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SOCIAL SECURITY AND WELFARE LEGISLATION

Q&A

DOING BUSINESS
IN ITALY

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CONTENTS

What are the main rules of law applicable to employment in Italy?.....	2
Which employment contracts are available to hire in Italy?.....	2
What are the aggregate social security contributions payable in Italy ?.....	2
Is part-time work permitted under TEC or PEC in Italy ?.....	3
When are dismissals on economic grounds permitted in Italy?.....	3
What are the consequences of an unfair economic dismissal in Italy ?	3
What are the provisions of law governing business transfers in Italy?.....	3
Am I permitted to hire free-lance/independent personnel in Italy rather than using PECs or TECs?.....	4

What are the main rules of law applicable to employment in Italy?

- Recruitment in Italy is generally subject to the rules of the labour code and the national collective agreements, namely, the “*Contratti Collettivi Nazionali di Lavoro*” (or “collective bargaining agreements”), which are adopted by the employers, and differ in the relevant business sector.
- In particular, collective bargaining agreements:
 - i. set out the legal and economic conditions (which provide for gross minimum salary, subject to the level of responsibility) of subordinate employment (including periods of probation, notice terms, number of monthly wages – 13 or 14 – etc.), thus becoming a reference benchmark for individual employments, and
 - ii. govern the relationships among the different counterparties to the “collective bargaining agreements” (trade-union relationships).

Which employment contracts are available to hire in Italy?

- As a general rule, employment contracts are on a permanent basis (PECs), although fixed-term employment contracts (TECs) are permitted, as well (though limited to 20% of PEC workforce), provided that the overall term of a TEC (including any extension thereof) does not exceed 36 months. Beyond 36 months, a company is obliged to convert TECs into PECs.
- Apprenticeship (or alternate employment) contracts in Italy are used to hire people below 30 years, since these contracts allow employers to take advantage of certain economic benefits, with

special regard to their favourable social security and welfare contribution system (10%).

- In Italy, TECs or PECs may also apply to the workforce recruited by means of temporary employment agencies or “Job on call” arrangements, which enable employers to call workers whenever they need to, subject to the restrictions set out in the collective bargaining agreement applicable to the company.

What are the aggregate social security contributions payable in Italy?

Generally, the contribution rates for industrial or trading companies (except for development/building and mining industry) representing the most important categories, are roughly as follows:

RISK	EMPLOYER CONTRIBUTION	SALARY CONTRIBUTION
Illness and Pregnancy –		
▪ <i>Industry</i> (on aggregate)		
Blue collars	2.68%	–
White collars	0.46%	–
▪ <i>Trade</i> (on aggregate)		
Blue collars/White collars	⁽¹⁾ 2.68%	–
Disability, Old Age, Survivors (DOAS)	23.81%	9.19%
Unemployment	⁽²⁾ 1.61%	–
Family Allowances	0.68%	–
Work Accidents and Occupational Diseases	⁽³⁾	–

- (1) Aggregate contribution, of which: 2.44% for social security coverage and 0.24% for pregnancy coverage.
- (2) Most of TECs (except for, *eg.*, employee replacement contracts, apprenticeship contracts, or contracts for certain types of seasonal workers) are subject to an additional contribution of 1.40%.
- (3) Contributions on account of work accidents and occupational diseases may change subject to the risks entailed by the company's business sector (the payroll basis will affect the applicable rate, as well), and are at the employer's charge.

The payment of employers and staff DOAS contributions is limited to a wage cap of € 100,324 (2017). The remaining contributions are paid on the aggregate salary.

Is part-time work permitted under TEC or PEC in Italy ?

- Yes it is. Part-time recruitment under a TEC or a PEC (*ie.*, less than 40 hours a week) is permitted.
- The part-time contract, which should be executed and delivered in writing, is governed by the collective bargaining agreement adopted by the employer.

When are dismissals on economic grounds permitted in Italy?

- In Italy, besides fair dismissals, dismissals are also permitted on "fair objective grounds".
- Over the last years, the case law definition of "fair economic grounds" has been extensively changing, as not only dismissals caused by the company distress situation (such as operating loss, material downturn of turnover etc.) were considered as valid

grounds, but also those dismissals aimed at increasing the company's efficiency and effectiveness, regardless of any distress situation.

- For instance, the case law has recently established that profit optimization constitutes fair and legitimate grounds for dismissal.

What are the consequences of an unfair economic dismissal in Italy ?

- Following the enactment of the Jobs Act and the launch of "rising protection" PECs for personnel hired after 7 March 2015, in case of unfair dismissal a capped indemnity principle will apply.
- Such right to compensation will grow based on the employee seniority within the company, and will be comprised between a minimum of 4 monthly wages (for 1-year seniorities) and a maximum of 24 monthly wages, plus the balance of any other accounts.
- Nowadays, the right to reinstatement in case of unfair dismissal (except for discrimination cases) has become impracticable under "rising protection" PECs for personnel hired after 7 mars 2015.

What are the provisions of law governing business transfers in Italy?

- Pursuant to article 2112 of the Italian civil code business transfers in Italy are "any sort of transaction that, owed to mergers or transfer arrangements, entails a transfer of title to an organised business activity, whether for profit or not, existing before the transfer, which maintains its own brand after the

transfer, regardless of the contractual form adopted, or the deed whereby the transfer was made, including usufruct or business lease”.

- The above provisions will also apply to transfers of business concerns, provided that they consist in an organized and independent business activity.
- Article 2112 of the Italian civil code sets forth the principles of survival of employment contracts and maintenance in full force and effect of the rights arising therefrom, upon transfer from the transferor to the transferee, and provides for their joint and several liability.
- According to law, in case of transfer of businesses employing more than 15 people, compliance must be ensured with the special reporting procedure to the trade union representatives 25 days, at least, before the date of execution and delivery of the relevant deed of transfer (or preliminary binding agreement).
- The personnel authorisation/consent to business transfers is not required.

Is recruitment of free-lance/independent personnel instead of PECs or TECs permitted in Italy?

- In Italy, you may have recourse to independent workers – who are practitioners, usually – provided that they are enabled to render their services in full freedom and independency, having regard to the place and time of work, so as to avoid any risk of subordination.
- Commonly, the parties enter into a contract setting out the employment conditions (*i.e.* scope and term of employment, modes of performance of the services to be rendered, right of

withdrawal and notice etc.) and the economic conditions (*i.e.* fees, means of payment etc.).

- In order to avoid the risk of third-party subordination, the Italian social security and welfare legislation provides for the parties’ right to have the employment contract “certified” by the employment tribunals either before or during the employment.