting either just cause or just motive), an employer must comply with a specific disciplinary procedure set forth the Workers' Statute prior to termination. Dismissals made without providing notice to the employee and the reason for the dismissal as required by law are void and unenforceable.

Employers doing business in Italy should also note that, collective agreements, known as National Collective Labor Contracts, may specify justified grounds for an employee's dismissal, stipulate the period of notice required, provide for conciliation procedure or state that the notification of a dismissal must be accompanied by reasons. If an employer terminates a contract without notice, the employer must pay to the employee the amount equivalent to the salary otherwise payable during the notice period.

IV. Compensation Paid Upon Termination

Employees dismissed by an employer are entitled to receive mandatory severance referred to as *Trattamento di Fine Rapporto* ("T.F.R.") which is deferred compensation that accrues year by year for the employee and is paid out to the employee at the time of termination. The T.F.R. is calculated on the basis of an employee's base salary in addition to any other compensation paid to the employee such as bonuses and commissions. The annual T.F.R. accrual is equal to the total amount of annual compensation divided by 13.5 in addition to 1.5% for each year's work and compensation for inflation

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V. Time Period for Employees to Contest Termination

In Italy, if an employee believes that his/her dismissal was unjust or in violation of his/her employment contract, the employee must first contest the dismissal in writing to the employer within 60 days of the receipt of the dismissal notification. In the cases of fixed-term contracts the 60 day period is extended to 120 days. Once the contestation is made, the employee can file a claim before the Labor Court seeking reinstatement and damages as long as the employee does so within a period of 5 years. Damages awarded to the terminated employee will be determined by the Labor Court on a case by case basis taking into account the number of employees, the size of the company, the length of the employment and the parties' behavior.

While this article provides a brief overview of employer obligations relevant to terminations, the applicable laws are complex and vary depending on the terms of the particular employment contract, whether the employee is a member of a union and the reasons for the termination. Accordingly, employers should always review employee contracts before implementing a termination and be familiar with the applicable laws governing terminations to ensure compliance and avoid pitfalls which could result in liability.