

## Italy

# Employment protection in relation to business transfers

<b>Phase</b>	Civil Code; Civil Procedure Code; Law 29 December 1990, no.428, Provisions for the fulfillment of obligations deriving from Italy's membership of the European Communities; Legislative Decree of 10 September 2003, no. 276, Implementation of provisions concerning employment and labour market, mandated by Law of 14 February 2003, no. 30; Legislative Decree no. 251 of 6 October 2004, Provisions amending Legislative Decree of 10 September 2003, no. 2765, concerning employment and the labour market; Law No. 87 of July 12, 2018, Urgent Provisions for the Dignity of Workers and Businesses; Law No. 234 of December 30, 2021 State Budget for the Financial Year 2022 and Multi-Year Budget for the Three-Year Period 2022-2024
<b>Native name</b>	Codice civile; Codice di Procedura Civile; Legge 29 Dicembre 1990, n. 428, Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee; Decreto Legislativo 10 Settembre 2003, n. 276, Attuazione delle deleghe in materia di occupazione e mercato del lavoro, di cui alla legge 14 febbraio 2003, n. 30; Decreto Legislativo 6 Ottobre 2004, n. 251, Disposizioni correttive del decreto legislativo 10 settembre 2003, n. 276, in materia di occupazione e mercato del lavoro; Legge 12 luglio 2018, n. 87, Disposizioni urgenti per la dignità dei lavoratori e delle imprese; Legge 30 dicembre 2021, n. 234 Bilancio di previsione dello Stato per l'anno finanziario 2022 e bilancio pluriennale per il triennio 2022-2024.
<b>Type</b>	Employment protection in relation to business transfers
<b>Added to database</b>	26 September 2016
<b>Access online</b>	<a href="#">Click here to access online</a>

## Article

Civil Code, paragraph 5 article 2112; Civil Procedure Code, articles 410 and 411; Law no. 428/1990, article 47; Legislative Decree no. 276/2003, articles 31 and 32; Legislative Decree no. 251/2004, article 9; Law No. 87 of July 12, 2018, Chapter II, Article 5; Law No. 234 of December 30, 2021, paragraphs 224-236

## Description

Under the Italian law, a transfer is defined as any operation which transfers the ownership of an undertaking or a part thereof, 'regardless of the type of legal procedure or legal act by which the transfer is made, including 'usufruct' or lease of the undertaking'. An undertaking itself is defined as 'an organised economic activity, with or without the aim of profit, which pre-exists the transfer and conserves its identity upon the transfer'.

The Italian Civil Code does not cover the transfer of shares, or cases where the transfer involves an undertaking or part of one which is in a state of financial crisis.

The Civil Code provides some protection to the employees involved in business transfers including apprentices and executives. However, consultants and self-employed people are not included. In particular:

- The transferee must apply collective agreements in force at the transferor on the day of the transfer until they expire or are replaced by new agreements applying to the transferor. This includes employment conditions and wage levels.
- The transfer cannot constitute itself a justified reason for dismissal.
- The involved employees can legitimately terminate the employment relationship if there is a substantial modification of the working conditions over the three months following the transfer.
- Joint liability between the transferor and the transferee apply in regards to debts existing at the time of the transfer, including wage and social security contributions. The liability is extended in case a subcontracting agreement is entered between the two entities up to two years following the termination thereof in line with the rules governing subcontracting. However, the transferred employee may release the transferor from obligations under the employment contract by applying settlement procedures set out in articles 410 and 411 of the Civil Procedure Code.

In addition, article 47 of law no. 428/1990 grants unions information and consultation rights in case of business transfer and sets out that workers who do not become employees of the transferee have a priority right in the case of new hiring by the transferee within one year from the date of the transfer, or any longer time span as set out in collective agreements.

Law No. 87 of July 12, 2018, Chapter II, Article 5 concerns the limitations imposed on companies in the event of relocation if they have benefited from state aid:

- Limits on relocation outside the EU: If a company (whether Italian or foreign, operating in Italy) has received state aid and then decides to relocate the activity (or part of it) outside the EU (with some exceptions) within 5 years, they lose the benefits. In such a case, they will be fined an amount between two to four times the aid they received.
- Limits on relocation within the EU: If the company relocates the activity from an incentivised area to another (even within the EU or the European Economic Area) within 5 years, they lose the benefits.
- Checks and repayment: Each administration will establish how to monitor compliance with these constraints and how to reclaim benefits in case of violation. The repaid amount will be increased by a specified interest.
- Pre-existing regulation: For aid and investments already in place or announced before the enactment of this decree, the previous rules apply.
- Allocation of refunded funds: The returned aids go to the State's budget and are then reassigned to the administration that provided the aid.

The clauses from 224 to 236, referred to as the "anti-relocation regulations," are provisions found in Law 234 of 30 December 2021. These regulations provide for several points:

- Mandatory communication for relocations: Companies with at least 250 employees intending to close a branch or establishment in Italy, resulting in the redundancy of at least 50 workers, are required to notify, at least 90 days in advance, local authorities, trade unions, the Ministry of Labour, the Ministry of Economic Development, and ANPAL. This communication can be relayed through the employer's association. Companies facing potential bankruptcy or insolvency are exempt. Any redundancies made without this prior notification or before the 90-day period are deemed null and void.
- Mandatory post-relocation plan: Following the closure announcement, the company has 60 days to devise a plan to alleviate the occupational and economic impact. This plan, which should not exceed 12 months in duration, must detail actions to protect employment levels, measures for reemployment, potential company sale prospects, and redevelopment projects for the site. If a trade union agreement is reached, the company commits to adhering to the plan. Affected workers might qualify for social shock absorbers. In the absence of an agreement, penalties are imposed on the company.
- Sanctions and resources: INPS will oversee a budget of around €900 million for the period 2022-2031. MISE is responsible for verifying the plan's adherence to the requirements. Penalties, such as doubled redundancy payments, are applied if

companies fail to comply with regulations or default on their commitments in the plan. Companies are obligated to report any failure to present the plan in a non-financial statement, mandatory for large companies, covering topics like environmental issues, human rights, and anti-corruption measures.

## Commentary

According to law studies, there might be inconsistencies between the Italian provisions and Directive no. 2001/23/EC, especially insofar the former allows the modification of employment conditions by means of collective agreement whereas the transferor is in a state of crisis, without entailing any judicial supervision.

In addition, criticisms have been raised also concerning the absence of provisions limiting the possibility for companies to transfer workers without their consensus.

Both Law No. 87 of July 12, 2018, and Law 234 of 30 December 2021 illustrate Italy's proactive approach to safeguarding workers' rights and the national economy. They emphasise the importance of transparency in corporate decisions and underscore the consequences of relocation, especially for companies benefiting from state aid.

## Additional metadata

<b>Cost covered by</b>	Companies
<b>Involved actors other than national government</b>	National government Trade union Employer organisation
<b>Involvement (others)</b>	(ANPAL) National Agency for Active Employment Policies, INPS (National Social Security Institute)
<b>Thresholds</b>	Affected employees: 250 Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

## Sources

- [Legge 29 Dicembre 1990](#)~~~ [Civil Procedure Code](#)~~~ A Ius Laboris Publication (2009), Transfers of Undertakings Guide~~~ Ballestrero, M.V. and De Simone, G. (2015), *Diritto del lavoro*, Giappichelli Editore, Torino~~~ [DECRETO-LEGGE 12 luglio 2018, n. 87](#)~~~

[LEGGE 30 dicembre 2021, n. 234](#) ~~~ [Cessazioni e delocalizzazioni: le nuove regole in legge di bilancio](#) ~~~

## Citation

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