Which issues would you most highlight to someone new to your country?

Italian employment regulation comprises a complex system of rules provided by law and collective bargaining agreements. Employment relationships are subject to certain mandatory rules that cannot be derogated from (in a way that is detrimental to the employee) as a result of private negotiations between the employer and the employees. The mandatory rules cover some aspects related to the establishment, management and termination of relationships with employees.

Further, in regard to certain issues (eg, collective dismissals and the transfer of undertakings), the employer must comply with the procedures for informing and consulting with the unions as set down by law.

What do you consider unique to those doing business in your country?

For a long time Italian employment regulation has been considered to be a very rigid system. However, Italian labour law is now experiencing a new era marked by a proliferation of new legislation. The new laws aim to:

- adapt the employment rules to the demands of the new millennium;
- increase flexibility in the market for those both in and out of work; and
- stimulate foreign investment in Italy.

These changes include:

- the liberalisation of fixed-term contracts;
- significant changes to the rules for dismissal applicable to those hired after March 7 2015; and
- economic incentives for enterprises doing business in Italy in 2016.

Moreover, the new laws give employers the option to determine in advance the maximum cost of a dismissal.

Is there any general advice you would give in the employment area?

It is important to obtain advice in order to exploit the many opportunities provided by the new laws, reduce the cost of labour and minimise the risk of litigation.

Emerging issues/hot topics/proposals for reform

Are there any noteworthy proposals for reform in your jurisdiction?
Nothing at present, as many important reforms have been approved since 2010.

What are the emerging trends in employment law in your jurisdiction?

Italy

There is increasing focus on privacy and data protection under both legislation and case law. In particular, the new EU General Data Protection Regulation (2016/679) is now in force, following its approval by the European Parliament on April 14 2016. The regulation applies even extraterritorially, as it is mandatory for any party which deals with information pertaining to EU residents. The government and businesses have two years (until May 25 2018) to adapt to the new rules.

The employment relationship

Country specific laws

What laws and regulations govern the employment relationship?

Italy

The employment relationship is governed by different levels of rules, as follows:

- individual contracts;
- collective agreements (national, territorial and company) signed with trade unions or works councils;
- legislation, including the Italian Civil Code;
- the Italian Constitution; and
- binding EU rules.

Who do these cover, including categories of worker?

Italy

The abovementioned rules cover all employees, even at executive level. The law sets down specific rules regarding relationships with contractors.

Misclassification

Are there specific rules regarding employee/contractor classification?

Italy

Yes. The law punishes the misuse of self-employed contracts and provides for the transformation of the contract into an employment contract if the worker is subject to the company’s hierarchical and disciplinary power.

Contracts

Must an employment contract be in writing?

Italy

Yes.
Are any terms implied into employment contracts?
Yes, the mandatory rules provided by law and collective bargaining agreements are implied into the individual contract.

Are mandatory arbitration/dispute resolution agreements enforceable?
No.

How can employers make changes to existing employment agreements?
Improvements to contracts (eg, an increase in salary, a more important job role or assignment of a new benefit) can be made through a private deed.
If the changes are detrimental to the employee, the agreement must be approved by the Public Panel of Conciliation or the trade unions.

Foreign workers
Is a distinction drawn between local and foreign workers?
There is no distinction based on the nationality of an employee, apart from specific roles with the public authorities (eg, the police and the army) which only Italian citizens can hold.

Recruitment
Advertising
What are the requirements relating to advertising positions?
There are no specific requirements apart from protection from discrimination, which applies to the hiring process.

Background checks
What can employers do with regard to background checks and inquiries in relation to the following:
(a) Criminal records?
Criminal record checks may be carried out by public employers or for specific positions (eg, security guards or bank employees). Only the employee can request his or her criminal record from the authorities.

(b) Medical history?

Checks on medical history are not permitted. However, for specific roles an employer can carry out a medical examination before hiring in order to ascertain that the employee can perform his or her duties.

(c) Drug screening?

Drug screening is not permitted.

(d) Credit checks?

Credit checks are not permitted.

(e) Immigration status?

Yes, a company must check immigration status before hiring a foreign employee in order to prevent the hiring of illegal immigrants.

(f) Social media?

No specific regulation applies to social media checks.

(g) Other?

The general rule is set out in Article 8 of the Workers Statute, which prohibits an employer from carrying out investigations before hiring (eg, into relationships, religious views, opinions and any other facts which are irrelevant to professional qualifications).

### Wages and working time

**Is there a national minimum wage and, if so, what is it?**

National collective bargaining agreements provide for a minimum wage for each business sector depending on the employee’s grade and length of service.
Are there restrictions on working hours?

Decree-Law 66/2003, which gives effect to the EU Working Time Directive in Italy, contains many restrictions on working hours.

