



Basics Of Employment Law In Italy: Part II

Insights

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This article is the second in a series which provides a brief overview of some of the key elements of employment law in Italy. This article will focus on the specific laws prohibiting discrimination and harassment in the workplace and potential employer liability for violations of those laws.

I. Laws Prohibiting Discrimination and Harassment.

There are several different sources of law in Italy which prohibit discrimination in the workplace. The first source of law is the Italian Constitution which provides that "all citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinions, personal, and social conditions." The Constitution also expressly provides that women are entitled to equal pay as men performing the same jobs.

In addition to the Constitution, there are various conventions executed by Italy within the International Labor Organization ("ILO") which also include specific laws prohibiting discrimination in the workplace, including: Convention No. III of June 28, 1958, on discrimination in employment matters; Convention No. 100 of June 29, 1951, on equal pay for men and women; Convention No. 98 of July 1, 1949, on freedom of union activity; Convention No. 122 of July 9, 1964, on placement; and Convention No. 135, of June 23, 1971, on protection of workers' representatives. The laws prohibiting discrimination forbid discrimination in connection with hiring, disciplinary actions, transfers, training, terminations of employment, assignment of titles and job responsibilities, access to the job market, employment and working conditions, activities of employees' and employers' unions, education, and access to accommodations based on a number of protected categories. Both direct and indirect discrimination are prohibited in Italy.

Italian law recognizes the following protected categories:

- Sex
- Race
- Ethnic origin
- Color
- Religion
- Political opinion

- Sexual orientation
- National, social or ethnic origin
- Membership in a trade union
- Marital status
- Pregnancy
- Family status
- Disability
- Age
- Personal opinion
- HIV status

Harassment in the workplace based upon the aforementioned characteristics is also strictly prohibited and is defined as any unwanted conduct relating to any of the discriminatory grounds with the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment. Further, according to Legislative Decree No. 198/2006, sexual harassment is defined as any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, with the purpose or effect of violating a person's dignity, or by creating an intimidating, hostile, degrading, humiliating or offensive environment.

II. Potential Employer Liability for Violations of Laws Prohibiting Discrimination and Harassment.

If an employer is found liable for discrimination based upon the above mentioned protected characteristics, the employer can be fined. An Italian court can also order the publication of any decisions finding workplace discrimination in a national newspaper. Additionally, any adverse actions taken against an employee based upon a discriminatory animus will also be declared void by a judge. An employee may also be awarded injunctive relief, forcing the employer to cease any discriminatory practices and/or harassment, and monetary damages in the form of wages and/or benefits. Employees subject to unlawful discrimination and/or harassment are also entitled to recover damages to compensate them for "moral" suffering, "biological" damages if the employee's state of health has been adversely affected and "existential" damages if the employee's quality of life has been affected. However, "punitive damages" are not available under Italian law. In cases of sexual harassment, employers can be punished pursuant to Articles 660 of the Italian Criminal Code and the alleged individual harasser can be held personally liable for damages pursuant to tort law.

In order to prevent potential liability from unlawful discrimination and harassment, and consistent with union practice, employers who have employees in Italy should conduct thorough and prompt investigations in response to employee complaints and implement remedial action in cases where there has been discrimination or harassment. Employers should also have clear policies prohibiting unlawful conduct, including retaliation for bringing complaints of discrimination or harassment, and

provide education and training as to the specific laws and ways to avoid liability to management-level employees. Finally, U.S. employers who have U.S. employees working in Italy should be aware of the extraterritorial application of U.S. anti-discrimination and anti-harassment statutes such as Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act and the Americans with Disabilities Act, which expressly protect U.S. employees working overseas.