

Italian Care Workers' Discrimination Map Report¹

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1. Gender

1) Provide a brief overview of your national legislation on gender discrimination in the field of employment.

Anti-discrimination law has its constitutional basis in Article 3 of the Italian Constitution. This article asserts the principle of equal social dignity among citizens and mandates equality before the law, prohibiting discrimination based on sex, race, language, religion, political opinions, and personal or social conditions. However, it is widely believed that this list is not exhaustive, meaning that violations of the principle of equality can occur outside of those cases. Article 3(2) indicates the principle of substantive equality, which requires the Republic to remove economic and social obstacles that effectively limit the equality of citizens. Moreover, Article 37(1) of the Constitution reaffirmed the traditional protective objectives of differentiated protection of women's work while also introducing the principle of equal protection, which guarantees women equal treatment with adult male workers. According to a protective rationale, the constitutional article declares that women must be granted the working conditions

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required to fulfil their family function and safeguard motherhood. From an egalitarian perspective, women have the right to equal pay for work of equal value.²

The rationale for protecting women underpins many laws and is enshrined in the Constitution.³ Both nuptial clauses (which required women workers to leave their jobs after marriage) were declared null and void by Law no. 7 of 9 January 1963. Under the law, there is a presumption of illegitimacy of dismissal ordered between the request for nuptial publications and the year following the celebration. The unlawfully dismissed female worker has the right to be readmitted to work and to be paid her wage from the date of her dismissal to the date of her actual readmission. The presumption also applied to the employee's resignation during the above-mentioned time, unless she confirmed it within one month with the Provincial Labour Inspectorate. Another example is Legislative Decree no. 151 of 26 March 2001 on the protection and support of maternity and paternity that safeguarded working mothers.

In this historical context, the Equal Opportunities Code (Legislative Decree no. 198 of 11 April 2006) is crucial. This legislative decree transposes EU legislation's principles and reorganises national legislation to combat direct and indirect gender discrimination and to ensure valid equality in all social and economic areas. The Legislative Decree no. 198 of 11 April 2006 is structured in four books:

- 1) Book I: Provisions for promoting equal opportunity for men and women (Articles 1–22).
- 2) Book II: Equality of men and women in ethical and social relationships (Articles 23–24).
- 3) Book III: Equality of men and women in economic interactions (Articles 25–55).
- 4) Book IV: Equality of men and women in civil and political relations (Articles 56–58).

In addition to the establishment of a general principle of equal treatment, the most important points of the code concern the protection of equal opportunities in the workplace in the event of maternity or paternity (Article 25(2a) Legislative Decree no. 198 of 11 April 2006) and the prohibition of wage discrimination (Article 28(1) Legislative Decree no. 198 of 11 April 2006). The lawmaker gives special attention to fighting against workplace harassment by enacting a set of repressive laws as well as a set of rules supporting equitable treatment. In this respect, sanctions have been tightened up since 2006 by reforming Legis-

² Cristina Alessi, "Le azioni positive," in *La tutela antidiscriminatoria. Fonti, strumenti, interpreti*, a cura di Marzia Barbera, e Alberto Guariso (Torino: Giappichelli, 2019).

³ Maria Grazia Giammarinaro et al., *Donne gravemente sfruttate. il diritto di essere protagoniste* (2022), <www.slavesnomore.it> (Accessed September 26, 2023); Beatrice Busi, *Separate in casa* (Roma: Ediesse, 2020); Lilli Casano, *Verso un mercato del lavoro di cura: questioni giuridiche e nodi istituzionali* (Valenza: ADAPT University Press, 2022); Darcy du Toit, "La tutela dei diritti dei lavoratori domestici e di cura: verso un nuovo paradigma," in Casano *Verso un mercato del lavoro*.

lative Decree no. 198 of 11 April 2006. Additionally, the legislative decree creates committees and bodies that are tasked with enforcing the discipline, such as the Women’s Entrepreneurship Committee, National Equality Committee, and Equality Councillors. In the final section of the legislative decree, the legislator establishes positive actions to raise the proportion of women in institutions.⁴

