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CONSTITUTIONAL
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INDEMNITY CAP FOR
UNFAIR DISMISSALS
BY SMALL
EMPLOYERS



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By CRCCD Employment Team

Italy's Constitutional Court Invalidates Indemnity Cap for Unfair Dismissals by Small Employers

In its Judgment No. 118/2025, published on 21 July 2025, the Italian Constitutional Court ruled that the statutory 6-month cap on the indemnification payable in case of unfair dismissal of employees hired after March 2015 by employers with 15 or fewer employees is unconstitutional. To better understand the significant impact of such ruling, it is necessary to briefly explain the intricacies of the Italian legislation governing the dismissal of employees, differentiated between (i) small-sized and larger employers and (ii) employees hired before or after March 2015.

Background

In our jurisdiction employees hired by employers with 15+ employees are historically more protected in case of unfair dismissal than employees of smaller enterprises. As a matter of fact, statutory rules awarding a different level of safeguard have existed since the 60s.

If hired before March 2015, they may be entitled to (i) in the most serious cases, reinstatement (or 15 monthly salaries in lieu, subject to employee's election), plus the salary (and social security charges) for the entire period from dismissal to reinstatement (capped at 12 months) or (ii) in the less serious cases, an economic indemnification ranging from 12 up to 24 monthly salaries. If hired after March 2015, they are only entitled to an economic indemnification, ranging between 6 and 36 months' salary (reinstatement as a remedy remains but just for a very limited number of circumstances).

Employees of enterprises with 15- employees are instead entitled to economic indemnification only. If hired before March 2015 the amount ranges from 2.5 up to 6-month salary; if hired after March 2025 the amount is half the sum awarded to employees of larger employers (as said: 6-36), subject however to a 6-month cap (so that the range is between $6/2=3$ and 6 months).

The Constitutional Court Reasoning

Prompted by a local Court dealing with the case of an employee dismissal hired in April 2015 and dismissed by a small employer, the Constitutional Court has been called to assess whether the statutory provisions applicable to employees hired by smaller enterprises after March 2015 (allowing, in case of unfair dismissal, economic indemnification between 3 and 6 months) are aligned with the principles of our Constitution, specifically in terms of equal/fair treatment (art. 3), protection of the right to work and labour in all its forms and applications (arts. 4 and 35), safeguard of the workers' dignity and freedom (art. 41) and respect Italy's international obligations under

article 117(1) of the Constitution in relation to Article 24 of the Revised European Social Charter, which guarantees the right to adequate indemnification in case of unfair dismissal. In its reasoning, the Constitutional Court emphasized that indemnification for unfair dismissal must reflect the seriousness of the conduct, the damage suffered, and the specific features of each employment relationship.

While acknowledging the legislator's discretion in designing differentiated remedies for unlawful dismissal, the Court reiterated that such discretion is bound by constitutional guarantees. Therefore, as stated in earlier rulings (e.g., Judgments No. 194/2018 and No. 183/2022), any indemnification scheme must ensure customization of damages and take into account factors such as the employee's tenure, the size and structure of the employer, and the parties' conduct and economic conditions.

On this basis of these considerations, the Court found that the "halved" protection allowed to these employees, combined with the fixed and insurmountable cap of 6 months, result in a too narrow and rigid range which does not allow Labour Courts to adequately modulate the indemnification on the basis of the wide range of potential wrongfulness and harm suffered by the employee in the specific cases, and force them to treat similarly situations which deeply differ one from the other. In addition, this restrained range does not represent a sufficiently effective deterrent to unjustified dismissals.

This rigid and stiff scheme thus violates the principles of proportionality and reasonableness and fails to satisfy constitutional standards of fairness.

The Court, as already in the past, also added that a small headcount no longer reflects, *per se*, the actual economic strength of an employer, especially "*in a context dominated by the relentless evolution of technology and the transformation of production processes*", in which a small number of employees may be offset by substantial capital investments and a significant volume of business.

The Decision and its Practical Implications

The ruling of the Constitutional Court removes the indemnification 6-month cap, thus eliminating the narrow range which limits the Labour Courts' discretion, while the principle of "halved protection" available to employees of small enterprise remains in place. Indeed, the Constitutional Court did not consider it unlawful *per se*, being aware that a disparity in the consequences related to dismissals ordered by small and larger employers exists and can validly be reflected in the law. As a consequence of this decision, Labour Courts are now free to determine indemnification for employees of small enterprises hired after March 15 in a range between the (already existing) minimum of 3 months and a "new" maximum of 18 months, i.e. half the 36 months awardable to employees of larger companies. This will give judges a wider discretion to assess case-specific elements, including the conduct of the employer and the consequences for the employee, taking into consideration all the variable elements of the specific position.

At the same time, however, smaller enterprises - which in the Italian economic fabric not always can rely on "*substantial capital investments and a significant volume of business*" - are now potentially faced by significantly higher liabilities in case of dismissals considered unfair by a Labour Court (as said, indemnification can amount to up to 1.5 year of salary!). This increase is likely to determine a higher prudence, if not reluctance, in investing in new hires, will negatively impact on such enterprises' competitiveness and will render the labour market less dynamic in the overall.

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Conclusions

Judgment No. 118/2025 confirms the Constitutional Court's prior warning (reflected in Judgment no. 183/2022) that the Italian legislator needs to re-design and adjust dismissal protections more broadly and reduce the too huge difference in the protection of workforce employed by small or larger employers.

To this regard the Court points out that the small headcount size can no longer be seen as the sole indicator of the lower economic strength of the employer, in line with the evolution of the EU and domestic legislation.

We consider that the Italian legislator will also need remedy the paradoxical discrepancy that this judgment creates between treatment available to unlawfully dismissed employees hired before March 2015, who have therefore a longer tenure but an indemnification which remains set in the range of 2.5-6 month salary, and the treatment granted to employees hired after such date, for whom indemnification can now range between 3 and 18 months (which also determines unjustified distortion and inequality).

A legislative intervention on the entire dismissal discipline is therefore no longer defensible in order to iron out the differences collaterally created by different layers of legislation enacted over the years and by this – and past – judgment(s) of the Constitutional Court.

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This document aims to provide general information on the topic discussed and should not be considered legal advice nor an exhaustive analysis of every aspect related to the subject matter.

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