BRIEFING PAPER

 KEY POINTS:

1. General legal framework
2. Labour rights in the Constitution
3. Contract of employment
4. Severance payment
5. Hours of work

 Summary:

1. General legal framework
* The Italian Constitution was approved by the Parliament in December 1947 and came into effect on 1st January, 1948. The Country is organized as a centralized State, divided into Regions, Provinces and Municipalities.
* The Head of the State is the President of the Republic. The Legislative is composed of two chambers, namely the *Senato* (315 seats) and the *Camera* (630seats). The government of the Republic is made up of the President of the Council and the ministers, who together form the Council of Ministers.
* All laws must be approved by both Chambers. The Judiciary is a professional and pyramidal body, composed of three instances. Judges are appointed after a competitive state exam; their career depends on the *Consiglio Superiore della Magistratura*, an administrative body composed of 33 members, the Head of State, the first President of the Supreme Court, the General Prosecutor, 20 members elected by judges, and 10 by Parliament.
1. Labour rights in the Constitution
* The Constitution contains some declarations of principles and some more effective rules, largely employed in case-law.
* (e.g. Sect. 1 - Italy is a democratic Republic
founded on labour; Sect. 4: the Republic recognises to every citizen the right to work; Sect. 35 – the Republic protects work in all its forms and applications)
1. Contract of employment
* The contract of employment is considered indefinite except in cases specified by legislation. Fixed-term contracts of employment are permitted to the extent that they are justified on
grounds such as seasonal work, replacement of employees on sick leave or maternity leave, and extraordinary and occasional work.
* Suspension of the contract of employment is pemitted under Sect. 2110 of the Civil Code in case of industrial accident, illness, maternity.
* As far as fixed-term contracts are concerned, termination is automatic at the end of the specified duration or on completion of the specified task.
* The Civil Code provides that each contracting party (the employer and the employee) of a contract of indefinite duration can terminate it, provided the notice period is respected (Sect. 2118), or without any notice in case of just cause (sec 2119).
* Dismissals on the grounds of political opinion, trade union membership, sex, race, language or religious affiliation are null and void.
* In case of unjustified dismissal, remedies are different according to the size of the firm: employers employing more than 15 employees. The contract of employment may also be terminated by the resignation of the employee, provided a notice period is respected.
1. Severance payment
* For any termination of the contract of employment, even for dismissal for just cause or resignation, the employee is entitled to receive from the employer a severance payment (*trattamento di fine rapporto*) which is considered to be a part of salary, set aside every year and kept by the employer.
1. Hours of work
* Article 36 of the Constitution establishes that maximum working time must be fixed by law.
The old Act no.692 of March 1923, still partly in force, provided that the hours worked by
employees ought not to exceed 8 hours a day or 48 hours a week. Work performed in excess of 40 hours a week is overtime.
* Act 196/1997 requires a specific authorisation by the Department of Labour (Inspectorate) for work exceeding 48 hours a week. Under Act 623, of 1923, still in force, overtime must be paid with an increase of not less than 10 per cent over the regular rate.
* Special pay increases are fixed by collective agreements for overtime worked on Sundays, on other holidays and night work.
* For *part-time work***,** the distribution of the working hours is established by an individually written contract which cannot be changed by the employer.

KEY POINTS:

1. Paid leave
2. Maternity leave and maternity protection
3. Sick leave
4. Educational Leave
5. Minimum age and protection of young workers
6. Equality

Summary:

1. PAID LEAVE
* All workers have the right to rest one day a week ( art.36 of the Constitution) normally on Sunday.
* Act 260/1949 and 90/1954 recognises four national holidays and other holidays. During these festive days, workers receive regular pay.
* All workers have the right to annual paid leave. Some agreements foresee additional vacation on the ground of seniority.
* The time at which the holiday is taken is in principle chosen by the employee.
1. MATERNITY LEAVE AND MATERNITY PROTECTION
* Female workers have special protection in case of pregnancy and maternity (Sect. 2110 Civil Code,Act 1204 of 30 December 1971). From the beginning of pregnancy to one year after the child’s birth, the employee cannot be dismissed and during this period.
* Maternity leave is compulsory for female workers, from two months before until three months after childbirth.
* Some rights, reserved for the mother by Act 1204/1971, have been gradually extended to the father.
* In 1987, for the first time, the Constitutional Court (decision no.1/1987) extended to the father the right to leave for three months after birth.
* Both parents have the right to leave for no more than a total of 10 months during the first eight years of a child’s life. Both parents have equal right to leave in case of a child’s illness.
* The working mother, during the first year, has the additional right to two hours of daily rest, initially intended for breast-feeding.
1. SICK LEAVE
* In case of sickness, the employee’s protection has been remarkably improved, mainly through collective bargaining.
* The average period is about one year. During this time, the worker is fully paid.
1. EDUCATIONAL LEAVE
* Student workers have the right to paid days off work to take exams.
* Many benefits promoting the education of workers have been introduced since 1973 by national collective agreements.
* In case of military service, job security and seniority are guaranteed to all workers.
* The Civil Service of Conscientious Objectors and Service in Underdeveloped Countries have the same consideration.
* Special leave or unpaid absences are granted to workers by collective agreements on the occasion of important family events.
1. MINIMUM AGE AND PROTECTION OF THE YOUNG WORKERS
* The capacity to conclude a labour contract is related to the age of capacity in civil law.
* Act no. 977 of 1967 and no.345/1999 introduced a special regulation to protect the work of minors.
1. EQUALITY
* The Italian Constitution (art. 3) provides for the concept of equality of all citizens before the
law *without difference of sex, race, language, religion, political views, personal and social
position.*
* Italy has also ratified the *International Agreement of Economic, Social and Cultural Rights.*
* Equality between men and women at work is specifically recognised and guaranteed by Act 903, 9 December 1977.
* A law on sexual harassment at work does not exist; however, there is case law on unfair dismissal on this ground.
* The Constitutional Court has ruled that equality is a fundamental right of foreigners as well. For citizens of European Union countries, Sect. 48 of the EEC Treaty abolishes all discrimination at work, wage and other conditions of work.