The standard number of working hours per week is 40. An employee who works in excess of 40 hours per week is eligible for overtime at a rate specified in the applicable collective bargaining agreement or employment contract.

Working hours must be calculated based on the average hours worked during the month.

Some employees are exempt from statutory hour restrictions, including high-level white-collar employees (the 'quadri') and executives (the 'dirigenti').

What are the requirements for meal and rest breaks?

Employees are entitled to at least one 10-minute break for each shift longer than six hours daily (and 11 consecutive hours of rest between one shift and the next).

Collective bargaining agreements usually provide for a meal break at the company canteen or the assignment of a voucher restaurant for each working day.

How should overtime be calculated?

Every working hour above the standard working week (40 hours) is considered as overtime.

What exemptions are there from overtime?

Some employees are exempt from overtime calculation, including the quadri and the dirigenti.

Is there a minimum paid holiday entitlement?

Yes. The minimum paid holiday entitlement is four weeks a year, but collective bargaining agreements can provide for additional holiday.

What are the rules applicable to final pay and deductions from wages?

On termination, an employer must pay:

- the *trattamento di fine rapporto* (termination indemnity), which is calculated by adding together, for each year of service by the employee, a quota equal to the annual salary divided by 13.5; and
Discrimination, harassment & family leave

What is the position in relation to:

- any untaken paid holiday.

Employees receive a net salary – the employer automatically deducts tax and social security contributions and pays them to the relevant public authority.

Record keeping

**What payroll and payment records must be maintained?**

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<th>Italy</th>
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Employers must provide employees with a copy of their payslips each month, which should fully include:

- the composition of the total monthly salary; and
- the taxes and social security contributions withheld at source.

Discrimination, harassment & family leave

What is the position in relation to:

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<tr>
<th>(a) Age?</th>
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Discrimination based on age is prohibited under Italian law.

<table>
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<th>(b) Race</th>
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Discrimination based on race is prohibited under Italian law.

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<th>(c) Disability?</th>
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Discrimination based on disability is prohibited under Italian law. Moreover, the law provides additional protections for employees with disabilities and those who assist family members with disabilities.

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<tr>
<th>(d) Gender?</th>
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Discrimination based on gender is prohibited under Italian law.

<table>
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<tr>
<th>(e) Sexual orientation?</th>
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Discrimination based on sexual orientation is prohibited under Italian law.
Discrimination based on sexual orientation is prohibited under Italian law.

(f) Religion?
Discrimination based on religion is prohibited under Italian law.

(g) Medical?
Discrimination based on medical needs is prohibited under Italian law.

(h) Other?
Legislation and case law also prohibit discrimination based on:
- family status;
- pregnancy;
- political opinions; and
- union activities.

Family and medical leave

What is the position in relation to family and medical leave?

With regard to maternity leave, a female employee is entitled to five months of mandatory leave. She may choose whether to take one month before and four months after the birth, or two months before and three months after.

If she has a high-risk pregnancy (ie, if it presents concrete risks for the health of the employee or her child, as certified by a specialist), she may leave earlier.

Maternity pay is 80% of the salary, paid by the public authority for social security, the INPS. Some collective bargaining agreements provide that the employer pays the remaining 20%.

Both parents are entitled to additional parental leave during the first 12 years of their child’s life.

In regard to medical leave, collective bargaining agreements provide for a retention period during which the employee cannot be dismissed. Some agreements also provide for additional unpaid leave after the retention period.

After the retention period, if the employee is still absent due to illness, the employer can dismiss him or her by paying the trattamento di fine rapporto (termination indemnity) in lieu of notice.

During absence from work due to illness, the INPS pays:
- 50% of the average daily wage from the fourth to the 20th day; and
- 66.66% of the average daily wage from the 21st to the 180th day.

Some collective bargaining agreements provide for an additional percentage payable by the employer.
Harassment

What is the position in relation to harassment?

Under Article 2087 of the Civil Code the employer is obliged to do what it can to prevent harassment (including sexual harassment and bullying) in the workplace.

The employee can also claim damages from the employer in the case of harassment. Moreover, harassment is a criminal offence punishable by law, and may constitute grounds for a grievance procedure.

Whistleblowing

What is the position in relation to whistleblowing?

No specific rules apply. However, in September 2016 Parliament began discussions over a potential whistleblower law.

Listed companies should implement an internal system for whistleblowing.

Privacy and monitoring

What are employees’ rights with regard to privacy and monitoring?

The remote controlling of working activities by employers is regulated by Article 4 of the Workers Statute, which was significantly changed by the 2015 Jobs Act reform.

The law still prohibits the use of instruments specifically aimed at controlling employees.

