

GLOBAL MOBILITY

An Overview for Human Resource Professionals

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THIRD EDITION

ITALY

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Summary

Italy is divided into 20 regions and each region is further divided into more than 100 provinces. Immigration matters are handled by local provincial offices.

Italy was one of the original members of the European Union (EU). It also became and remains to this day a member of the Group of seven (G7) and Group of eight (G8) industrialized nations with a Gross National Product (GNP) of approximately Euro (EUR) 1.8 trillion and a Gross National Income per capita of EUR 24,700.

In 2002, Italy converted its currency from the Lira to the Euro. Italy has the fourth largest economy in Europe, which is primarily fueled by the production of high quality consumer products, engineering products, agriculture, and tourism. In fact, over 42 million tourists visit Italy annually.

The Italian government has a bicameral structure. The Parliament, having legislative power, is composed of two Houses: the Chamber of Deputies and the Senate. The Prime Minister is the head of the government. As such, he has the power to issue orders on specific matters and decrees.

Legal System

Immigration issues at the national level are governed by the “*Dipartimento per le libertà civili e per l’immigrazione*” within the Ministry of Internal Affairs (www.interno.it). The Ministry provides instructions to the various provincial departments regarding the interpretation and implementation of the law.

Each province has an Immigration Office (*Sportello Unico per l’Immigrazione*). Immigration and permits are generally handled within the office of that region. In order to issue any kind of permit, the Immigration Office must first receive the necessary clearances from the Labor Office (*Direzione Provinciale del Lavoro* or DPL) and from the Police (*Questura* – www.poliziadistato.it).

Immigration law is enforced by the *Prefetto* (a Government representative in each province), the various police authorities (Police, *Carabinieri*, *Guardia di Finanza* and *Polizia Municipale*) and by the Department of Labor.

A person who enters or takes up residence in Italy illegally may be deported if any of the following circumstances apply:

- entering Italy without passing border controls;
- remaining in Italy without requesting a permit of stay, as prescribed by the i.l. (exception: if the delay is due to *force majeure*);
- the permit of stay has been either revoked or annulled; and
- remaining in Italy when the permit of stay has expired beyond 60 days and the renewal has not yet been requested.

A foreign national may be granted leave to appeal an order of deportation within 60 days by petitioning the judge in the pertinent court.

Heavy sanctions and penalties are imposed on companies and employers aiding the illegal entry of foreign nationals as well as hiring foreign nationals without complying with immigration and labor laws.

Visas

Temporary Visas

Citizens of countries with which Italy has a visa waiver program (India is not one of them), can enter Italy on business and stay up to 90

days without needing to obtain a visa. All other foreign nationals need to obtain a business visa to enter the country even for a few days. Business activities include:

- carrying out commercial activities;
- conducting negotiations and stipulating agreements, attending seminars; and
- installing products and equipment sold by the sending company.

In general terms, business visitors cannot carry out any activities for the benefit of the Italian host company but must work solely for the benefit of their own employer.

Long Term Visas (more than 90 days)

A 'Long Term' stay is defined as a stay in Italy, for work purposes, that is longer than 90 days duration.

Subordinate Workers (*Lavoratori Dipendenti*)

The direct hiring of a non-EU citizen by an Italian company is subject to the availability of quotas which are released annually by the government in limited quantities. The Italian company will need to first obtain clearance from the Department of Labor and the Police and then obtain a work permit from the Immigration Office. It is important to note that each time the government does release a new set of quotas, there are several hundred thousand applicants seeking to receive these quotas and as such, the wait for a work permit is very extensive, often lasting beyond a year.

Autonomous Workers (*Lavoratori Autonomi*)

Autonomous workers are basically independent consultants who come to Italy to do consulting work for a company, to set up a new company, or to function as a legal representative in Italy for an already existing entity. The work permits for this type of work are also subject to the availability of government quotas with a few exceptions. The application must be filed personally by the worker (and not by the company) or by proxy with some supporting documents issued by the company.

Each consulate has a certain amount of discretion when issuing an autonomous work visa and therefore the issuance of a work permit does not automatically guarantee the subsequent issuance of the pertinent visa.

