

## INTERNATIONAL EXECUTIVES & EMPLOYEES

International executives and employees who work in, or have connections with, a number of different countries may have difficulties understanding which nations' laws and courts will offer them the correct protection in case there is an employment dispute.

In some instances international executives and employees may even have parallel legal protection in a number of different legal jurisdictions simultaneously.

If you travel frequently for your work or are regularly engaged in overseas business – your employment relationship may not be limited to your country of residence. Instead it may also be tied to the countries where you conduct business as well as to the nation where your employer is headquartered.

## DISMISSALS IN ITALY



### Sources of Employment Law:

In Italy the employment relationship is governed by 4 sources of law:

- 1) Italian statutory law
- 2) National and local collective agreements
- 3) Case law
- 4) The individual employment contract

### Tribunals:

Employment claims are always to be brought before the Employment Tribunal (in Italian it is called the '*Giudice del Lavoro*') which is the only competent tribunal which can decide on employment cases – no matter what their value or whatever source of law which has been breached: statutory law, collective agreements, case law, or individual contracts.

Proceedings before the Employment Tribunal are faster and are also subject to less formal procedural rules compared to ordinary civil proceedings.

It is important to note that settlement agreements in Italian employment disputes shall always be signed in a *protected location* - meaning that either a judicial authority or a trade union shall supervise the agreement.

Executives in Italy have their own separated trade unions.

### Costs:

When an executive wins a employment case against their employer, or former employer, the court usually requests that the losing party covers the legal costs, within reason, of the executive. This sum is usually paid directly to the executives legal counsel.

In addition, the executive will also usually enter into a success fee agreement with their legal counsel – whereby a percentage of the final settlement will be paid to their legal representatives with the successful conclusion of a legal case.

**When does Italian law  
govern an  
employment relationship?**

**&**

**When will the Italian courts  
have power to hear  
your employment claim?**



The first issue is to consider what the applicable law of your contract is. This is often set out in your employment contract.

Generally, the parties to a contract have the freedom to choose the applicable law, but in reality it will be the employer that often chooses. That choice will often be the country's laws that are most favourable and convenient to the employer.

The employer's choice is not the end of the matter though. Employees working in countries that are signatories to the Rome Convention may apply to override the parties' choice, under this Convention, including where Italian rules cannot be contracted out of or they are enshrined in statute or case law, such as minimum notice rights.

In the absence of choice by the parties - international laws provide, broadly speaking, that it is the country with which the contract is most closely connected which shall govern the contract or the law of the place where the party performing the service has their normal residence.

The relevant law in play is not the only issue though. The second issue is to consider if the contract can be enforced in Italy (whichever law applies to the contract).

Note, for example, that Italian law does not need to be the applicable law for the Italian courts to have power to rule on a case. In other words, the Italian courts can decide on a dispute governed by Russian law for example.

The Brussels Regulation applies where the employer (whatever their nationality) is based in any EU member state. The Brussels Regulation states that the employee may sue their employer in the Italian courts if the employer is "domiciled" (or sufficiently based) here. Generally, an employer who has a branch, agency or other establishment in Italy, is "domiciled" in Italy.

For employees in countries outside of the EU, wishing to bring a claim in Italy the position is more complex and depends on which country they are based in, amongst other factors. In such cases, employees should seek specific advice.

## THE DISMISSAL OF EXECUTIVES IN ITALY



### Freedom of dismissals under Italian statutory law

Due to their role as *alter ego* of the employer, in Italy, executives are subject to different and less protective statutory rules compared to regular employees. This difference is quite evident in the legislation about dismissals.

In fact, while Italian statutory law generally provides that in order to dismiss an employee the employers must prove that they have fair reason to dismiss them, - when it comes to executives the employer is not obliged to provide proof of just cause. This means that, as a rule, executives can be dismissed freely (otherwise referred to as an *ad nutum* dismissal).

Moreover, if the dismissal is based on a very serious reason which is able to break the “bond of trust” between the employer and the executive (in Italian this concept is referred to as ‘*giusta causa*’ or ‘just cause’) then the employer is exempt from giving the executive a period of notice and is also exempt with paying the executive a sum in lieu of notice.

In these types of cases the executive will lose any contractually agreed sums for the notice period. However, they will be entitled to a *TFR – Trattamento Fine Rapporto*, a ‘treatment at the end of the relationship’ payment (more details below) as well as access to an unemployment benefit called *ASPI*.

### The concept of unjustified dismissal in the collective agreements

While executives remain rather unprotected under Italian statutory law, national collective agreements for executives fills the gap. In fact national collective agreements provide that the dismissal of executives shall be at least *justified*.

The concept of *justification* has been elaborated upon by Italian case law and, broadly speaking, it means that the dismissal shall not be completely arbitrary.

For instance, it will be considered justified the dismissal of the executive whose performance is not as high as expected.