 Key points:

1. Protection against anti-union practices
2. Collective bargaining and agreements
3. Workers’ representation in the enterprise
4. Strikes
5. Lock-outs (serrate)
6. Settlement of labour disputes

 SUMMARY:

1. Protection against anti-union practices:
* Sect. 28 of Act 300 of 1970 (Workers’ statute) provides that whenever the employer indulges in behaviour designed to hinder or limit the exercise of freedom of association and trade union activities , or the right to strike, the local organs of the relevant national trade unions can demand that the judge order the employer to cease and desist from his illegal conduct and to redress any grievances or obviate the effects thereof.
* Under case law a number of employers’ actions have been deemed to be *anti-union behaviour*, and are therefore prohibited.
* Under Section 28, the judge must summon the parties within the following two days and take a summary deposition of the facts at issue.
* An employer who does not comply with an order to cease anti-union behaviour shall be liable to penalties under section 650 of the penal code.
1. Collective bargaining and agreements:
* Unions can freely negotiate collective agreements at provincial, regional and national levels.
* Under Art. 17 of Law 936/86, which reorganized the National Council of Economy and Labour (CNEL), collective agreements and accords must be registered with the CNEL within 30 days after they have been concluded.
* Most categories of workers in Italy are covered by a collective agreement.
* it would be necessary to verify if at least the employer is a member of the employers’ association that has signed the agreement.
* the judges can take into account the minimum wage that has been fixed in the agreement as a parameter in view of fixing a *fair salary* pursuant to Sect. 36 of the Constitution.
1. Workers’ representation in the enterprise:
* The unions joining the biggest federations have a very important function in collective bargaining in public employment and receive protection in view of trade union activity at the plant level. The Workers’ Statute, 1970, regulates plant level union activity. The Statute has been an important means of support of the unions at plant level.
* The Workers’ Statute (Sect. 19) specifies that workers can choose representatives, who form plant level union bodies. These representatives have particular rights fixed by the Workers’ Statute, like the right to call meetings and *referendums* of workers, Sect. 20-21.
* For public employees there is a different system of workers’ representation (Act 29, 3 February 1993), but the rights are the same.
1. Strikes:
* The Italian Constitution recognises the right to strike, which must be exercised within the limits fixed by the law.
* Under the law of 1990 the notion of *public essential services* relates to certain rights protected by the Constitution referring to the life, health, freedom, safety, freedom to circulate, social assistance and provident fund (*previdenza*), instruction and freedom of communication of the persons. The law further specifies which services or activities are to be included in the definition of *public essential service.*
* Act 83, of 11 April 2000 has extended the above law to the public essential services fulfilled by a number of categories of self-employed workers, professionals and artisans.
1. Lock-outs (serrate):
* A specific regulation does not exist in the Italian legal system. When the employer locks out the workers he/she breaches the contract of employment and must pay wages.
1. Settlement of labour disputes:
* Labour Courts are integrated into the organization of the general civil court system, but follow special procedure.
* A special jurisdiction on labour issues was established in 1893, with an Act which introduced a “consiglio di probiviri”, composed of representatives of employers and employees, for lower cases.
* Act 80 of 1998 transferred to the labour courts the competence to hear cases brought by civil servants, which were previously dealt by the administrative courts.
* There is not a procedure for collective disputes, except for the possibility, introduced by the Act 80 of 1998, of asking the Supreme Court for the immediate interpretation of a collective agreement signed by the union of civil servants.