Law no. 162 of 5 November 2021 was adopted to strengthen gender equality in the workplace. This law broadened the notion of direct discrimination by establishing that this discrimination can also be perpetrated during the selection process. The law broadens the range of companies obliged to prepare periodic reports on the situation of personnel aimed at combating the gender gap. The reform introduces the possibility for enterprises to make a gender equality certification. Enterprises that obtain the certification are rewarded with a waiver of the employer’s total social security contributions, with the awarding of an additional score for obtaining funding on national and regional European funds and state aid to co-finance the investments incurred. Moreover, possession of parity certification may result in the award of a bonus score to award contracts for works or services.⁵

In Italy, two equality bodies were established to implement European directives: the Equality Councillors (*Consigliere di Parità*) and the Office for the Promotion of Equal Treatment and the Elimination of Discrimination on the grounds of Race or Ethnic Origin (*Ufficio Nazionale Antidiscriminazioni Razziali* or UNAR). While the Equality Councillors deal with preventing and combating gender discrimination, the UNAR deals with discrimination based on race and ethnic origin. In general, these are bodies that have limited powers and mainly deal with alternative dispute resolution. Equality Councillors are created at the provincial, regional and national levels.

Access to justice and case law concerning discrimination remains limited compared to other areas of labour law. This scarcity underscores the challenge of identifying and addressing discrimination, particularly within the framework of individual contractual freedoms versus the principle of equality.

Regarding discrimination in the care sector, the survey for Equality Councillors and the Italian National Stakeholder Meeting highlighted several cases of discrimination faced by workers in the care sector. These cases shed light on significant challenges related to equality and fair treatment in the workplace.⁶

One prominent form of discrimination highlighted during the Italian National Stakeholder Meeting was gender-based discrimination, particularly concerning maternity rights. For example, a female worker in a public health institution

⁴ Donata Gottardi, “Dalle discriminazioni di genere alle discriminazioni doppie o sovrapposte: le transizioni,” *Giornale di diritto del lavoro e di relazioni industriali* 27 (2004)].

⁵ Giulia Frosecchi, “La tutela contro le discriminazioni sul lavoro,” in *Elementi di diritto del lavoro*, a cura di William Chiaromonte, Maria Luisa Vallauri, e Maria Paola Monaco (Torino: Giappichelli, 2021).

⁶ CARE4CARE, “Minutes of the Italian National Stakeholders Meeting Held in Rome on 10 April 2024”; Consigliera Nazionale di Parità, “Responses to the Questionnaire in Preparation for the Italian National Stakeholders Meeting”.

encountered resistance when seeking to transition from full-time to part-time employment due to maternity reasons. Despite legal provisions mandating equal treatment for part-time and full-time working mothers, the administration initially denied her request. However, following intervention from the Inspectorate of Labour and legal action, the issue was ultimately resolved.⁷

Another prevalent issue discussed was discrimination based on contractual terms, particularly concerning part-time employment. A young mother employed under a discriminatory part-time contract faced challenges in negotiating fair working conditions. Despite efforts by the worker, her union representative, and legal counsel, the employer refused to engage in discussions, leading to the worker reluctantly accepting a full-time position to avoid job loss.

Additionally, cases of discrimination against foreign workers were highlighted during the dialogue. In one instance, a worker from Albania faced harassment and coercion to resign after returning from maternity leave. Despite attempts to intervene and address the discriminatory behaviour of the employer, procedural limitations hindered effective resolution of the issue. The Equality Councilors highlighted forms of intersectional discrimination, particularly concerning gender, religion, and ethnicity. People of colour, especially Moroccan women wearing the Hijab, experienced significant difficulties in the workplace, often encountering discrimination and prejudice.⁸

Regarding workers employed in the care sector, including nursing professionals, healthcare assistants, caregivers, and similar roles, several critical issues were identified. The boundary between gender discrimination, work-life balance issues, organizational discomfort, endogenous or induced psychological distress, harassment, or bullying is often blurred. The precarious nature of the female labour market, especially among young women, leads to increased apprehension about speaking out, with many preferring to seek advice and information from equality councillors rather than directly confronting their employers.⁹

The Italian National Stakeholder Meeting also revealed challenges related to work-life balance, temporary work assignments, and flexible working hours within the healthcare sector. While positive steps have been taken, such as the signing of agreements to promote work-life balance initiatives, the dialogue underscored the ongoing need for vigilance and proactive measures to combat discrimination in the workplace.¹⁰

2) *Make a brief social commentary on the presence of women workers in the care sector.*

In the Italian legal system, there is no unitary legal notion of care sector and care worker, but there are different forms of care work with autonomous disciplines. These forms of care work share the functional characteristic of providing

⁷ CARE4CARE, “Minutes of the Italian National Stakeholders Meeting”.

