

Italian managers and collective redundancy: the European Court of Justice extends collective redundancy procedure to *dirigenti*

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The decision of the European Court of Justice

The European Court of Justice, in its decision of 13 February 2013 (C 596/2012), declared that Italian Law no. 223 of 23 July 1991 regulating collective redundancy was not compliant with European Directive no. 98/59/CE, in so far as the Italian collective procedure was not applicable to managers (i.e. *dirigenti*).

In fact, according to the Directive, the collective redundancy procedure is applicable to each and every employee, including managers, regardless of his/her level, job title and duties.

The transposition of the judgment has occurred through Law no. 161 of 30 October 2014, the so-called “Legge Europea 2013-bis”, which amends article 24 of Law no. 223/1991 and provides that collective redundancy procedures are now applicable to *dirigenti*.

The amendments provided by Legge Europea 2013-bis

Pursuant to Law no. 223/1991, dismissals are deemed collective if a company, employing an average of 15 employees over the preceding 6 months, dismisses at least 5 employees within a period of 120 days (starting from the day of the first dismissal).

According to the amendment indicated in the above paragraph, managers shall be counted towards the 5 dismissals within 120 days and 15 employee thresholds required by Italian law for the application of collective redundancy procedures.

Moreover, Legge Europea 2013-bis specifies the provisions of the collective redundancy procedure which are applicable to *dirigenti*.

First of all, the company must send a letter to the applicable trade unions, including those that represent the *dirigenti*, in which it clearly details all the relevant information concerning the collective redundancy, such as the number of employees to be made redundant, the reasons for the redundancy and the reasons why the company cannot pursue an alternative course of action.

Within 7 days of receipt of the letter, the company and the trade unions must begin the consultation in order to avoid or reduce the impact of collective dismissal on employees, and to explore possible alternative solutions to meet the company's needs.

With reference to the consultation, *ad hoc* meetings must take place between the company and trade unions representing the *dirigenti*. Nevertheless, at the end of the process any agreement must be unique to all employees involved.

The criteria provided by the collective agreement or by Italian law governing the selection the employees to be made redundant are also applicable to *dirigenti*.

If the labour court finds the causes of the *dirigenti*'s dismissal unfair and in violation of the collective redundancy procedure and/or the above mentioned criteria, the company is required to pay the *dirigenti* the same indemnity provided for the other employees, which may range from 12 to 24 months' salary (quantified by the judge on a case by case basis). The supplementary indemnity usually applied in cases of unfair dismissal of *dirigenti* provided by relevant national collective agreements shall not apply.

Indennità di mobilità

All provisions concerning the *indennità per mobilità*, (i.e. the indemnity paid monthly to all dismissed employees) shall remain inapplicable to *dirigenti*.

Therefore, the employer shall not pay the contribution for *dirigenti* to access the *mobilità* procedure, and *dirigenti* shall not be registered on the lists of *mobilità* and consequently shall not be entitled to the *indennità per mobilità*.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.