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OVERVIEW ON ITALIAN REGULATORY FRAMEWORK ABOUT LABOUR

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Updated to June 2016

Introduction

This document provides a very high-level overview of the rules governing the Italian labour system.
It contains a brief and schematic illustration of the fundamental mandatory provisions that currently regulate the employer/employee relationship in Italy and should not be regarded as an exhaustive commentary of the applicable laws.
Since in Italy employment law is continuously subject to significant modifications, the information contained in the Guide should be constantly updated to reflect the evolution of the legislation, as well as of case-law interpretation.
As a consequence, specific and updated legal opinions on the single requested topics and/or issues are recommended.

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1. Trade Unions

The Article 39 of the Italian Constitution provides for: (i) the citizens' freedom to establish Trade Unions; (ii) the Trade Unions' possibility to be registered according to law (provided that they are governed by democratic principles); and (iii) the registered Unions' possibility to enter into collective labour agreements to be applied to all employees and employers belonging to the professional categories to which the single agreements refer.

Points (ii) and (iii) above have never been enforced, since the Unions have always feared that the registration procedure would have triggered an influence by the public authorities on their internal affairs. For the above reason, the Unions have always maintained status as unregistered associations. This, however, has not prevented them from playing a considerable role in the industrial relations system.

The Italian Unions perform an essential process of selecting and prioritising demands (and therefore interests) of workers. The main Italian Unions are CGIL, CISL, UIL.

2. Participating mechanism of worker representatives in the management of the company (employee representatives, joint commission of employees, management and shareholders)

The most important Italian law concerning Trade Unions' freedom and activity is Law No. 300/70. It provides, among other, the employees' freedom to join Unions, the Unions' activity within companies along with the consequent rights, introducing a special remedy to be started in the case an "anti-Union conduct" is put in place by the employer.

All employees are entitled to establish Unions, to join them, and to carry out Union-related activities at the workplace. Moreover, Union's members have been granted with special protection against discrimination.

In production units staffed with more than 15 employees, work councils (hereinafter "**RSU**" or "**RSA**"), may be established at the company level on the initiative of the employees. The members of RSU must be affiliated to Unions that are signatories of the collective bargaining agreements applied in the production unit.

3. Employment contract law

On 24 December 2014, the Italian Government passed the Legislative Decree which implements Law No. 183 of 10 December 2014, introducing a new type of employment contract applicable to newly hired permanent employees. Then, on 15 June 2015, the Legislative Decree No. 81 regarding the reorganization of employment contracts and the new rules on change of duties (hereinafter the «**Decree**») has been published in the Italian Official Gazette. The Decree entered into force on 25 June 2015.

With the Decree, all the rules governing the different types of employment contracts have been simplified and gathered together in a single consolidated law in order to incentive the **open-ended employment contract**. Several amendments have been issued to the prior regulation, in particular with reference to: part-time employment, fixed-term contracts, agency work agreements, self-employed work on projects and apprenticeship. The new permanent employment contract (the «**Increasing-protection Employment Contract**» - *Contratto a tutele crescenti*) provides for increasing protection against unfair dismissal depending on the length of service. This kind of contractual arrangement seems to be the most suitable for the employers also because the law regarding tax measures for 2015 (the "*Legge di Stabilità*") granted a contribution exemption on an annual basis up to an amount of € 3.250 for new employment.

The exemption is granted for two years if the following conditions are satisfied:

⇒ People are employed between 01.01.2016 and 31.12.2016;
⇒ People are employed with an open-ended contract.

This kind of benefit has the following limitations:

⇒ It does not include apprenticeships and domestic work;
⇒ It is not granted for workers that have been employed with permanent contracts by other employers in the six months preceding their new hiring;
⇒ It is not granted for workers who have already benefited of the above said exemption under a previous work relationship.

3.1 Fixed-term contract

All companies can opt for a fixed-term contract, only if:

⇒ they abide by the 36-months contractual relationship limit;
⇒ the limit of 20% of the total number of employee staffed with an open ended labour contract is respected.

3.2 Apprenticeship agreements

According to the Article 41 of Law Decree No. 81/2015, there are several types of apprenticeship agreements:

⇒ for professional diploma, high school diploma and technical high school diploma (from 15 to 25 years-olds);
⇒ professional training apprenticeship (from 18 years-olds);
⇒ higher education and research (from 18 years old – from 17, if the person has a certificate of professional qualification- to 29 years-olds).

