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Law No. 92/2012

The so-called Monti-Fornero Reform

Labour Market Reform in Italy

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Flexibility in Dismissals

Remedies for Unfair Dismissals and New Rules on Collective Dismissals

TERMINATION OF OPEN-ENDED AND SALARIED EMPLOYMENT CONTRACT

IT IS POSSIBLE, BUT ONLY IF THERE IS...



Just cause

not allow continuation of the employment relationship



Justified reason

- **subjective reason:** serious violation of the worker's contractual obligations
- **objective reason:** justified by needs related to production and its functioning, or organizational choices made by the employer

UNJUSTIFIED DISMISSAL

TRADITIONAL SAFEGUARDS OF EMPLOYMENT AGAINST UNFAIR DISMISSALS



Compensation award (Small-sized companies)

Dismissal is effective

Employer can choose between:

- re-hiring the worker
- granting a sum of money



Worker's reinstatement (Large and medium-sized companies)

Employment contract is not regarded as interrupted, thus the employee can ask to return to the same job and to demand unpaid salary

MAIN ISSUES

Too many **lawsuits**



Employers' demand to **forecast** the **dismissal costs**



Art. 18 Law. No. 300/1970 (the **Workers' Statute**) was **amended** by Law. No. 92/2012 (the **Monti-Fornero Reform**)

LAW NO. 92/2012

- The reform aims to:
 - **decreasing unemployment**
 - **attracting foreign investors**
- New rules applies only to **dismissals notified after 18th July 2012**
- The reform modifies only the **safeguards of employment against unfair dismissals** aiming at increase the use of **compensation awards** rather than the **workers' reinstatement**
- There are no changes on the **requirements** for making a **dismissal**

UNFAIR DISMISSALS

Art. 1(37-43) Law No. 92/2012

NOTICE OF DISMISSAL

NOTICE



Employer must send to the employee a **written statement**, telling him or her the **reasons causing the decision**

PROCEDURE



dismissal for
subjective reasons
(just cause or justified reasons)



Disciplinary
procedure
Art. 7, Law No.
300/1970



dismissal for
objective reasons
(economical, technical or
organisational reasons (ETO))



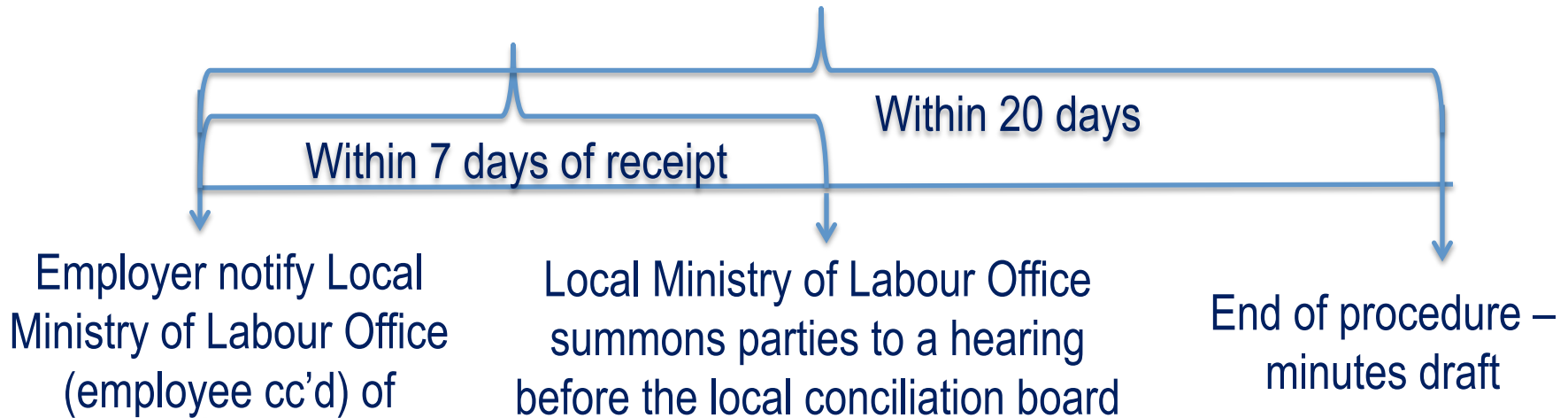
Conciliation
procedure
Art. 7, Law No.
604/1966

UNFAIR DISMISSALS

Art. 1(37 – 43) Law No. 92/2012

PROCEDURE PRIOR TO DISMISSAL FOR OBJECTIVE REASONS (ETO)

Requirement to attempt conciliation with regard to large and medium-sized companies



- intention to terminate the employment contract
- justification for the dismissal
- measures to be taken to help the dismissed worker find alternative work

(cont.)