Equipment which could monitor employees is admitted but only in the case of organisational, production-related or security needs, and after either an agreement is signed with the works councils or the public authority has given its authorisation. However, such rules do not apply to instruments or equipment used to perform employees’ duties (eg, technological devices assigned to employees such as smartphones, personal computers and tablets) and which can always be used without specific authorisation from public authorities or works councils.

To what extent can employers regulate off-duty conduct?

Off-duty conduct cannot be regulated by employers. However, off-duty conduct can be used to file a legal claim or to start disciplinary procedures if it damages the company (eg, if the employee reveals confidential information to third parties) or its image (eg, if a newspaper reveals that a manager has been convicted of a crime).

Are there rules protecting social media passwords in the employment context and/or on employer monitoring of employee social media accounts?

No specific rules apply. Case law differentiates between publicly available information on social media (which can be
Trade secrets and restrictive covenants

Intellectual Property

Who owns IP rights created by employees during the course of their employment?

Inventions made by employees in the course of their employment as a result of their tasks and duties belong to the employer. However, the employee is entitled to be recognised as the author of the invention.

Restrictive covenants

What types of restrictive covenants are recognised and enforceable?

The parties can agree a non-compete agreement. The non-compete obligations must be remunerated and the remuneration must be “fair” in relation to the extension of the obligations.

Under Italian law, the wording of the agreement should specify:

- the territorial limitation of the restrictions;
- their duration; and
- the restricted business.

Are there any special rules on non-competes for particular classes of employee?

No, the rules are the same for all grades of employee. The only difference is the maximum duration: five years for executives (the ‘dirigenti’) and three years for other employees.

Discipline and grievance procedures

Procedures

Are there specific laws on the procedures employers must follow with regard to discipline and grievance procedures?

The employer must follow a specific disciplinary procedure set forth by Article 7 of the Workers Statute. According to the law, a grievance letter must be delivered to the employee outlining the facts and circumstances under which the breach took place, and giving the employee at least five days from receipt of the letter to present, either in writing or orally, his or her justifications.

After this term has expired, the employer can dismiss the employee or apply a disciplinary penalty. The disciplinary penalties other than dismissal are set forth by collective bargaining agreements in relation to the gravity of the misconduct.
Industrial relations

Unions and layoffs

Is your country (or a particular area) known to be heavily unionised?

Italy

Yes. In Italy, trade unions historically played an important role in the creation of employment legislation. Now the situation has changed, mostly for private companies, because of many reforms introduced by Parliament.

In the past, the number of union members was very high, particularly in medium to large companies, but is now decreasing. There are many trade unions in every industry sector, meaning that negotiations can be difficult and complex for employers.

What are the rules on trade union recognition?

Italy

In Italy, there is no system of trade union recognition, as there is abroad (eg, in the United Kingdom).

What are the rules on collective bargaining?

Italy

A national collective bargaining agreement applies to every company belonging to an employer organisation that has signed the collective agreement, as well as for other employers that voluntarily apply the relevant sector’s collective bargaining agreement (in fact, nearly all companies). Some collective bargaining agreement clauses apply by law (eg, those stipulating minimum wages).

The primary source of rights for the employment relationship is the national collective bargaining agreement. In recent years the focus has increasingly shifted to collective bargaining agreements signed with the works councils of each company.

In any case, unions are private organisations and the bargaining process is based not on law, but on agreement between trade unions and employer organisations.

Termination

Notice

Are employers required to give notice of termination?

Italy

Yes. Employers must give notice of termination unless there is a serious disciplinary reason for the dismissal.

The duration of the notice period is determined by the collective bargaining agreement. During the notice period, the employee must work and must be paid. Alternatively, paid garden leave can be agreed.

Redundancies

What are the rules that govern redundancy procedures?
Under Italian law, a justified objective reason for dismissal occurs when the company ceases operating or implements a reorganisation leading to a reduction in the workforce.

In case of litigation, the company should be able to demonstrate the suppression of the position previously held by the dismissed employee.

Further, in order to rule on whether a dismissal is valid, the judge can examine factors other than the mere suppression of the role.

Prevalent case law provides that in the case of individual dismissal, the selection of employees to be dismissed in the same role must be subject to the same legal criteria as for collective dismissals (including dependent family members and seniority of service). Thus, the employees to be dismissed must be those who are less senior and who have fewer dependent family members.

Are there particular rules for collective redundancies/mass layoffs?

Law 223/1991 applies and was recently extended to executives (the 'dirigenti').

If a medium to large company with more than 15 employees wishes to dismiss more than four employees over a 120-day period for justified objective reasons, it must launch a special redundancy process.

An objective justified reason for dismissal occurs if a company reorganises its structure to deal with an unfavourable business situation.