Mixed-purpose contracts (thanks to the work performance, the apprentice receives training and compensation) have some legal advantages for the employer.

⇒ payment: salary can be down until two levels lower than the salary figure established by the relevant national collective bargaining;
⇒ withdraw: at the end of the apprenticeship period, no cost has to be incurred;
⇒ economic advantages (mainly, tax relief and the possibility to finance the training with inter-professional funds).

3.3 Internship or Stage

Internship is:

⇒ a period "*on the job-training*" which involves the temporary insertion of a subject in a company. It allows to gain a work experience through professional training and practical training in the workplace.
⇒ It is not considered as an employment relationship.

Internship is regulated by each region, according to the State Guidelines (the Agreement Government-Regions and Autonomous Provinces of Trento and Bolzano of 24.1.2013).

In general, Internship includes the involvement of three subjects:

⇒ the trainee: who performs the internship experience;
⇒ the host Company: a public or private entity which hosts the training;
⇒ the promoter entity: the institution who shall ensure that the internship is well performed (e.g. University).

Internship is activated on the basis of a Convention between the promoter entity and the host Company, together with a training project signed by the promoter, the host Company and the trainee annexed to the Convention. The educational project defines the type of training and other key features (area of professional reference, location, duration and period of the internship, project-specific training).

3.4 Part-time

The legislative Decree No. 81/2015 provides a new modality of utilization of part-time contract:

⇒ part-time employee may be required to perform additional working-hours (so called "*lavoro supplementare*") within the limit of 25% of the contractual weekly working hours against a remuneration increase of 15%;
⇒ parties may agree elastic or flexible clauses;
⇒ the employee has the right to transform a full-time contract in part-time in case the employee or his relatives suffer of serious chronic degenerative diseases.

4. Maternity and parental leaves

The Italian law system provides for equality between men and women employees. Pursuant to this principle, the Decree No. 151 of 26 March 2001 (so called "**Testo Unico sulla maternità**", hereinafter the "**Decree**") grants special protection in the case of pregnancy and maternity to fathers as well, who are entitled under certain circumstances to special parental leaves.

According to the Article n. 54 of the Decree, employers can not dismiss: i) pregnant female employees; ii) female with children under the age of one; iii) employees who married for less than one year. These measures of protection will not apply in the event the dismissal is grounded on: i) a "just cause", ii) the company's shut down, or iii) completion of the assignment for which the female employee has been hired or due to the expiry of the contract's term; iv) the negative outcome of the probationary period in case of female pregnant employees and female employees with children under the age one.

4.1 Mandatory maternity leave

During the so-called "*mandatory maternity leave*" female employees must abstain from performing any working activity. Such period runs from two months before to three months after the child birth or, alternatively, from one month before to four months after the child birth (provided that this latter alternative is not detrimental to the mother's or baby's health, as certified by a doctor).

Under exceptional circumstances (i.e. the mother dies or is seriously ill, the mother abandons the child, or the father is granted exclusive custody of the child), the mandatory maternity leave, limited to the three months after birth, can be used by the father.

During the aforesaid period the mother or, when applicable, the father, is entitled to receive a rate (usually 80%) of her/his normal salary from INPS. Such amount is paid in advance by the employer and then set off against the social security charges to be paid to INPS.

Certain national collective labour agreements provide that the above portion shall be increased up to 100% and that the difference shall be at the employer's charge. The mandatory maternity leave must be taken into account for the purposes of calculating seniority, the 13th and 14th monthly salaries (the latter if applicable), holidays, and so on.

4.2 Paid daily leaves

During the baby's first year of age women employees are entitled, upon specific request, to benefit from special paid daily leaves (two hours per day if the working time exceeds 6 hours, otherwise one hour per day).

Fathers can also be entitled to such paid leaves under the following exceptional circumstances:

i. the father is granted exclusive custody of the child;
ii. the mother decides not to make use of them;
iii. the mother is a self-employed worker.

The above right belongs to the father also during the ordinary maternity leave. Paid daily leaves are duplicated in the case of twin births.

Parents of disabled children can benefit from special conditions.

