Short and Extended Sick Leave Periods in Italy

Can an employee who enters the extended sick leave period return to the short sick leave period? An analysis of the legal and practical implications.

The sick leave period is a well-known concept in labor law, as it refers to the maximum allowable absence due to illness, beyond which the employer may dismiss the employee. In general, it is understood that this period should not exceed six months (180 days). Nevertheless, the duration and terms of the sick leave period can vary significantly depending on the applicable national collective labor agreement (CCNL), which regulates its specifics.

The Differences Between National Collective Labor Agreements (CCNLs)

An in-depth analysis of the individual collective agreements reveals that the regulation of the sick leave period is not uniform, even within similar categories. For instance, when comparing two agreements in the commercial sector, such as the CCNL Commercio – Confcommercio and the CCNL Commercio – Conflavoro-Confsal, significant differences emerge in how sickness-related absences are managed. Likewise, such variations can be observed between different sectors, such as the CCNL Metalmeccanica Industria and the CCNL Commercio – Confcommercio. These discrepancies highlight the complexity of the regulations concerning the sick leave period.

Below are some extracts from the CCNLs mentioned above.

CCNL Commercio – Conflavoro-Confsal	CCNL Commercio – Confcommercio	CCNL Metalmeccanica Industria
Article 36 – Sick Leave Period	Article 186 – Sick Leave Period	Article 2 – Treatment in Case of Illness and Non-Work-Related Injury

An employee who is not on probation and must interrupt their service due to illness or non-work-related injury is entitled to job retention, with recognition of seniority for all purposes, under the following conditions: **a.** Firstly, the employee is entitled to 180 days of continuous illness, certified within a calendar year, defined as a 360-day period calculated retroactively from the last illness event. **b.** Moreover, in the case of cumulative illness, the employer's obligation to retain the position and provide economic compensation will cease if the employee has accumulated a total of 180 calendar days of certified illness within the 36 months preceding the last illness event, even if caused by different conditions and/or non-continuous periods. **c.** Lastly, for severe illnesses, including certified oncological diseases, multiple sclerosis, and cirrhosis, job retention, upon the employee's request and presentation of supporting medical certification, is extended to 720 calendar days of absence due to illness—whether consecutive or cumulative—calculated within the 48 months preceding the last illness event.	During illness, a non-probationary employee is entitled to job retention for a maximum period of 180 days within a calendar year. After that, if the illness persists, the employer may proceed with termination, providing the compensation stipulated in Articles 248 and 249 of this contract, unless otherwise provided in Article 192. (…)	In the case of an interruption of service due to illness or non-work-related injury, a non-probationary employee is entitled to job retention for a period, defined as the short sick leave period, of: **a)** 183 calendar days for up to 3 years of service; **b)** 274 calendar days for more than 3 years and up to 6 years of service; **c)** 365 calendar days for more than 6 years of service. (…)

The Complexity of Calculating the Extended Sick Leave Period

A particularly complex and delicate issue, which lawyers and labor consultants often tend to avoid, concerns the calculation of the sick leave period when the generally prescribed six months are exceeded, and the so-called ‘extended sick leave period’ comes into play. This is provided for only by certain national collective agreements, including the CCNL Metalmeccanica Industria.

Given the uncertainty due to the unclear wording of some collective agreements, the fundamental question that arises is whether, once an employee enters the extended sick leave period, their stay is indefinite. Alternatively, after a certain period or upon the occurrence of a specific event, the employee may return to the calculation of the short sick leave period.



The CCNL Metalmeccanica Industria example

For example, if we analyze the CCNL Metalmeccanica Industria, Article 2 – Treatment in case of illness and non-work-related injury, it states:

“The employee is entitled to a period of job retention, defined as the extended sick leave period, under the following conditions:

- Firstly, in the case of a continuous illness event with uninterrupted absence or interrupted by a single return to work for a period not exceeding 61 calendar days;
- Secondly, when there have been at least two illnesses, each involving a continuous absence of 91 or more calendar days;
- Finally, when, at the expiration of the short sick leave period, there is an ongoing illness, including the prognosis indicated in the latest medical certificate, which equals or exceeds 91 calendar days.”

A natural question arises regarding how one should proceed when, in a specific case, one of these conditions for transitioning to the extended sick leave period occurs. Let us consider, for instance, hypothesis no. 3, which provides for entering the extended sick leave period when, at the expiration of the short sick leave period, there is an ongoing illness with a prognosis of 91 or more calendar days, specifically referring to an employee with more than six years of seniority (in which case, the extended sick leave period would amount to 548 days).

In such a case, if the illness lasts 91 or more days at the end of the short sick leave period, the employee automatically transitions into the extended sick leave period. However, since the sick leave period is calculated retroactively, the

question arises as to whether it is necessary, at every stage of the employment relationship, to go back three years to calculate the 548 days to determine if the extended sick leave period has been exceeded. Understandably, such an interpretation would be unacceptable.

Therefore, the article must be interpreted literally, meaning it applies solely to continuous illness, which, even if interrupted, refers to a single illness event. Furthermore, since the employer cannot verify specific details regarding the nature of the illness beyond what is reported in the medical certificate, it is assumed that if a new certificate is presented for a different illness, the employee re-enters the short sick leave period.

Conclusions: A Balanced Approach Between the Rights of the Employee and the Employer

This solution appears to be the most logical, as it allows for a balance between the rights of the employee and those of the employer. The possibility of accessing the extended sick leave period was introduced to protect the employee in cases where, at the end of the short sick leave period, they suffer from a severe illness that requires long-term treatment. This measure is particularly justified when the ongoing condition continues to represent significant severity.

However, if the illness that arises after the expiration of the short sick leave period is different from the original one, the reasons that justified the transition to the extended sick leave period no longer apply. In such circumstances, it would be reasonable to restore the calculations related to the short sick leave period, as the new condition is not necessarily comparable to the one that justified access to the extended period.

This approach respects both the employee’s need to be protected in the case of severe illnesses and the employer’s right to manage prolonged absences sustainably. The system is thus balanced, considering the different needs of the parties involved and maintaining a framework of fairness.

Attorney Cristiano Cominotto

Attorney Sonia Predieri