

January 2016

Collective Redundancies and Reorganisations

Italy

Summary

In Italy, special provisions apply to collective redundancies, as described below.

When do the provisions apply?

A collective redundancy occurs when an employer intends to reduce its workforce due to a reorganisation process (e.g. shut down of a business unit, a production plant or a number of individual job positions). Pursuant to the Collective Dismissals Law (Law. n. 223/1991), the collective dismissal procedure applies to employers with more than 15 employees, which intend to dismiss at least five employees within a period of 120 days in a single unit or in different units located in the same territory (i.e. province).

What are the requirements? Who are “appropriate representatives”?

Information and Consultation process: In order to proceed with a collective dismissal the employer must follow a specific procedure, which can last 75 days and is split into two different phases. The first phase is mandatory, the second phase is not.

- i. Internal phase: the Company must send a letter to the respective Works Council, to the provincial Trade Unions and also to the competent authorities (i.e. the Local Employment Office, or Ministry of Employment if the affected business units are located in different regions). The letter should contain: (a) the reasons for making employees redundant; (b) the technical, organisational or production reasons which make it impossible for redundancies to be avoided either in their entirety, or in part (by adopting measures such as using part-time employees, reducing hours, etc.); (c) the number, rank and job description of all potentially redundant employees and of the remaining workforce; (d) the timetable for the redundancy plan; (e) the possible measures to reduce the social impact of the redundancy plan; and (f) the method of calculation of the additional sums to which the employees are entitled which are not provided for by law or under collective agreements. Within seven days of the date of receipt of their letter, at the request of the Trade Unions, an information and consultation process between the parties is carried out, the aim being to examine the reasons which have contributed to the decision to make redundancies, to agree different “selection criteria” to the statutory criteria (see below) and to try to find a different solution to reduce the number of employees involved. This procedure must be completed within 45 days.



- ii. External phase: if the parties do not reach an agreement during the internal phase, the Local Employment Office or Ministry of Employment will summon the parties for a further examination, which lasts up to 30 days. There is no obligation to reach agreement, but the employer cannot dismiss the employees until the end of the consultation period. After 30 days, the employer can serve notices to dismiss in accordance with the notice periods, which vary according to the position and seniority of each employee. Within the following seven days, the list of the dismissed employees together with their names, places of residence, roles, level of seniority, ages, family situations, as well as a detailed indication of the methods by which the selection criteria have been applied must be communicated in writing to the Regional Employment Office.

What sanctions apply if the process is not followed?

The main risk if the process is not followed is that the dismissals will be unfair. If the Employment Court holds the dismissal unfair, the risk is different depending on the date the employee was hired:

- i. For employees hired before 7 March 2015:

- if the unfairness of the dismissal is due to a breach of the collective dismissal procedure with the Trade Unions, the employer is ordered to pay the unfairly dismissed employee an indemnity which ranges between 12 and 24 months' salary;
- if the unfairness of the dismissal is due to a breach of the "selection criteria" agreed with the Trade Unions in the collective dismissal procedure or provided for by law, the employer is ordered to reinstate the employee (who can opt for an indemnity equal to 15 months' salary instead of reinstatement) and to pay him/her a further indemnity equal to 12 months' salary plus social security contributions due for the period between the dismissal and the Judge's decision.

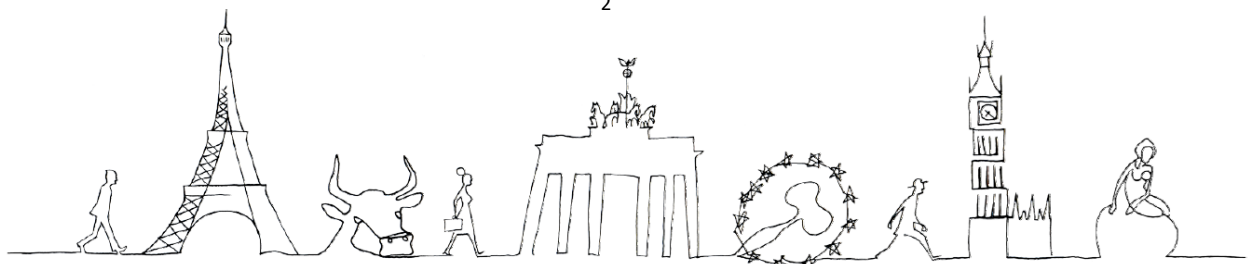
- ii. For employees hired on or after 7 March 2015:

- if the unfairness of the dismissal is due to a breach of the collective dismissal procedure with the Trade Unions or breach of the "selection criteria", the employer is ordered to pay the unfairly dismissed employee an indemnity which ranges between 4 and 24 months' salary, without social security contributions, depending on the length of service of each employee.