Finally, it is worth noting that additional provisions regulate both parents' leaves from work if the child becomes ill, up to the age of eight.

With regard to parental leave, the legislative decree no. 81/2015, Article 8, has finally reserved the right to the employee to request, only for once, as an alternative to the parental leave, the transformation of full-time employment in part-time (part-time). Although, such reduction shall not be more than 50% of the previous working time.

5. Work discipline

5.1 The system of sources governing the employment relationships in Italy

Italian employment relationships are governed by the system of rules resulting from the following sources:

⇒ Italian Constitution
⇒ European Law
⇒ Ordinary Italian legislation
⇒ Collective labour agreements at national and company level
⇒ Individual employment agreements
⇒ Customs and business practices
⇒ Labour Courts' decisions

5.2 General overview: characteristics and differences between employment and self- employment relationships

The Italian Civil Code defines as "employee" a worker "*who commit himself to co-operate against a remuneration in an enterprise by working manually or intellectually under the direction of the entrepreneur*". This definition is not clear, since the remuneration and the direction (i.e. the duty to follow the entrepreneur's instructions) are also key features of certain forms of self-employment.

According to the prevailing opinion, in order to distinguish employment from self-employment, the crucial element is the existence of an element of "subordination", i.e. a particular link that makes the employee's activity subjected to the employer's managerial, organizational and disciplinary powers.

5.3 Classification of the employees

Pursuant to Italian law, employees are divided into four main categories (Article 2095 of the Civil Code):

i. blue-collars (operai),
ii. white-collars (impiegati),
iii. middle-executive (quadri),
iv. executive (dirigenti).

⇒ **Blue collars, white collars and quadri**

The Article 2095 of the Civil Code sets forth a major distinction between blue-collar and white-collar employees, on the basis of the intellectual/manual criterion. Indeed, a white-collar employee is defined as a worker who undertakes professional activities with the function of co-operating with the employer and with the exclusion of merely manual activities. Through the development of industrial technology and enterprise organisation, this distinction is no longer supported or connected with a clear social status distinction. In fact, most national collective labour agreements have progressively extended the treatment granted to white collar employees to blue collar employees as well. The category of quadri was introduced by a law dated 1985. Some national collective labour agreements have consequently extended and further specified the provisions regulating their relationships. However, as a general principle the rules applying to white-collar employees are also applicable to quadri.

⇒ **Dirigenti**

Dirigenti are considered the highest level of employees. The criteria for distinguishing dirigenti from the other high level employees are set by collective agreements and the Labour Courts. The most common definition, shaped by an established case-law tradition, is that a dirigente is the alter ego of the employer, in charge of directing the whole enterprise or an important or autonomous branch thereof, operating with full autonomy within the general directive of the employer.

Dirigenti are organised in Trade Unions separate from those of other employees and conclude separate national collective labour agreements. They are excluded by law from certain provisions applying to other employees, namely certain rules on working time, overtime, fixed-term contracts and termination of employment.

6. Collective employment agreements

- **Definition**. Collective bargaining is the main instrument of the joint regulation of the Italian employment relationship. From a social perspective, it expresses solidarity among workers and it 'produces' fairness and legitimation. From an economic perspective, it is mainly regarded as a wage-setting institution, but it usually covers the full range of terms of employment and working conditions, including most notably working time, work organization elements and job classification.
- **Coverage rate**. The main indicator of the relevance of collective bargaining is the coverage rate, that is the share of employees covered by collective (wage) bargaining. According to ICTWSS Database (Database on Institutional Characteristics of Trade Unions, Wage Setting, State Intervention), in **Italy collective bargaining coverage is around 80% of the work force**.

- **Structure**. The centralisation/decentralisation of collective bargaining refers to the prevalent level of bargaining.
  In Italy there is a trend towards decentralisation within multi-level bargaining systems, from a central to industry level. Usually, vertical coordination between levels it is essentially based on the formal introduction of opening and opt-out clauses at national level, which respectively allow to bargain or even derogate on issues already set at higher level (usually at sectoral level), within the limits and according to the rules established at this same higher level.

7. Working hours and leave

In Italy working time is governed by both law provisions and national collective labour agreements. Pursuant to law, ordinary working time cannot exceed 8 hours a day or 40 hours a week (so called "**standard working time**"); however, national collective labour agreements often reduce the normal working time (art. 3 Legislative Decree n. 66/2003).