⁸ Consigliera Nazionale di Parità, “Responses to the Questionnaire”.

⁹ Consigliera Nazionale di Parità, “Responses to the Questionnaire”.

¹⁰ CARE4CARE, “Minutes of the Italian National Stakeholders Meeting”.

personal and/or healthcare to people with disabilities, older people, sick people, and children. In line with the consortium's decision on the scope of the study, the report excludes consideration of childcare providers and medical practitioners, concentrating exclusively on care workers possessing qualifications spanning from low to medium levels.

This report considers four types of care workers:

- 1) Health professionals with at most a Bachelor's degree.
- 2) Social and care workers.
- 3) Basic care workers.
- 4) Home caregivers.

Each of these four categories corresponds to professions that are autonomously regulated in the Italian legal system.

- 1) Health professionals with at most a Bachelor's degree encompass nurses, midwives, healthcare and rehabilitation technicians who obtained their professional qualification after a bachelor's degree.
- 2) Social and care workers correspond to social and health workers (*operatore socio-sanitario* or OSS) who have obtained the qualification through a course accredited by public bodies, which requires a secondary school diploma.
- 3) Basic care workers correspond in Italian law to social assistance workers (*operatore socio-assistenziale* or OSA) who perform low-complexity and varied care tasks and are involved in personal care, domestic help and hygiene/health services.

Italian legislation is highly fragmented, particularly concerning the professional roles of Social and Care Workers and Basic Care Workers. The decentralisation of responsibility to the regions within the healthcare sector has resulted in a proliferation of models and methodologies for recognising these professional roles, which often have varying designations across Regions. The required training is not standardized nationally but instead determined at the regional level, leading to a wide disparity in the number of training hours. Additionally, national regulations in the healthcare sector suggest that the role of Basic Care Workers (OSA) should no longer be employed in the public sector, yet it continues to be prevalent in the private sector.¹¹

- 4) Finally, home caregivers (*assistenti domiciliari*, or *badanti*)¹² are a category that the law and collective agreements partially assimilate to domestic workers,

¹¹ CARE4CARE, "Minutes of the Italian National Stakeholders Meeting".

¹² The term "badante" is commonly used to refer to home caregivers. This colloquial expression lacks direct correspondence in national law. Nonetheless, its adoption has been observed in certain collective agreements. Legislative references typically designate these individuals as "domestic workers," "family aides," or "home assistants/helpers" (i.e., *lavoratori domestici*, *assistenti domiciliari*, *assistenti familiari* o *assistenti domiciliari*). This analysis, encompassing both legislative and collective agreement perspectives, incorporates both terminologies. However, it is noted that during the national stakeholder meeting, home

albeit they specifically take care of elderly, sick or dependent persons without a specific qualification.

The National Institute for Public Policy Analysis (*Istituto nazionale per l'analisi delle politiche pubbliche*, or INAPP) estimates that there were slightly under 618,000 care workers in Italy in 2020, with 68.7% women and 31.3% men working in this field.¹³ More than 72% of individuals work in healthcare institutions, with nurses and midwives accounting for 59.3%, physicians and dentists for 23.1%, and other carers (social and care workers, basic care workers) for 17.6%.¹⁴

In a 2019 report, the Organization for Economic Co-operation and Development (OECD), and the European Commission's European Observatory of Health Policies and Systems highlighted that Italy employs fewer health professionals than most Western European countries. In 2019, there were 5.8 healthcare professionals per 1,000 inhabitants in Italy, in contrast to 8.5 in the EU. Furthermore, the number of healthcare professionals has been consistently declining; Italy had approximately 557,000 healthcare professionals in 2016, which decreased to about 456,000 by 2022. National Federation of Associations of Nursing Professions (*Federazione Nazionale degli Ordini delle Professioni Infermieristiche*, or FNOPI) estimates that Italy would need between 50,000 and 60,000 additional healthcare professionals to reach the EU average.¹⁵ According to the World Health Organisation (WHO) