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Italy: Effects of non-compliance with dismissal regulations

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Italy

Phase:

Management

Type:

Effects of non-compliance with dismissal regulations

Last modified: 21 June, 2021

Native name:

Legge 23 luglio 1991, n. 223, Norme in materia di cassa integrazione, mobilità, trattamenti di disoccupazione, attuazione di direttive della Comunità europea, avviamento al lavoro ed altre disposizioni in materia di mercato del lavoro; Legge 28 giugno 2012, n. 92, Disposizioni in materia di riforma del mercato del lavoro in una prospettiva di crescita; Decreto Legislativo 4 marzo 2015, n. 23. Disposizioni in materia di contratto di lavoro a tempo indeterminato a tutele crescenti; Decreto legge 12 luglio 2018, n. 87, Disposizioni urgenti per la dignita' dei lavoratori e delle imprese

English name:

Law 23 July 1991, no. 223, Rules on the Wage Guarantee Fund, redundancies, unemployment benefits, enforcement of European directives, job placement, and other labour market provisions; Law of 28 June 2012, n. 92, Provisions on labor market reform with a view to growth; Legislative Decree 4 March 2015, no. 23. Provisions on the open-ended employment contract with growing protections; Decree Law 12 July 2018, n. 87, Urgent provisions for the dignity of workers and businesses

Article

Law n. 223/1991, article 4, paragraph 12, and article 5, paragraph 3; Law n. 92/2012, art. 42; Legislative Decree n. 23/2015, article 10; Decree Law n. 87/2018, article 3

Description

The effects of non-compliance with dismissal regulation are different between individual and collective dismissals. In both cases, however, legislative evolution - and in particular Legislative Decree of 4 March 2015, no. 23 - created a composite framework in which the sanctioning regime is determined, in addition to the nature of the fault, by the start date of the employment relationship (before or after 7 March 2015).

In case of non-compliance with the provisions ruling collective dismissal procedures (concerning dismissal of at least five workers within 120 days, in companies employing more than 15 staff), different sanctions apply, largely recalling those applying to the unfair individual dismissal.

In the case of void or verbal termination or termination based on discriminatory reasons, layoffs can be considered null and void and the dismissed workers can be reinstated according to article 18 of Law 20 May 1970, no. 300 (so-called 'Workers' Statute'). Instead of reinstatement, employees can opt for the payment of 15 months' salary. Sanctions typically entail also the payment of financial compensations equal to the salary that the employee would have earned from the date of termination to the date of reinstatement, with a minimum payment of five months' salary.

Failure to abide by procedures of collective dismissal implies the payment of an indemnity up to 36 monthly salaries (Law 87/2018). However, non-compliance with collective redundancy communication procedures can be remedied by means of an agreement with the unions, in the framework of the collective dismissal procedure.

In the case of wrongful termination for financial reasons, reinstatement is envisaged only when the court holds that there is a manifest lack of grounds, namely in cases when the objective financial reasons raised by the employer to justify the termination prove to be non-existent. Otherwise, compensation for damages is envisaged (6-12 months' salary). Employees or others can bring the case to labour courts or make an appeal to employers (either directly or through a trade union) within 60 days.

As to unlawful dismissals, the Jobs Act and, more specifically, Legislative Decree of 4 March 2015, no. 23 introduced a new form of protection that can be applied to workers employed on indefinite contracts from 7 March 2015 onwards. From the merely substantial point of view of the dismissal, the right to reinstatement for these workers is limited to the cases in which the dismissal has not been communicated in writing. The violation of the selection criteria entails the payment of compensation as a form of protection, with an indemnity paid to the

worker ranging from six to 36 months' salary, depending on the seniority at work(Law 87/2018).

Further to the publication of Law 30 October 2014, no. 161 in the Italian Official Gazette of 10 November 2014, the collective dismissal procedure referred to in Law no. 223/1991 concerns executives, too.

Comments

Legislative Decree 23/2015 (so-called Jobs Act) significantly reduced protection against dismissals for workers hired from March 2015 onwards, who are more exposed to this risk than in the past. Specifically, the reform narrowed the field of application of the reinstatement rule in case of unfair dismissal, generally replaced by a seniority based financial compensation. The intervention foreseen by the legislator in 2018 (decree law 87/2018) did not fundamentally alter the system, it has only increased the thresholds for financial compensations.

With the introduction of new rules on collective dismissals by the Jobs Act, there are currently two parallel disciplines for the same cases. Within the same company it is possible that workers in a comparable position enjoy different protections on the mere basis of the day they have been hired.

Cost covered by

Employer

Involved actors other than national government

Trade union

Other

Involvement others

Labour courts

Thresholds


Company size by number of employees:

15

Number of affected employees:

5


Sources

 [Law 23 July 1991, no. 223](#)

 [Law 28 June 2012, n. 92](#)

 [Legislative Decree 4 March 2015, no. 23](#)

 [Decree law 12 luglio 2018, n. 87](#)

 F. Carinci, R. De Luca Tamajo, P. Tosi, T. Treu, 2016, Diritto del lavoro, Volume II, Il rapporto di lavoro subordinato, Utet;

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