The working hours exceeding such standard working time will be considered: i) additional work, up to the legal limit of 40 hours, with reference to the agreement sets a weekly limit of less than 40 hours; ii) overtime if the working time exeeds more than 40 weekly hours.

In any case, it is necessary to refer to the collective agreement to determine the actual applicable working hours.

The Article 36 of the Constitution, as well as the Article 2109 of the Civil Code, set forth the employee's right to an annual vacation. Law, national collective labour agreements or Labour Courts determine the duration of holidays. Waiver of vacation time is not allowed under Italian employment law; consequently, in the event the vacation period is not fully used, employees are entitled to an indemnity in lieu of holidays.

8. Wage regulation and incentives for employees (including employee's benefits)

The Article 36 of the Italian Constitution sets forth the essential employment remuneration requirements, stating that the employee is entitled to receive a fair remuneration for the work performed and that, in any case, such remuneration shall be adequate for the employee to maintain him/herself and his/her family. However, the law does not specifically determine a national minimum salary.

As a matter of fact, according to the Article 2099 of the Civil Code, remuneration shall be paid in the amount agreed by the parties or established by collective agreements. In the absence of individual or collective labour agreements, the remuneration shall be determined by Labour Courts.

8.1 Fixed items of the salary

National collective labour agreements set forth the so-called "base salary", i.e. the minimum amount of salary to be paid in the several business sectors. As anticipated, the such salary are usually applied by Labour Courts when settling disputes between employers and employees, even if the rules of the collective labour agreements do not apply to the employment agreement in dispute.

The employer is obviously entitled to pay the employees a remuneration higher than the above salary. The portion of remuneration exceeding it is called "*superminimo*".

In addition to the base salary and the "*superminimo*", if any, the law provides for an additional fixed item of the remuneration, namely the annual 13th monthly salary (so called "*tredicesima*"). It is paid once a year on the occasion of Christmas holidays and usually corresponds to one monthly remuneration. In addition to the "*tredicesima*", collective labour agreements or even individual agreements may establish the payment of an annual 14th monthly salary (so called "*quattordicesima*").

8.2 Severance indemnity

Italian law also provides for the payment of a deferred form of remuneration, i.e. the severance indemnity (so-called "**TFR**"). Together with other minor mandatory termination indemnities, the TFR must be paid to employees when an employment agreement is terminated. The amount of the TFR varies depending on the employee's salary and length of service. As a matter of fact, the TFR is equal to approximately one month's salary multiplied by the years of service at the same company. The aggregate TFR accrued in favour of all the employees is allocated in the company's financial statements during the entire term of employment.

Employees who have worked at least 8 years in the same company can request to the employer a payment in advance up to 70% of the TFR accrued in the following events: i) extraordinary health expenses; ii) purchasing a first home; iii) expenses related to child birth.

8.3 Variable items of the remuneration and benefits

In addition to fixed remuneration, there are other forms of variable payments, provided by the law, collective agreements or individual agreements.

First of all, the employer may elect certain employees eligible for a bonus calculated pursuant to discretionary criteria established by the employer (such as productivity, performance, financial targets, personal objectives, etc.) which may vary on a year basis. Business practices, particularly in the context of multinational companies, have recently introduced stock option plans for employees. Under certain circumstances benefits deriving from stock option plans are subject to a favourable tax and social security regime.

As for the other benefits generally granted to employees, it must be noted that employers frequently grant dirigenti and key-employees fringe benefits such as a company car and cellular phone. In such cases, the value of the personal use, calculated pursuant to statutory rules, shall be included in the relevant pay-roll slip for tax and social security purposes.

Article 2099 of the Civil Code also provides for the possibility of profit sharing but such form of payment is quite rare in business practices.

9. Laws on dismissal

Under Italian Law, employers would need to have a reason to terminate employment.

