

ITALY

I. Legal notice - disclaimer

This sheet aims to provide a general overview of the main substantive rules concerning the terms and conditions of employment to be met by legislation transposing Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (OJ L 18 of 21.1.1997). By its very nature, such a sheet can only summarise and does not necessarily contain all the relevant information in this context. In no way can it replace legislative, regulatory or administrative texts, or applicable collective agreements. The information below has been provided by the authorities of the Member States, which have made every effort to ensure its accuracy. Neither the Commission nor the Member States concerned can, however, guarantee that the information provided is always precise, complete, accurate and up to date. Furthermore, publication on the portal of the European Commission does not imply in any way that the latter or its DGs and Services consider the rules presented in this way to be in conformity with Community law.

II. Instrument transposing Directive 96/71/EC

Legislative decree No 72 of 25/02/2000

Official publication: Published in *Gazzetta Ufficiale della Repubblica Italiana* No 75 of 30/03/2000

Internet link: www.lavoro.gov.it
www.cliclavoro.gov.it

III. Information on legislation applicable in accordance with the Directive

General information on legislation applicable to undertakings which, for a limited period of time, post workers to the territory of another Member State can be obtained at the following address:

Eures

Ministero del Lavoro e Politiche Sociali

Direzione Generale per le Politiche Attive, i Servizi per il lavoro e la Formazione

Div.V.

Via Fornovo 8

00192 Roma

Responsabile: dott.ssa Marinella Colucci

tel.+39 064683.4433

macolucci@lavoro.gov.it

Web site: www.lavoro.gov.it; www.cliclavoro.gov.it

Ministero del Lavoro e politiche Sociali

Direzione Generale Tutela delle Condizioni di Lavoro - Divisione V

Via Fornovo 8

00192 ROMA

Responsabile Dott.ssa Bellomia Valeria

Tel 06 46834504

e-mail: Div5TutelaLavoro@welfare.gov.it

Specific questions about the application of the law, as provided for by Article 9 of Legislative decree No 124/04, should be submitted via the Direzioni Provinciali del Lavoro to the General Directorate for Inspection Activities.

Questions as per Article 9 can only be raised via professional associations, trade unions and public bodies on their own initiative, or at the request of their members.

In this case the question can be raised by the Italian employer asking for the posting.

Confindustria

Viale dell'Astronomia, 30 - 00144 ROMA

Website www.confindustria.it

Confapi

via della Colonna Antonina 52

00186 - Roma

Tel: 06/69015.1 Fax: 06/6791488

Website : www.confapi.org

IV. Failure to comply with the prescribed terms and conditions of employment

Cases of failure to comply with the prescribed terms and conditions of employment in Italy and possible cases of illegal transnational activities can be reported to the following address:

Local Inspectorate DPL in every Italian city or DRL in every Italian region.

Web site : www.lavoro.gov.it/DPL/default

Web site : www.lavoro.gov.it/DRL/default

At central level

Direzione Generale per l'Attività Ispettiva

Via Flavia,6 00187 ROMA

TEL 06 46837273

FAX 06 46837909

e-mail DGAttivitaIspettiva@lavoro.gov.it

dgattivitaispettiva@mailcert.lavoro.gov.it

V. Situations constituting a posting [Article 1 of the Directive]

Legislative decree No 72 of 25/02/2000

The Legislative decree applies to undertakings that post workers to the territory of Italy,

- on their account and under their direction, under contract concluded between the undertaking making the posting and the party for whom services are being provided;
- to an establishment or to an undertaking owned by the group,

provided that in both cases there is an ongoing employment relationship between the undertaking making the posting and the worker during the period of posting.

VI. Posted workers [Article 2 of the Directive]

Directive 96/71/EC applies to workers who, for a limited period of time, carry out their work on the territory of a Member State other than the State in which they normally work.

In Italy a (dependent) worker is any person who, on the basis of an employment contract, works in an undertaking, under the employer's direction (Article 2094 Civil Code), irrespective of that person's title in the country of origin.

