

# ITALY

## Labour standards

In Italy all laws relating to employment were developed in an organic way during the sixties by some jurists as Gino Giugni, and found their concrete implementation in the Statute of Workers, in the Law of May 20th 1970, n. 300.

The Law of February 14th 2003, n. 30 (which has been defined by some as "Biagi law", thus arising some disputes), on the basis of which Legislative Decree No 276 of September 10th 2003 was issued, can be compared in scope and conduct to that of 1970.

## Sources of Employment Law

### International and communitarian sources

#### Constitution

Work is one of the fundamental principles established by the Constitution of the Italian Republic, and it's even considered to be a pillar of the Republic itself (art. 1) and a criterion in inspiring social emancipation, as well as a subject of strong protection. Article 35 "protects work in all its forms and applications", while subsequent dictates specify various criteria for determining issues as pay, working hours and holidays.

#### Law and acts with equal strength

The ordinary law (and acts on which law might be applied, being them the central source -at least formally- of the Italian legal system), is the main instrument Government can rely on, in order to try to balance any dispute among parties involved in employment relationships. The Civil Code of 1942 gave immediately a definition of employment (art. 2094), general principles of the employment contracts (art.2060), and above all a common discipline (now largely repealed) for the protection of employee. After the Constitution was approved, there has been an evolution in this subject which can be divided into three periods: an initial period of preservation of the traditional model of intervention, with the expansion of protections already in force (law n.741 of 1959, law n .1369 of 1960, Law n.230 of 1962). A second period (the well-known and already mentioned Statute of workers) in the law n.300 of 1970, in which the model of intervention was refined, and that of trade union action was introduced. The third and last period consists in a slight reversal in the trend of reconciliation and protection of workers with regard to those who have lost their jobs, and in compliance with the requirements of efficiency and productivity of businesses.

#### Collective autonomy

An important debate has turned into doctrine and aims to identify the effectiveness of the collective bargaining agreements. Indeed, with the repeal of the rules of the guild system, collective bargaining could not be considered

more as a 'public institution (see art. 2077 cc). It is therefore necessary to trace the autonomy into private foundation (art. 1322 cc), and in that case it comes out that collective autonomy, together with individual autonomy, is a sort of "private autonomy". Collective bargaining produces therefore binding (art. 2113 cc) in respect of members of trade unions (concerning employers or workers) because of its nature and its strength of an act of private autonomy, which is intended to operate under the collective interests managed by the social partners and subtracted to the regulatory powers of the individual (Scognamiglio).

### **The collective and general interests**

Collective interests are the sum and summary of the individual interests of those who join the trade union. Collective interests are the minimum conditions of economic and regulatory treatment. General interests are the interests of the Italian citizenship. Therefore, we must not confuse the collective interests and the general ones, since the latter are cared for by the Government, while the former can be cared for by trade unions. It follows that the consultation between Government, unions of workers and employers' associations, can not end up with legal obligations for the Government, as if it were otherwise, there would be that the collective interests prevail over the general interests of the nation. In other words, the collective interests have paramount importance in political, but they can not prevail on general law, otherwise the democracy would be endangered. Government therefore does not receive any legal obligation from this cooperation that would be leading to the adoption of acts having the force of law. The Government may declare that it would respect a given protocol and then, legitimately, also decide not to take action to honour or even enact laws and acts with the force of law which conflict with the agreements made in the consultation with social partners. In such circumstances, of course, the Government is politically responsible for its choices, and this leads irremediably to social clash.

### **Collective Bargaining**

The other essential tool of protection of workers is the collective agreement, which is the main instrument of collective expression. The primary function of the collective agreement is to supplement and, if possible, improve the protection offered to workers by law, adapted to various contexts (professional, commercial, geographical..). The law often refers to the collective agreement, by providing only certain principles and leaving the latter the particular discipline. The current collective agreements (common law) have no overall effectiveness in the mandatory private law because they are contracts concluded between private parties (organizations of employers and workers). They can be applied only to persons (employer and employee) who are members of the associations or unions that have made express reference to the contract of employment. However, there are some collective agreements signed in the 50s (around 8000, it is difficult to make a numerical estimate of the collective agreement incorporated in the D.P.R. but there are certainly less than 1000, at most a few hundred, given that over the period 1959-1961, that

is before the period prior to the decision of the Constitutional Court of 1962, there haven't been more than 1,400 laws a year) who have obtained compulsory effectiveness because they have been implemented by legal measures that have reproduced their contents under law l. No 741 of 1959. But this trick, developed in order to overcome the lack of implementation of article 39 of the Constitution (which remains today unsolved) was declared unconstitutional and no longer used (rectius: the law aiming to extend the effects of law 741 has been declared illegal, rejecting in so doing the accuse of unconstitutionality, which was, in fact, purely contingent, particularly in relation to Article. Const. 39). Some collective bargaining signed in the corporative period, ended up in 1945, remain in force, because they were maintained by the law not to create a regulatory gap. But their role is now virtually nonexistent.

### **Cases of extension of collective bargaining**

The effectiveness of the collective agreement may be extended to those who do not join one of the union that has signed, but only in limited situations. If the individual contract is contrary to the provisions of law, the court shall determine the salary considering the economic conditions of the data contained in the collective agreement. The effectiveness of the collective agreement also extends to those who, although they're not members of the association adhering to the pact, manifest by behaviours and in explicit form the willingness to accept the content.

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### **Use, equity and individual autonomy**

- The discipline of the employment relationship may be entrusted to the regulatory purposes, in case there are no laws or collective agreements concerning (art. 2078 civil code, shall be deemed repealed Art. 8 second paragraph of disp. Prel. to DC). Uses may persist and prevail even if the provision of the law, if they provide a more efficient protection, but cannot prevail on the contract of employment. Company customs are to be regarded as sources of employment law. Negotiating customs, if concerning individual autonomy, cannot be regarded as sources of employment law.
- Equity has a subsidiary and legislative function that is established by:
  - subsidiary function: when the court, if necessary, goes back to equity type of assessments to determine the features of the right wage (see art. Const. 36)
  - determining function: the art. 432 of the civil proceedings code gives the court the power to establish the worker's skills.
- The individual autonomy is a source of law in the limited sense that the contract is an expression that has "the force of law between the parties" (art. 1372 cc) (Persiani - Proia).

Contract (vulgarly "letter of engagement") is the contract signed by the individual worker with the employer, this contract cannot derogate from the

law, but may include provisions with respect to enhancing the collective (i.e. , more than the minimum salary and regulatory environment in the collective, the individual contract may stipulate additional conditions, but only as long as they are more favourable to the worker).