9.1 Reasons on which an individual dismissal can be grounded

Employees can be lawfully dismissed only for the following reasons:

i. for a so called "**just cause**", without giving any notice period to the employee. The "just cause" is defined as a cause of such seriousness so as to prevent the continuation of the employment and to justify summary dismissal by the employer (e.g. removing the company's confidential documents and information in breach of the employee's duty of loyalty and fairness);
ii. for a "**justified subjective reason**", giving a notice period. The subjective reason could be defined as an "employee-related reason" of dismissal, normally referred to a serious breach of the employee's contractual obligations, but less serious than a reason constituting a "just cause" (e.g. poor performance, failure to reach certain minimum productivity results etc..);
iii. for a "**justified objective reason**", giving a notice period. The objective reason could be defined as a "company related reason", normally referred to a reason relating to the production activity, the work organization and the regular functioning of the company. This includes closure of the plant/office/unit, suppression of the employee's job position, termination of the business activity etc...

9.2 Payments due to affected employees

In any case of termination of the employment, the employee is entitled to the severance indemnity.

9.3 Possible claims by affected employees

Employees hired before 7 march 2015

If the dismissal is found by a Court to be unjustified as detailed above, consequences will be vary depending on the reason on which the dismissal was originally grounded.

a) Dismissal found to be without a just cause or a justified subjective reason:

⇒ If the dismissal is ascertained as void, or oral, the employee would be entitled to reinstatement or, on the employee's choice, an indemnity in lieu of reinstatement equal to 15 months of total compensation.

⇒ In addition, the employee would also be entitled to damages equal to the salaries that the employee would have received from the day of the dismissal until the day a Court orders reinstatement.

⇒ For severe unjustified dismissals, the employee would also be entitled to damages limited to a maximum of 12 months of total compensation (plus social security contributions).

⇒ In some other cases where the dismissal is found to be without a just cause or a justified subjective reason, the employee would be entitled to all inclusive damages only, ranging between 12 and 24 months of total compensation (actual amount of damages would depend on employee's length of service, the

Employees hired after 7 march 2015

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⇒ For the case in which the disciplinary facts charged to the employee do not exist, the employee would be entitled to reinstatement.

⇒ In addition, the employee would also be entitled to damages up to a maximum equal to 12 months of total compensation (plus social security contribution).

⇒ In any other cases where the dismissal is found to be without a just cause or a justified subjective reason, including dismissals proved by a Court being disproportionate compared to the

number of employees staffed by the employer, the size of the employing company, the behavior of the parties). ⇒ In any other cases, the employee would be entitled to all inclusive damages only, ranging between 6 and 12 months of total compensation.	reasons grounding the dismissal, the employee would be entitled to all inclusive damages only, equal to 2 months of total compensation per each year of length service and in any case ranging from a minimum of 4 months of total compensation up to a maximum of 24. ⇒ In any other cases, the employee would be entitled to all inclusive damages only, ranging between 2 and 12 months of total compensation
b) <u>Dismissal found to be without a justified objective reason:</u> ⇒ see the consequences under section a) of the present column, first bullet point.	b) <u>Dismissal found to be without a justified objective reason:</u> ⇒ The employee would be entitled to all inclusive damages only, equal to 2 months of total compensation per each year of length service and in any case ranging from a minimum of 4 months of total compensation up to a maximum of 24.
c) <u>Dismissal found to be discriminatory, regardless of the reason which formally grounded the dismissal:</u> ⇒ the employee would be entitled to reinstatement, or, on employee's choice, an indemnity in lieu of reinstatement equal to 15 months of total compensation. In addition, the employee would also be entitled to damages equal to the salaries that the employee would have received from the day of the dismissal until the day a Court orders reinstatement.	c) <u>Dismissal found to be discriminatory, regardless of the reason which formally grounded the dismissal:</u> ⇒ see the consequences under the present column on section a) first bullet point.

9.4 For the companies with a number of employee less than 15.

For companies with a number of employee less than 15, the rules concerning dismissal are specified by the art. 8 of the Law 604/1966. In these cases, where the dismissal is found to be without a just cause or a justified subjective reason or objective reason, the employee would be entitled to be hired or, on the employer's choice, to all-inclusive

damages only, ranging between 2,5 and 6 months of total compensation (actual amount of damages would depend on employee's length of service, the number of employees staffed by the employer, the size of the employing company, the behaviour of the parties).

10. Recruitment of foreign employees

Law No. 158 of 10 April 1981, which ratifies ILO Convention No. 143/1975, provides that all immigrant employees, when legally residing in Italy, are entitled to receive the same treatment as Italian employees. Among other provisions, it is provided that immigrant employees, hired or seconded in Italy, are entitled to receive the same remuneration as Italian employees in proportion to the work performed.

