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Italy: Employment protection in relation to business transfers

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Italy

Phase:

Management

Type:

Employment protection in relation to business transfers

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Native name:	Codice civile; Codice di Procedura Civile; Legge 29 Dicembre 1990, n. 428, Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee; Decreto Legislativo 10 Settembre 2003, n. 276, Attuazione delle deleghe in materia di occupazione e mercato del lavoro, di cui alla legge 14 febbraio 2003, n. 30; Decreto Legislativo 6 Ottobre 2004, n. 251, Disposizioni correttive del decreto legislativo 10 settembre 2003, n. 276, in materia di occupazione e mercato del lavoro
English name:	Civil Code; Civil Procedure Code; Law 29 December 1990, no.428, Provisions for the fulfillment of obligations deriving from Italy's membership of the European Communities; Legislative Decree of 10 September 2003, no. 276, Implementation of provisions concerning employment and labour market, mandated by Law of 14 February 2003, no. 30; Legislative Decree no. 251 of 6 October 2004, Provisions amending Legislative Decree of 10 September 2003, no. 2765, concerning employment and the labour market

Article

Civil Code, paragraph 5 article 2112; Civil Procedure Code, articles 410 and 411; Law no. 428/1990, article 47; Legislative Decree no. 276/2003, articles 31 and 32; Legislative Decree no. 251/2004, article 9

Description

Under the Italian law, a transfer is defined as any operation which transfers the ownership of an undertaking or a part thereof, 'regardless of the type of legal procedure or legal act by which the transfer is made, including 'usufruct' or lease of the undertaking'. An undertaking itself is defined as 'an organised economic activity, with or without the aim of profit, which pre-exists the transfer and conserves its identity upon the transfer'.

The Italian Civil Code does not cover the transfer of shares, or cases where the transfer involves an undertaking or part of one which is in a state of financial crisis.

The Civil Code provides some protection to the employees involved in business transfers including apprentices and executives. However, consultants and self-employed people are not included. In particular:

- The transferee must apply collective agreements in force at the transferor on the day of the transfer until they expire or are replaced by new agreements applying to the transferor. This includes employment conditions and wage levels.
- The transfer cannot constitute itself a justified reason for dismissal.
- The involved employees can legitimately terminate the employment relationship if there is a substantial modification of the working conditions over the three months following the transfer.
- Joint liability between the transferor and the transferee apply in regards to debts existing at the time of the transfer, including wage and social security contributions. The liability is extended in case a subcontracting agreement is entered between the two entities up to two years following the termination thereof in line with the rules governing subcontracting. However, the transferred employee may release the transferor from obligations under the employment contract by applying settlement procedures set out in articles 410 and 411 of the Civil Procedure Code.

In addition, article 47 of law no. 428/1990 grants unions information and consultation rights in case of business transfer and sets out that workers who do not become employees of the transferee have a priority right in the case of new hiring by the transferee within one year from the date of the transfer, or any longer time span as set out in collective agreements.

Comments

According to law studies, there might be inconsistencies between the Italian provisions and Directive no. 2001/23/EC, especially insofar the former allows the modification of employment conditions by means of collective agreement whereas the transferor is in a state of crisis, without entailing any judicial supervision.

In addition, criticisms have been raised also concerning the absence of provisions limiting the possibility for companies to transfer workers without their consensus.

Cost covered by

Not applicable

Involved actors other than national government

National government only

Thresholds

No, applicable in all circumstances

Sources

-  [National law database](#)
-  [Civil Code](#)
-  [Civil Procedure Code](#)
-  [Law no. 428/1990](#)
-  [Legislative Decree no. 276/2003](#)
-  [Legislative Decree no. 251/2004](#)
-  A Ius Laboris Publication (2009), Transfers of Undertakings Guide
-  Ballestrero, M.V. and De Simone, G. (2015), Diritto del lavoro, Giappichelli Editore, Torino

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