Whistleblowing in Italy

A high level outline of employment protection for whistleblowers in Italy.

Please note the European Commission has proposed a draft directive to strengthen whistleblower protection across the European Union. This remains subject to review and approval by the European Parliament and the European Council. Please see our elexica article for a high level overview.

Introduction

Italy introduced a key piece of legislation at the end of 2017, which for the first time, specifically broaches the topic of whistleblowing and applies not only to the public sector. The new legislation establishes that public and private sector employees must be protected if they report illegal practices within their company/organisations.

Who is protected?

Employees are protected by a specific legislation safeguarding them from dismissal, disciplinary action or any form of discrimination/retribution as a consequence of having flagged any unlawful practices to the authorities.

Which disclosures are covered?

Given the absence of any specific legislation for the private sector, there is no clear-cut definition of what makes a qualifying disclosure. Under general principles of law, employees may not make unfounded accusations which could damage an employer’s reputation or needlessly incur legal costs. As such, in accordance with general principles of law, accusations must be specific and backed by evidence.

With regard to the public sector, civil servants may flag “knowledge of unlawful practices acquired in relation to the
individual’s position”, again provided that it does not amount to slander, defamation or a false accusation.

There has been debate on how this wording should be interpreted: some have interpreted this as excluding individuals who acquire knowledge of unlawful behaviour casually, so not necessarily as a result of their specific position within a company.

**Procedure for making a disclosure**

The law does not provide a specific procedure for the private sector for making a qualifying or protected disclosure. In general, there must be one or more channels for employees and all personnel to report unlawful practices. Any such disclosure must be based on specific and objective information. In terms of the public sector, the law states that individuals must first raise the concern with the department manager. Individuals can ask for the assistance of a trade union in raising a concern.

In general, companies are free to adopt their own internal policies, which may include specific procedures and whistleblowing helplines for flagging concerns. The policies usually state that anonymous accusations are not considered. There is an increased awareness amongst employers that having an internal policy in place can avoid regulatory breaches and reputational damage.

If an individual is to make a criminal complaint, then the lawful procedure must be followed, ie filing a charge with the public prosecutor. In this case, the claimant must provide evidence backing the claim.

**Payment**

There is no legislation requiring a company to award a payment to an individual to make a disclosure. Likewise, there are no provisions entitling an individual to payment for flagging a concern.

**Protection available**

Workers are protected by the law and the applicable collective bargaining agreement. It is automatically unfair to dismiss or victimise an employee because he/she made a disclosure if in doing so he/she did not breach the law or contract.

**Contracting out**

It is not possible to agree with individuals that they will not make a protected disclosure. Any such arrangement would be void under Italian law.

**Remedies**

The remedies depend on the worker’s collective agreement and in the event of an unfair dismissal, on the individual judge’s decision. In some cases an individual can be entitled to reinstatement, payment in lieu of reinstatement and/or damages.

**Whistleblowing policies/arrangements**

There is no statutory requirement that employers put in place a whistleblowing policy or whistleblowing arrangements. There is, however, an increasing awareness that doing so means that concerns can be dealt with efficiently and transparently. There is also the added benefit that having an internal policy in place means that concerns can be raised
and managed internally, not externally mitigating the risk of reputational damage/repercussions.

**Practical implications**

The practical implications for employers are devising and implementing a policy which safeguards employees and at the same time also guards against any abuse of whistleblowing to air personal grievances rather than genuine concerns. Practical implementation might include a “whistleblowing hotline”.

Further details on whistleblowing in Italy are available [here](#).