The procedure begins with a written communication to the internal works council and the trade unions stating:

- the reasons for the redundancy process;
- the reasons why it is not possible to take alternative measures instead of dismissal;
- the number and job classification levels of the redundant employees;
- the timeframe for the dismissals; and
- any measures to mitigate the social consequences of the collective dismissal.

Within seven days of receiving this information, the works councils and unions may request a joint procedure to examine:

- the reasons for the redundancy,
- the possibilities of using the workforce (or part of it) in different ways (including flexible working hours and downgrading or retraining dismissed employees).

This procedure must be completed within 45 days of the initial communication. If the parties fail to reach agreement, the next step is a conciliation phase conducted by the Public Labour Office, which may last for up to 30 days. Overall, the procedure takes 75 days.

At the end of the procedure the employer notifies the employees in writing of their dismissal, observing the required notice period.

The selection criteria for the employees to be dismissed are set out by law (ie, length of service, family responsibilities and technical, production and organisational needs). For example, in order to avoid the risk of litigation, a company cannot choose to dismiss the oldest employees or any underperforming employees. It is possible to avoid applying the selection criteria only if an agreement on alternative rational and objective criteria is reached with the unions.

In practice, usually the unions will agree only if the company undertakes to dismiss only employees:

- eligible for a pension; and
- who accept an economic incentive to leave, as agreed with the unions.

A letter, including the list of employees being dismissed, must be sent to the unions and the Public Labour Office for registration on the availability list, which gives the employees a number of financial and regulatory benefits (eg, entitlement to an availability allowance).

In the letter the company must explain and demonstrate that the employees to be dismissed have been chosen by applying the criteria stipulated by law.
What protections do employees have on dismissal?

There are differences between employees hired before and after March 7 2015, when the Jobs Act entered into force, with regard to protection against unfair dismissal. Before March 7 2015 Law 92/2012 applied.

The following applies to the unfair dismissal of an employee hired before March 7 2015:

- Where the reasons for the dismissal are found to be non-existent, the company must reinstate the worker or pay the equivalent of 15 months’ salary – the employee has the choice. In addition, the company must pay compensation equal to the salary that the employee would have received from the date of dismissal until the date of the court ruling up to 12 months plus the relevant welfare contribution costs.
- If the court finds that the dismissal was simply not justified, the employee has the right to obtain compensation of between 12 and 24 months’ wages.
- If the dismissal is found to be based on discriminatory reasons, the judge can order the company to pay the salary that the employee would have received from the date of dismissal until the date of the court ruling (with no cap) and to reinstate the employee or pay him or her the equivalent of 15 months’ salary.
- If the dismissal is found to be legitimate but the company failed to follow all the procedural steps set out by law, the company must pay an indemnity of between six and 12 months’ salary.

For employees hired after March 7 2015, according to the Jobs Act the following rules apply.

- Null and void dismissal – if the dismissal is found to be based on discriminatory reasons or parental issues, or null or void for other reasons (eg, it is found to be retaliatory), the court will order the company to pay the salary (subject to social security contributions) that the employee would have received from the date of dismissal until the date of the court ruling, and to reinstate the worker or pay him or her the equivalent of 15 months’ salary (the employee has the choice).
- Unfair objective dismissal – if the court ascertains that the dismissal was simply not justified, the employee has the right to obtain compensation equal to two months’ salary for each year of service, with a minimum of four and a maximum of 24 months.
- Unfair disciplinary dismissal – the reasons for the dismissal are found to be overtly non-existent (merely non-existent for Law 92/2012), the court will order the company to reinstate the employee or pay him or her 15 months’ salary, and to pay the salary that the employee would have received from the date of dismissal until the date of reinstatement, with a cap of 12 months.
- In other cases where the dismissal is found to be unfair (eg, if the penalty is disproportionate to the facts), the employee has the right to compensation equal to two months’ salary for each year of service, with a minimum of four (12 under Law 92/2012) and a maximum of 24 months.

Regarding the unfair dismissal of an executive (‘dirigente’), except in the case of discrimination, the amount of compensation is established by the collective bargaining agreement, depending on the dirigente's seniority and age.

Courts/tribunals

Which tribunals or courts have jurisdiction to hear complaints?

A special section of the civil courts is dedicated to labour trials.

What is the procedure and typical timescale?

The procedure is quick compared to the other civil procedures in Italy – a first-instance decision can be issued in six to 12 months.

Since 2012, for the dismissal of employees hired before March 7 2015, a special, faster procedure applies, which lasts four to
What is the route for appeals?

The courts of appeal hear appeals from the lower courts.

An appeal can be filed if:

- the judge erred in examining the facts;
- a mistake was made in applying the law; or
- the proceedings were carried out incorrectly.

There is also the possibility to appeal before the Supreme Court in case of an error in applying the law (but not for mistakes regarding the examination of the facts).