According to the case law of the Court of Justice of the European Communities, the temporary nature of an activity carried out on the territory of a Member State in the context of free provision of services cannot be determined abstractly but should be judged on a case-by-case basis, depending on the duration, frequency and periodicity or continuity.

In Italian legislation, fundamental requirements in the posting of workers are both

- temporary duration of the secondment, and
- ongoing interest of the employer.

In Italian legislation and jurisprudence it is fundamental for the employer's interest in the secondment to be for the whole period of secondment.

It should be noted that if an occupational activity in Italy can no longer be considered as being exercised temporarily, taking account of the above-mentioned criteria, but is stable and continuous, *all* the binding rules and regulations in force in Italy apply.

Italian legislation of the posting of workers is provided for by Article 30 of Legislative decree No 276/30.

Website: <http://www.welfare.gov.it/RiformaBiagi/RapportiLavoro/Distacco/default.htm>

VII. Work periods and rest periods [Article 3(1)(a) of the Directive]

Working time and rest periods are provided for by Legislative decree No 66/2003:

Normal working time is 40 hours per week, but collective agreements provide more flexibility for the average duration of working time, taken over a reference period of one year. **Maximum weekly** working time is established by collective agreements, and may not exceed 48 hours in any seven-day period, including overtime, for a period of four months, rising to 6 or 12 months, by collective agreements, for technical reasons related to the organisation of work.

Rest periods are provided for by Article 7 and amount to 11 resting hours in every 24 hours.

Weekly rest is one day off every seven days (continuous 24 hours rest), normally on Sundays. Collective agreements can provide for different resting periods for particular working conditions and periods of activity.

Website: www.parlamento.it/leggi/deleghe/dlattcee.htm#2003

Website: www.cnel.it/archivio/contratti_lavoro/BDCL.asp

VIII. Paid annual holidays [Article 3(1)(b) of the Directive]

A minimum of 4 weeks is provided for by law (Legislative decree No 66/2003), but, also in this case, collective agreements can give more flexibility and extend the duration of paid annual leave.

Website:

www.parlamento.it/leggi/deleghe/dlattcee.htm#2003

Website: www.cnel.it/archivio/contratti_lavoro/BDCL.aspCNEL.it

IX. Pay [Article 3(1)(c) of the Directive]

In general, remuneration is provided for by second-level collective agreements (at territorial or enterprise level), on the basis of a minimum standard established by national collective agreement. Remuneration for overtime is also provided for in collective agreements.

Website:

www.parlamento.it/leggi/deleghe/dlattcee.htm#2003

www.welfare.gov.it/RiformaBiagi/Archivio/GuidaRiforma/Contrattazione/default.htm.

Website:

www.cnel.it/archivio/contratti_lavoro/BDCL.aspCNEL.it

X. Rules concerning hiring-out of workers and the terms and conditions applying to temporary workers [Articles 3(1)(d) and 3(9) of the Directive]

All the legislative and economic provisions provided for (subordinate) workers of the same level apply to temporary workers.

See Legislative decree No 276/2003 (from Article 1 to Article 28).

Temporary Agency work can be provided only by “Labour Agencies” that are authorised by the Ministry of Labour on the basis of specific requirements.

Website:

www.welfare.gov.it/RiformaBiagi/RapportiLavoro/Somministrazione/default.htm.

Information can be requested from:

Ministero del Lavoro e Politiche Sociali

Direzione Generale delle Politiche Attive, i Servizi per il lavoro e la Formazione

Div. III

Via Forno 8

00192 Roma

Responsabile: dott. Marco Esposito

tel.+39 064683.4045

mesposito@lavoro.gov.it

XI. Health, safety and hygiene at work [Article 3(1)(e) of the Directive]

Health and safety conditions are provided for by:

- Legislative decree No 626 of 24/9/1994, as amended by Legislative decree No 242/96;
- Legislative decree No 494/96, as amended by L.d. No 528/99 for constructions;
- L.d. No 532/99 for nocturnal work;
- Presidential decree No 459/96 and subsequent amendments for health and safety with machinery at work;
- L.d. No 493/96 on minimum requirements for safety signals at work.