Are certain employees protected from dismissal?

Disabled persons hired in accordance with the Disabled Employees Statute are a protected class of employee. Pursuant to this Statute, the dismissal of a disabled employee as part of a collective redundancy is not valid and can be declared null and void if the number of remaining disabled employees in the workplace is lower than the legal number required by the law.

How do I choose which employees to dismiss?



During the information and consultation process, the employer and the Trade Unions negotiate the criteria to select the employees to be made redundant. Should the employer and the Trade Unions not reach agreement on the criteria, Italian Law imposes mandatory selection criteria of the employees as follows: family circumstances (i.e. dependent family members); length of service in the Company (i.e. *last in, first out*); and the employer's technical, production and organisational needs.

More favourable rules might be provided for under a national collective bargaining agreement or the plant-level collective agreement applied by the employer, if any.

What will it cost?

Aside from payments in the case of unfair dismissal (see above), the direct costs for making redundancies are as follows:

- i. Employees' salaries during the process (45 days or 75 days);
- ii. Payments for unemployment indemnity: the employer must pay (if due) to the INPS (National Social Security Authority) the mobility amount multiplied by the number of employees to be laid-off and then multiplied by nine. This sum may be reduced to one third should the employer reach agreement with the Works Council and the Union during the consultation process; and
- iii. Indemnity in lieu of notice: the length of the notice period is provided for by the national collective agreements.

Other mandatory payments are:

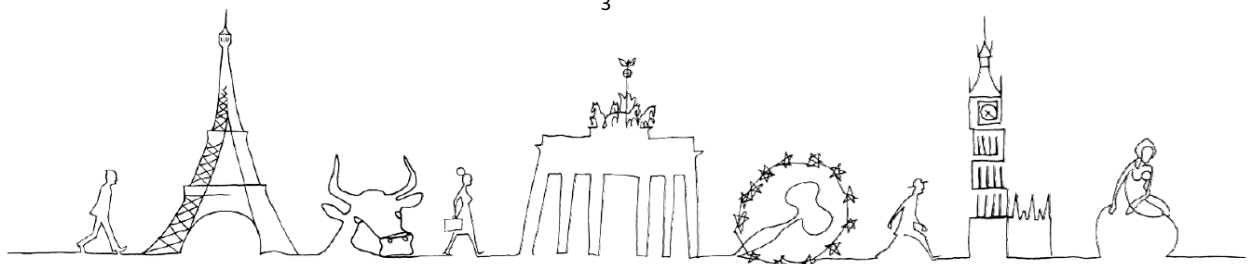
- i. Employment termination payment (*T.F.R. – Trattamento di fine rapporto*), which is a sum already accrued in the Company's balance sheet and is calculated by adding for each year of service a share equal to the amount of the due annual remuneration divided by 13.5;
- ii. Supplementary monthly payments due up to the date of termination of the employment contract, calculated on a pro rata basis, including the pro rata of supplementary monthly payments accrued during the notice period;
- iii. Payment in lieu of unused holiday, if holiday has not been used by the employee because of the termination of the employment contract, the employee is entitled to a payment in lieu.

An additional severance payment is not provided for by law. However, the dismissed employee can claim the unfairness of his/her dismissal and be awarded an additional payment by the Employment Court, in the amount indicated above.

Are staff required to work during the consultation process?

Employees are required to work until the end of the procedure and also until the end of the notice period, if the employer decides not to pay them the indemnity in lieu of notice. In particular, during the notice period the employee must perform his/her normal tasks and duties. If the employee refuses to work, he/she must pay to the employer the relevant indemnity in lieu of notice. If the dismissal is served on the employee by the employer with immediate effect, the employee is entitled to receive the indemnity in lieu of notice.

Garden leave can be agreed by the parties on an individual basis.



Can I ask employees to sign a waiver agreement?

The parties are entitled to reach a settlement in order to mutually terminate the employment and/or to waive any potential claims against each other. Settlement agreements can be reached both at a collective (between the employer and the Trade Union/works council) or individual level (between the employer and the employee) and they are commonly used at the end of the information and consultation process.

Do I need consent from a public authority?

No.

Can disgruntled employees bring claims?

Yes. Employees can bring claims for unfair dismissal, and/or for a failure to inform and consult, before the employment Courts. Such claims generally need to be brought within 240 days from the date of the dismissal.

This material is for general information only and is not intended to provide legal advice.

**For more information regarding employment law in Italy, please contact:
Davide Boffi, Ughi e Nunziante Studio Legale, at dboffi@unlaw.it.**