Assigned Workers (*Lavoratori Distaccati*)

The temporary transfer of nationals from a foreign company to an Italian company, when the employee remains hired by the sending company, is a preferential route as it is not subject to the availability of yearly quotas. The temporary assignment can be initially for a maximum period of two years with the possibility of:

Intra-company Transfers

If the foreign national employee has at least six months' experience in the same sector, has special skills (usually proven by a diploma) or a manager, and if the foreign company and the Italian company are both part of the same group of companies, the foreign national employee can obtain an intra-company work permit.

Service Agreement Assignments

If the foreign company and the Italian company are not part of the same group, an intra-company transfer (ICT) is not allowed. However, the two companies can enter into a service agreement regulating the terms and conditions of the assignment. The Italian company will need to inform the local Unions and additional documents must be submitted to the Immigration office following which the employee can obtain a work permit.

Fast-track Procedure for Intra-company Transfers

The Ministry of Interior (*Ministero dell'Interno*) implemented a fast-track procedure for the companies willing to host non-EU highly specialized workers coming to Italy on intra-company assignments. This consists of a registration with the Ministry of Interior that allows the companies to file online work permit applications without pre-approval from the Italian Labor Board. These applications are, in fact, directly processed by the Immigration Office, which should not require any document to be submitted for the application to be approved.

To register with the Ministry, employers must satisfy certain mandatory compliance requirements and must execute a framework agreement with the Ministry. Once registered, employers receive a password to access the online system and check on the status of their applications.

EU Blue Card

Non-EU nationals with a highly specialized job profile can be hired by Italian companies without being subject to the quota system. The issuance of Blue Card Work Permits for subordinate work is, in fact, not affected by the Government limitations typical of the standard Subordinate Work Permit applications. The foreign national must be in possession of a University Degree obtained from a post-secondary study program with a minimum duration of three years and must be offered an employment contract with minimum annual salary of Euro 25,000. After eighteen months under Blue Card status in one EU country, workers can move to Italy without obtaining a visa; within one month after their entry into Italy, the employer must apply for a work permit.

The Italian Government is currently implementing a fast-track procedure for Blue Card applications on the model of the one for ICT.

Special Types of Work

If a foreign national seeking to come to Italy is employed as a journalist, athlete, artist, or nurse, or other forms of skilled labor, then he or she may be treated as a specialist. Different procedures apply, depending on the relevant activity.

Training or Internship

A separate category of visas is required for attending training and internships wherein it is necessary to submit a training program to the local authorities for their approval.

Start-up invalidity pension or disablement benefit visa

Italy has recently implemented the Start-up Visa program, aiming to attract foreign investors in Italy. The program is directed at non-EU nationals interested in establishing innovative startups in Italy. To apply for the relevant self-employment visa, the foreign national must first apply for a 'Certificate of No Impediment' issued by the Italia Start-up Visa Technical Committee, proving the availability of at least Euro 50,000 to develop their innovative start-up and submitting a business plan for the start-up they wish to establish. The entire application procedure is carried out online in an effort to streamline the bureaucracy usually involved in Italian Immigration process, and can be filed either (a) by the applicant, or (b) through a "certified incubator" sponsoring the applicant's project.

The issuance of start-up visas is subject to the availability of Government quotas.

Employment and Labor Law

Hired by Company

Under Italian law, it is mandatory to apply labor regulations to all employees working within Italy, regardless of whether the company is Italian or foreign. Employment relationships in Italy are governed by the provisions of:

- the Italian Civil Code (sections 2094 and ff.);
- special labor laws;
- the applicable National Collective Labor Contract (the CCNL); and
- local agreements with the labor unions where applicable.

In particular, the CCNL provides for most of the basic terms of the employment relationship, such as working hours, supplementary working hours, overtime, night and shift work, holidays and salary increments.

Employees are classified into seven different categories. Level One is the highest and Level Seven the lowest. Classification within a category will determine minimum salary levels, holiday allowances, notification periods in case of termination of an employment relationship, and duration of the trial period. Executives (*dirigenti*) are subject to a set of substantially different provisions.