Italian case law, however, has recently been trying to extend the protection of executives. Today the dismissal of executives can be considered unjustified when, in case of disciplinary or conduct dismissals, the employer fails to follow the relevant dismissal procedures or to carry them out correctly.

In fact, a fair process is needed to be followed in order for a disciplinary dismissal to be considered legal and must include matters such as a reasonable consultation with the employee. This procedure applies to both regular employees and executives.

### Compensation

If the dismissal will be deemed 'not justified' by the Employment Tribunal - then the executive will be compensated with a sum called "*supplementary indemnity*" which can be equal to as much as 18 months of wages for an executive operating in the industrial sector. For executives operating in the commercial sector this sum can be up to 22 months of wages. The *supplementary indemnity* is to be added to the payment of regular notice monies, to the TFR, and also to the unemployment benefit that in Italy is called ASPI.

It is worth noting that executives that have been unfairly dismissed will never be reinstated in employment by a court order.

### Time limit

Italian statutory law is silent on this matter and it is widely accepted that any claim to obtain a supplementary indemnity payment is subject to a 10 year limitation period which is set out in the Italian civil code.

## ORAL DISMISSALS ON DISCRIMINATION GROUNDS

There are only 2 instances where the dismissal of an executive is regulated by the same Italian statutory laws which govern all employees

- 1) If the dismissal is given orally
- 2) If the dismissal is based on discrimination grounds - for example race, nationality or national origins, sex, age, sexual orientation, disability, religion and belief/non belief

### Compensation

In the 2 cases above the sanction will always be reinstatement into the previous position of employment in addition to a financial compensation for wages lost since the day of dismissal until the day of reinstatement.

### Time Limit

A dismissal inflicted orally or on discrimination grounds must be challenged, by means of a written notice, within 60 days from the date of dismissal.

The challenge however becomes without effect if in the subsequent 180 days the legal action is not filed.



## END OF EMPLOYMENT INDEMNITIES

### **TFR – *Trattamento Fine Rapporto***

The *TFR* is a end-of-employment indemnity provided for by Italian statutory law.

In particular *TFR* is a part of the salary set aside by the employer every year and that every employee, including executives, will collect at the end of the employment relationship.

It is calculated according to the formula of a year's salary divided by 13.5, plus 1.5 % for each year of service plus compensation for inflation.

It is important to note that Italian statutory law has also provided for a guaranteed fund to protect all workers who are unable to collect their *TFR* due to the bankruptcy of their employer

### **ASPI**

ASPI - *Assicurazione Sociale per l'Impiego* (in English 'Social Insurance for Employees') is an unemployment benefit that is available to all employees, including executives, who lose their job involuntarily due to reasons beyond their control.

The amount of this benefit is usually in the region of 12 months of salary.



## Conclusion

There are a range of rights and legal options available to International Executives & Employees under Italian law.

For an initial discussion about your employment rights in Italy, with no obligations, please contact:

Cristiano Cominotto  
Founding Partner  
**AL Assistenza Legale**  
Email: [c.cominotto@alassistenzalegale.it](mailto:c.cominotto@alassistenzalegale.it)  
Tel: +39 02 54 53 314 / +39 02 54 50 823



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In some instances international executives and employees may even have parallel legal protection in a number of different legal jurisdictions simultaneously.

The *Lawyers International Network for Executives and Employees* (LINEE) has been created to specifically assist international executives and employees with exactly this challenge.

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Employment law is a complex subject on a national level – let alone an international one.

LINEE is your guide, your advisor, and your defender when cross-border employment and labour law issues arise... nationally and internationally.

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**AL – Assistenza Legale**, which is a Founding Member and the Italian representative of LINEE is a multi-practice firm which was founded in 2008. Since then the firm, and interest in the firm, has grown exponentially. Today, **AL** counts 15 offices located throughout Italy.



**AL's** employment and labour practice, which is led by Founding Partner Cristiano Cominotto, advises executives, managers, and employees on a range of employment and labour matters including: the drafting and negotiation of employment contracts, executive

benefits, mobbing, discrimination, health & safety, pensions, private health insurance, severance packages, unfair dismissals, and work permits for foreign nationals working in Italy.

**AL** is also well versed in representing executives and employees in contentious situations – representing them in arbitration, mediation, and litigation both in and out of court.

**AL** has been recognised by the Financial Times as 1 OF THE 50 MOST INNOVATIVE LAW FIRMS IN EUROPE in 2010 and 2011. In addition, the firm was Highly Commended for the ITALIAN LAW FIRM OF THE YEAR award presented The Lawyer magazine in 2011. This same year **AL** also won their award for EUROPEAN NICHE LAW FIRM OF THE YEAR.

[WWW.ALASSISTENZALEGALE.IT/LINEE](http://WWW.ALASSISTENZALEGALE.IT/LINEE)

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