UNFAIR DISMISSALS

Art. 1(37 – 43) Law No. 92/2012

THE ATTEMPT AT CONCILIATION IS...

not effective, or the Local Ministry of Labour Office fails to convene a meeting with the parties within 7 days of the delivery of the communication

The employer can **dismiss** the worker by giving **notice**

Successful and the contract of employment comes to an end by mutual agreement

Law provides for the implementation of safety-net measures or employment agencies are in charge of helping the worker re-enter the labour market

UNFAIR DISMISSALS

Art. 1(37 – 43) Law No. 92/2012

THE RESTYLED ART. 18 WORKERS' STATUTE (WS)

- Art. 18 was revised and renamed from «Reinstatement to the Former Job» in «Worker Protection From Unfair Dismissal»
- Revision of safeguards of employment against unfair dismissals that apply in accordance with the reasons and depending of the type of dismissal:
 - discriminatory dismissals
 - disciplinary dismissals
 - dismissals for justified objective reasons

1. DISCRIMINATORY DISMISSALS - Art. 18(1-2-3) (WS)

*This remedy can be applied regardless of the reasons provided and the number of workers employed. Executives are also affected

A. Discriminatory

B. Violation of rule which prohibits one to discharge workers who are on maternity / parental leave or on the grounds of marriage

C. Statutorily regarded as null and void (i.e. removed after training leave)

D. Notified orally

E. Resulting from illegal practice (i.e. “retaliatory” termination)

- reinstatement (or dismissed worker might ask for payment of up to 15 months’ pay)
- compensation for the damage suffered from unfair loss of job (last salary paid to the worker from the date of dismissal up to the date of effective reinstatement), in any case not less than 5 months’ pay
- pay social contributions and compulsory insurance
- pay a fine for non-payment or delayed payment of social contributions

2. DISMISSAL FOR DISCIPLINARY REASONS (or DISMISSAL FOR SUBJECTIVE REASONS) - Art. 18(4-5-6) (WS)

*This remedy can be applied only with regard to large and medium-sized companies

A. Dismissal is null and void for a lack of a justified “subjective” reason or just cause:

- there is no case to answer
- the violation falls within those for which measures short of dismissal can be imposed on the employee, in line with what is laid down by collective agreements or codes of conduct

- judge nullifies the unfair dismissal
- reinstatement (or dismissed worker might ask for payment of up to 15 months’ pay)
- compensation (remuneration accrued from the date of dismissal to the date of effective reinstatement) which cannot exceed 12 months’ pay
- pay social contributions and compulsory insurance for the period the worker has been away, including premiums for occupational injuries and diseases + interests legally accrued

2. DISMISSAL FOR DISCIPLINARY REASONS (or DISMISSAL FOR SUBJECTIVE REASONS) - Art. 18(4-5-6) (WS)

B. Lack of the justified “subjective” reasons or just cause put forward by the employer

- termination of the employment contract from the date of dismissal
- compensation ranging from 12 to 24 months’ pay considering the last salary (depending on length of service, number of employees, size of the business)

C. Violation of the requirement to provide justification or because of a procedural defect, which is typical of disciplinary dismissal

- termination of the employment contract from the date of dismissal
- compensation ranging from 6 to 12 months’ pay considering the last salary (depending on the seriousness of the violation of the employer)

3. DISMISSALS FOR JUSTIFIED OBJECTIVE REASONS

Art. 18(6-7) (WS)

*This remedy can be applied only with regard to large and medium-sized companies

A.

a) dismissal for objective reasons is unfair:

- as justified on the grounds of physical or mental unfitness of the workers

- organizational and productive reasons are not grounded

b) contract is discontinued before expiration of the time granted to workers on sick or parental leave to maintain their post

- dismissal is null and void
- reinstatement (or dismissed worker might ask for payment of up to 15 months' pay)
- compensation which cannot exceed 12 months' pay
- social contributions and interests

3. . DISMISSALS FOR JUSTIFIED OBJECTIVE REASONS

B. The reason justifying the dismissal is not grounded, or not in a patent manner

- termination of the employment contract
- compensation ranging from 12 to 24 months' pay considering the last salary (depending on length of service, number of employees, size of the business)

C. Dismissal for justified objective reasons is the result of discrimination or unfair disciplinary action

remedies for unfair discriminatory or disciplinary dismissals (see slides no. 9-10-11)

D. Failing to provide justification for the dismissal or to comply with the obligation to seek conciliation

- termination of the employment contract
- compensation ranging from 6 to 12 months' pay considering the last salary (depending on the seriousness of the violation of the employer)

INDIVIDUAL DISMISSALS

Art. 1(37-43) Law No. 92/2012

FURTHER NEWNESS

- If an employee intends to challenge the dismissal, the employer may withdraw the dismissal within 15 days from the notice of challenge

If the employer withdraws the dismissal:

- the employee should return to work
- the employee is also entitled to the payment of salary from the date of dismissal up to the date of withdraw
- the employer does not have to pay any fine