11. Social insurance (covering retirement)

All workers performing their activity in the Italian territory shall be covered by the social security system, regardless of their nationality. In general, the social security contributions are paid to the National Social Security Institute (*Istituto Nazionale per la Previdenza Sociale* – INPS). The employer shall register the new employee to the applicable social security insurance and pay part of the relevant contributions. The average rate charged to the employer (except additional reductions and discounts) is around 32.70% of gross salary for employees. The contributions paid by the employee is generally equal to 9.19% of the "gross salary".

Italian legislation provides coverage of the following branches of social security: retirement, disability, survivor, illness, unemployment, early retirement, family, maternity and paternity those equivalents and performance in case of accidents at work and occupational diseases.

Furthermore, the employees are covered by a mandatory insurance policy managed by the Italian Insurance Institute for accidents at work (*Istituto Nazionale per l'Assicurazione contro gli Infortuni sul Lavoro e le malattie professionali* - INAIL) in relation to the risks deriving from the work activity, including death and permanent and temporary disability. The latter insurance policy is fully paid by the employer. The amount of the relevant premium depends on the type of the activity carried out by the employer.

12. Laws on health, safety & environment

The rules concerned workplace safety and health are provided by the Legislative Decree n. 81/2008.

The Legislative Decree no. 81/2008 proposes a safety and health management system in the field of work environment which is aimed to:

⇒ identifying the factors and risks of sources;
⇒ reducing the risk which should tend to a minimum level;
⇒ continuous monitoring of the preventive measures put in place;
⇒ corporate strategy developing that includes all the elements for the organization (technology, organization, working conditions ...).

The Decree also has clearly defined responsibilities and figures within the company with regard to the workers' safety and health.

Please note, particularly sensitive risk groups must be protected against any relevant danger.

13. Labour supervision and administration

The Legislative Decree no. 151/2015, as implementation of the so called **Jobs Act** has changed the rules on the employees' monitoring-at-distance, as traditionally regulated by the Article 4 of the Workers' Statute ("*Statuto dei Lavoratori*").

The new version of the Article 4 allows the installation of monitoring-at-distance devices, in force of an agreement with the work councils, or with the authorization of Territorial Employment Department ("*Direzione Territoriale del Lavoro*" - hereinafter, the DTL Authorization).

Such control is permitted only for the following reasons:

⇒ to satisfy the organizational and productive needs;
⇒ to guarantee the security in the work-place;
⇒ to protect the company assets.

Such agreement can be signed also with the most representative Trade Unions at national level in case are involved companies which have production units in different provinces of the same Region or in different Regions.

The agreement with the work councils or DTL Authorization, is not required by law if the work has performed through instruments which might also allow the employer to monitor at distance the employee's activity (pc, tablet, smartphone).

It has been permitted the utilization of devices registering access and presence in the workplace (badges) without agreement with the work councils or DTL Authorization.

The information collected through instruments which might also allow the employer to monitor at distance the employee's activity, can be used for any purposes related to the employment relationship including disciplinary purposes.

The principle that the law about monitoring-at-distance, shall guarantees dignity and privacy to the employee on the workplace, has a fundamental reference in the Privacy Law (Legislative Decree no. 196/2003). In particular, the employee has to be provided with an adequate informative about the use of such equipment of control.

The data collected with the equipment can be used by the employer in compliance with principles expressed by the Legislative Decree no. 196/2003 in terms of need, proportionality, adequacy and adherence to the objective pursued. Beyond this view, the employer shall always choose the equipment of control which are less invasive.

14. Labour dispute settlement

Especially in cases where the employers do not have strong lawful grounds to serve a dismissal, it is a common practice in Italy that the employer offers a termination package to the employee on top of the payment in lieu of notice and the severance indemnity and within a compromise agreement which would include the employee's full waiver to any claim relating to the execution and termination of the employment, in order to avoid the risk that the dismissal is contested.

The amount of the possible termination package would depend on the strength of the envisaged dismissal and therefore on the chances for the employer to win a case in Court if the employee challenges the dismissal and starts a legal proceeding.

Settlement agreements shall be executed before the Labour Office or the Unions in order to consider the waivers final and effective.

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