Minimum salary levels are fixed according to the classification level. Market salary levels often exceed by far the minimum salary levels established by law. According to the CCNL, salary is usually paid on a monthly basis, with double pay in July and December, constituting 14 monthly salaries.

Italian law prescribes limits on the ability of employers to dismiss employees. In case of dismissals without cause, the employer must generally allow for a notice period. Specific and more protective provisions for the workers are established for companies which have more than 15 employees.

Independent Contractors

In consideration of the costs related to employment practices in Italy, many companies prefer to offer independent contractor positions to their staff operating in Italy. Retention of independent contractors needs to be analyzed on a contract-by-contract basis. Labor law may apply despite how the parties name the contractual relationship.

Each contractor should have an autonomous VAT position (Partita IVA) and should invoice the company for services he or she is providing (invoices are submitted to a 20 percent VAT taxation). Generally contractors have more than one client to work for, and while they could be hired with a contract containing a 'no competition' clause, it is generally recommended that contractors not work on an exclusive basis to avoid any claims that Italian employment regulation applies.

Entrepreneurs

Foreign nationals who are shareholders or are appointed directors of an Italian company are entitled to obtain an autonomous work visa (see 4.2(b)). In the event that the company sponsoring the permit is newly established and cannot provide sufficient financial guarantees (in some cases the Office will request legalized documents proving the good financial status and standing of the parent company), it may be difficult to obtain a working visa.

Additional Laws Applicable to Foreign Nationals

After obtaining a permit of stay (registration with the Police), foreign nationals are obligated to apply to the nearest Town Hall to declare permanent residency. Keep in mind that permanent residency is mandatory for the following activities:

- lower fees on bank accounts;
- paying the mandatory garbage tax;
- buying a car;
- issuance of an Italian ID Card (carta d'identità);
- getting a parking permit if living in a historic centre;
- registering for the National Health Service; and
- shipping of personal goods into the country duty free.

After one year of residency in Italy, a foreign national's driver's license is no longer valid. Getting an Italian driver's license becomes mandatory after this first year. Only foreign nationals from certain countries (does

not include India) can convert their driver's license into an Italian one, all others must apply for an Italian license.

Income Tax and Social Security Contributions

Income Tax

For tax purposes, individual income tax is classified into the following categories:

- income from real estate;
- income from capital;
- income from employment;
- income from independent work;
- business income; and
- miscellaneous income.

Individual taxation is levied on the aggregate income from all categories, after excluding income subject to "substitute taxes" and income subject to separate taxation and after deducting allowable personal expenses. Currently the income tax rates range from a minimum of 23 percent (for an income up to EUR 15,000) to a maximum of 43 percent (for an income in excess of EUR 75,000).

The above rates are increased by a regional surtax ranging from 0.9 percent to 1.4 percent. The rates may be further increased by a municipal and provincial surtax, determined by each municipality. Income from employment comprises all amounts including gratuitous payments, and in general any value received during the tax year from the employer, or from third parties for any reason, with regard to the employment relationship. Non-residents are generally taxed on the income they produce in Italy.

Social Security

Social Security taxes are regularly deducted by the employer from the employee's salary. The standard total tax for each individual employee is about 10 percent of their gross salary, while the employer's tax for each of their employees is about 30 percent of an employee's salary.

Social Security within the EU is governed by the EU Regulation 1408/71 according to which an employee who is working for an EU member may remain under the social security system of the home country. The same

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is extended to nationals of those countries who are not already covered by the provisions solely on the ground of their nationality, as well as to members of their families, provided that they are legally resident in the territory of a Member State.

Italy has agreements in place with 40 countries including members of the EU, Canada and the United States (U.S.) but does not include India. This allows foreign national employees from these countries to remain under their own Social Security system for up to five years. The company for whom the employee is working will be required to pay a reduced Social Security fee for this employee, approximately nine percent of the employee's salary. With this arrangement, the company is responsible for providing evidence that the employee is in fact paying the Social Security taxes abroad.

Employees from those countries with whom Italy does not have an agreement (such as India), must pay the Social Security taxes under the Italian tax system, which in the aggregate is approximately 39 percent of the employee's salary.