Termination in Italy and consequences of unlawful dismissals

Autore: Diritto del lavoro

i) Definitions

Pursuant to the Italian law on dismissal, subordinate workers are divided into 2 different categories: the first, that includes Quadri i.e. Managerial Staff (employees with the responsibility of a “small” division of the company), Impiegati / white collars, Operai / blue collars and the second, that comprises Dirigenti i.e. Executive / Top Managers.

In Italy, the dismissal has to be notified in writing.

The first category employees can be dismissed only for the following reasons: just cause or justifiable reason.

(ii) Just cause for dismissal

It occurs when a fact or situation arises such that the employment relationship cannot be continued even temporarily. Non-fulfilment of the duties inherent in the employment contract must be of exceptional gravity.

In case of just cause dismissal the employers is not bind to grant the notice period.
The bankruptcy of an enterprise, or its compulsory liquidation, does not constitute just cause for dismissal.

If dismissal is on the grounds of infringement of company discipline, the rules and guarantees for disciplinary sanction also apply.

Article 7 of the Statute stipulates, among other things, that the disciplinary code relating to sanctions, to the offences for which each of these sanctions may be applied and to the procedures for appealing against them must be made known to employees by being posted up in a place accessible to all; that the employer may not apply any disciplinary measure without first communicating the grounds for it to the employees in question and hearing what they may have to say in their defence; and that the employees may be assisted in this by a representative of the union to which they belong or which they nominate for the purpose.

(iii) Justifiable reason for dismissal

The Article 3 of Law No. 604/1966 distinguishes between two types of justifiable reasons: “subjective”, consisting on a “serious non-fulfilment of the employee's contractual obligations”, and “objective”, which occurs when dismissal is justified by “reasons inherent in the production activity, the organisation of work and its proper functioning”.

The serious non-fulfilment which gives rise to subjective justifiable reason differs both from that which constitutes just cause - in being of a less grave nature so that the breach is not so severe to immediately affect upon the employment relationship preventing its prosecution, even if temporary.

In order to distinguish between the different categories, case law applies a criterion of correspondence between the gravity of the violation and the gravity of the judgement adopted.
Unlike dismissal for just cause, however, dismissal for justifiable reason does not exempt the employer from the obligation to give notice.

Objective justifiable reason is due to the enterprise's technical/production requirements. When these requirements dictate organisational decisions resulting in the abolition of jobs, they prevail over the employee's employment interests, subject to only 3 conditions:

- that the technical or organisational modification is true (i.e. we are not planning to replace the employee);
- that the dismissal is the necessary consequence of the above modification;
that it was not possible to assign the dismissed employee to different tasks, comparable to those he was appointed before dismissal.

(iv) Notice period

This is the period between the notification (in writing) of termination and the time when it takes effect.

The obligation to give such notice to the other party (the period itself being established by collective bargaining) does not, however, exist in the case of withdrawal for just cause.

During the notice period the employment relationship continues as normal in all its effects, but Article 2118 of the Italian Civil Code allows replacing "worked" notice by pay in lieu of notice, corresponding to the amount of pay which would have been received for the period of notice.

The choice between worked notice and pay in lieu of notice lies, according to prevailing opinion, with the non-withdrawing party, that is, with the employee in cases of dismissal and with the employer in cases of resignation.

Pursuant to collective agreements the duration of the notice period depends on the employee’s seniority and on his job position.

Sickness during notice period postpones the termination date.

(v) Dismissal of Top Managers
Pursuant to Italian law, different rules are provided for dismissals of Top Managers.

The ground for dismissal, in case of Top Managers, is lightened, and the Italian law doesn’t ask for the specific requirements provided for just cause and justifiable reason of dismissal in case of different employees, but more simply for a breach of trust.

Nonetheless, recently in the Italian case law a new position is developing, in accordance to which Top Managers, in case of dismissal due to a breach of the employment contract, are entitled to the same protection provided for other employees by Article 7 of Law n° 300/1970 (the employer may not dismiss the Top Manager for a breach of the employment contract, without first communicating the grounds for it to the employees in question and hearing what he may have to say in his defence).

(vi) Consequence of unlawful dismissals of Quadri, White collars and Blue collars

Pursuant to Italian law, the general rule in case of dismissal of an employee by a Company is that the employer, should the dismissal be considered unfair by the judge, could be condemned to give to the employee an indemnity whose amount is included between 2,5 and 6 monthly salary (in addition to the notice period/indemnity in lieu of notice).

A special protection is acknowledged, pursuant to Article 18 of Law n° 300/1970, to workers hired by means of an open ended contract by a company with more than 15 employees in the same productive unit, or in more than one unit located in the same County, or with more than 60 employees in Italy, and who have been dismissed without just cause or justifiable reason have the right to:
reinstatement at work, in the same (or equivalent) position he had before being dismissed;

- the payment of wages and social contributions for the period between dismissal and reinstatement, by way of damages (it cannot be less than 5 monthly gross salary instalments). The employee, after the judgement (should the termination be considered unfair), would be entitled to choose, instead of being reinstated, to be paid additional 15 monthly instalments.

(vii) Consequence of unlawful dismissals of Dirigenti

Pursuant to Italian law, different rules are provided for dismissals of Top Managers. In particular Top Managers are not entitled to the same juridical protection than managerial staff, white collar and blue collars, as:

- the continuity protection provided for by Article 18 of Law n° 300/1970;
the protection provided for by Article 7 of Law n° 300/1970 (disciplinary procedure) in case of dismissal due to non-fulfilment to obligations inherent in the employment contract.

Pursuant to CCNL Dirigenti Terziario, in case the dismissal of a Top Manager is considered unlawful the Dirigente is entitled to an indemnity which ranges from 6 to 18 monthly wages. An extra amount of money will be paid to the manager with a seniority of more than 10 years, wrongfully dismissed, depending on his/her age, up to a maximum of 9 additional monthly wages.

Francesco d'Amora
Studio Legale Tonucci Roma