Website:

www.ISPESL.it

www.welfare.gov.it/Lavoro/TutelaCondizioniDILavoro/SaluteSicurezza/entra+negli+uffici/Direzione+tutela+condizioni+lavoro.htm

www.cnel.it/archivio/contratti_lavoro/BDCL.aspCNEL.it

XII. Rules concerning the terms and conditions of employment of pregnant women and women who have recently given birth [Article 3(1)(f) of the Directive]

Legislative decree No 151/2001, as amended by Legislative decree No 115/2003, provides for maternity and paternity protection and introduces special rights and guarantees also for the father, so as to give equal opportunities in terms of wages, parental leave and working conditions.

After giving birth, a mother is allowed compulsory and fully paid maternity leave of five months (normally two months before birth, and three months after birth).

There is an optional period, partially paid, of six (seven) months after the maternity leave, for both mother and father, and there are specific allowances for baby sickness and for baby care.

Website:

www.welfare.gov.it/Lavoro/TutelaCondizioniDILavoro/tutela+lav+situazioni+particolari/default.htm?baseChannel=Lavoro&actualChannel=tutela%20lav%20situazioni%20particolari

<http://www.welfare.gov.it/Sociale/famiglia/congedi+parentali/default.htm>

XIII. Rules concerning the terms and conditions of employment of children and young people [Article 3(1)(f) of the Directive]

- Legislative decree No 345/99 for youth protection at work;
- Law No 53/2003 on minimum requirements for education and vocational training, in reforming instruction system;
- Legislative decree No 276/2003 (Article 48, 49) provides both for training (from 15 to 18) and specialised work (from 18 to 29).

Website :

www.parlamento.it/leggi/deleghe/dlattcee.htm#2003

www.parlamento.it/leggi/deleghe/dlattleg.htm#2000

www.parlamento.it/leggi/eelenium.htm

www.cnel.it/archivio/contratti_lavoro/BDCL.aspCNEL.it

XIV. Equality and non-discrimination [Article 3(1)(g) of the Directive]

- Law No 903/77 for equal right between men and women;
- Legislative decree No 215/2003 for racial and ethnic origin discrimination;
- Legislative decree No 216/2003 for religious, personal opinions, handicap, age and sexual harassment.

These decrees introduced judicial protection against discrimination. There is a definition of direct discrimination, indirect discrimination (any behaviour, even when neutral, that can disadvantage someone), and nuisances, which is a wider concept than sexual harassment.

Also, collective agreements provide for specific rules to fight against discrimination at the workplace.

Website:

www.welfare.gov.it/Lavoro/OccupazioneEMercatoDelLavoro/pari+opportunita/default.htm?baseChannel=Sociale&actualChannel=pari%20opportunita

www.parlamento.it/leggi/deleghe/dlattcee.htm#2003

www.pariopportunita.gov.it.

www.pariopportunita.gov.it/I-SERVIZI/Normativa-/Normativa-Italiana.doc_cvt.htm

www.cnel.it/archivio/contratti_lavoro/BDCL.aspCNEL.it

XV. Terms and conditions of employment concerning other matters [Article 3(10) of the Directive]

This provision has not been transposed into Italian legislation.

XVI. Procedural and administrative requirements

There are no specific documents or administrative procedures for UE workers, only for non-EU workers.

XVII. Mediation mechanisms in case of conflict

Under Article 6 of Legislative decree No 72/2000, posted workers have a special kind of protection before the Italian court. If they decide to sue to uphold their working conditions, they can bypass part of the procedure (the obligatory settlement before the Direzioni Provinciali del Lavoro) and go directly to court.

Collective agreements also provide for extrajudicial conciliation procedures.

www.cnel.it/archivio/contratti_lavoro/BDCL.aspCNEL.it

XVIII. Information on judicial enforcement procedures

Information on possible judicial remedies in Italy can be obtained from the following address:
Ministero della Giustizia – Via Arenula – Roma

Website:

<http://www.giustizia.it/uffici/info/tribunali.htm>.