The Dismissal of Executives for Objective Reasons

Introduction: The Dismissal of Executives

The dismissal of executives represents a unique situation within the framework of Italian labor law. Unlike other employees, executives are afforded limited protection in cases of dismissal for objective reasons.

This article aims to delve into this topic, analyzing the characteristics of executive dismissals and the differences compared to other categories of workers.



The Regulatory and Jurisprudential Framework

The rules governing the dismissal of executives are rooted in Article 2118 of the Italian Civil Code, which allows both parties (employer and employee) to terminate an open-ended employment contract, provided that notice is given. However, this provision is supplemented by Law 604/1966, which introduces the concepts of just cause and justified reason for dismissal.

Case law has developed the concept of "justification" for the dismissal of executives, which encompasses reasons "related to the production activity, the organization of work, and its proper "functioning." These reasons are formally regarded as the objective justification required by Law 604/1966.

Objective Reasons for the Dismissal of Executives

The dismissal of an executive for objective reasons is a widely discussed topic in Italian case law. According to Article 2118 of the Italian Civil Code, an employer may terminate an employee at any time, provided there are "justified reasons" for doing so. Specifically for executives, Article 18 of Law No. 300 of May 20, 1970 (the Workers' Statute) stipulates that dismissal is permitted only for "just cause" or "justified reason."

Case law has identified specific scenarios that may constitute objective reasons for dismissing an executive, such as the cessation of business activities, the elimination of the executive's position, and corporate restructuring or reorganization. These situations fall under the concept of "objective justification" as defined by Italian law.

In such cases, dismissals for objective reasons are considered indisputable, provided there is a causal link between the company’s needs and the executive’s dismissal. The executive may only verify the existence of this causal link and cannot challenge the legitimacy of the organizational reasons provided by the employer.

Under Law No. 604/1966, the employer is required to communicate the reasons for the dismissal to the employee in writing. An executive dismissed for objective reasons may also request that a labor court assess the correctness of the procedure followed and the actual existence of the causal link between the company’s needs and their dismissal.

Overall, Italian case law and legislation grant employers significant discretion in managing executive personnel, provided that the reasons cited are genuinely connected to organizational and managerial needs.

However, executives retain the right to verify compliance with procedures and the actual existence of the grounds for dismissal.



The Inapplicability of Reemployment (Repechage)

Reemployment (or **repechage**) is a protection requiring the employer to seek an alternative solution to dismissal by offering the employee another position equivalent to their current role. This protection is outlined in Article 2103 of the Italian Civil Code and applies to subordinate employees, with the exception of executives.

For executives, reemployment is not applicable because their employment relationship is based on trust, as well as a high degree of autonomy and responsibility. Consequently, the employer is not obligated to verify the availability of an alternative suitable position for the executive before proceeding with dismissal for objective reasons.



This distinction in treatment between executives and other employees has been upheld by case law, which has deemed the concept of reemployment incompatible with the nature of executive employment relationships.

In particular, the Italian Supreme Court (Corte di Cassazione), in ruling no. 5468 of 2018, clarified that reemployment is not an obligation for the employer but a discretionary option. This option can only be exercised if the executive agrees to the proposal of a new position.

The Burden of Proof: The Dismissal

of Executives

In cases where a dismissal is contested, the burden of proving the legitimacy of the termination lies with the employer, who must demonstrate the existence of objective reasons and their causal connection to the executive's dismissal. This burden is established by Article 2697 of the Civil Code, which states that "whoever claims a right in court must prove the facts that form its basis."

However, prevailing case law has determined that for executives, it is sufficient to demonstrate the occurrence of corporate reorganization and the involvement of the executive's position, without the need to prove the impossibility of reemployment. This simplification of the burden of proof is grounded in the principle of reasonableness, which requires the judge to consider the specific circumstances of the case and the unique nature and characteristics of the executive employment relationship.

Furthermore, case law has recognized employers' technical and organizational discretion in determining the methods and criteria for implementing corporate restructuring, provided these are not unreasonable, discriminatory, or arbitrary.

In particular, the Italian Supreme Court (Corte di Cassazione), in ruling no. 18338 of 2019, stated that "the employer's decision to dismiss an executive cannot be challenged by the court unless the alleged objective reason is proven to be unfounded or unreasonable."



The dismissal of executives for objective reasons is characterized by less extensive protection compared to other employees. Case law has developed the concept of “justification” for dismissal, granting employers greater discretion in carrying out corporate restructuring and reorganization.