COLLECTIVE DISMISSALS

GENERAL RULES

- This regulation can be applied only with regard to large and medium-sized companies (more than 15 employees)
- Regulation applied to employers who dismiss at least 5 employees in 120 days in the same premises
- Dismiss must be based on economical, technical or organisational reasons



REDUNDANCY PROCEDURE

1. Employer must send to trade unions a written statement, telling them the reasons causing the decision, the workers involved and the measures to be taken to help the dismissed workers find alternative work
2. Trade unions may demand a meeting to find alternatives to dismissals
3. If in the meeting is not successful, or is not demanded: requirement to attend a meeting at the Local Ministry of Labour Office
4. Employer may give notice of dismissal at every employee

COLLECTIVE DISMISSALS

Art. 1(44-46) Law No. 92/2012

NEW LEGISLATIVE MEASURES

- Opportunity to overcome the non-compliance of redundancy procedure by signing an agreement concluded with trade unions during the redundancy procedures
- Revision of remedies in the event of collective dismissals that took place in breach of redundancy procedures.

There are 3 different scenarios:

- dismissals not notified in writing
- violation of collective agreements
- non-compliance with the criteria laid down to identify the workers to be made redundant

1. DISMISSALS NOT NOTIFIED IN WRITING

The employment tribunal nullifies the unfair dismissal and the employer is obliged to

a) reinstatement (or payment of up to 15 months' pay)

b) compensation for the damage suffered from unfair loss of job, in any case not less than 5 months' pay

c) pay social contributions and compulsory insurance

d) pay a fine for non-payment or delayed payment of social contributions

2. UNFAIR DISMISSAL BECAUSE OF A VIOLATION OF COLLECTIVE AGREEMENTS

The tribunal orders the

a) termination of the employment contract from the date of dismissal

b) compensation ranging from 12 to 24 months' pay considering the last salary (depending on length of service, number of employees, size of the business)

3. NON-COMPLIANCE WITH THE CRITERIA LAID DOWN TO IDENTIFY THE WORKERS TO BE MADE REDUNDANT

The employment tribunal nullifies the unfair dismissal and the employer is obliged to

a) reinstatement (or payment of up to 15 months' pay)

b) compensation (remuneration accrued from the date of dismissal to the date of effective reinstatement) which cannot exceed 12 months' pay

c) social contributions and interests without including penalties from non-payment or delayed payment of the amount due

REQUIREMENTS FOR MAKING A DISMISSAL

Law No. 92/2012

- No changes on the **requirements for making a dismissal**
- **Workers' reinstatement** is still frequent in the judgments
- Judges have wide freedom in the decision on the **fairness of a dismissal**

Law No. 183/2010, Art. 30(3)

Collective agreements and **individual employment contracts certified** by a Commission of certification can point out some reasons for dismissing with:

- **Just cause**
- **Justified reasons**

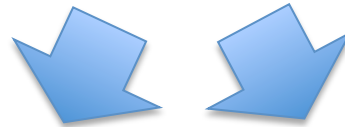


Undated Letter of Resignation and Termination by Mutual Consent

RESIGNATIONS

GENERAL RULES

Employee can always choose to leave open-ended and salaried employment contracts by **resigning**, making a formal statement (generally in writing) that he intends to **leave the job**



If there is a just cause the employment terminates at the moment of the resignation and the employer is obliged to **pay** the employee a sum equal to full wages that would be payable in respect of the unexpired **period of notice**

If there isn't just cause the employment ends after the **notice period** has **expired**

RESIGNATIONS

MALPRACTICE

Employers who ask workers to sign an **undated letter of resignation** and use them at a later stage, further dismissing the workers but claiming that they have resigned or freely terminated the employment contract



**Art. 55(4) Legislative Decree No. 151/2001
as regulated by Art. 4(16-23) Law No. 92/2012**

Law provides that **resignation** handed in by some categories of workers has to be **validated by special bodies**. This concerns: **women workers during pregnancy or workers who are fathers of children** – by birth, custody, or national or international adoption – up to three years of age, thus extending the previous age limit of one year

RESIGNATIONS

ASSESS WHETHER THE RESIGNATION WAS REALLY INTENDED

- Cases of voluntary resignation in a strict sense
- All cases of consensual termination other than those resulting from maternity or paternity



Genuine nature of both voluntary resignation and termination by mutual consent assessed through two distinct procedures



Validation by:

- Local Ministry of Labour Office,
- local employment services,
- any other body listed in collective agreements

Parties might issue a **written statement** to be appended to the notification of the termination of the employment relationship that has been sent to the employment services

RESIGNATIONS

The resignation is **effective** only after the validation process



If the employer fail to comply with the validation procedure will face **sanctions from ¥ 650.000 to ¥ 4.000.000**



If an employer use an undated letter of resignation signed by the worker as a way to dismiss without just cause or justified reasons commit **criminal retaliation**



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Thank you for your attention

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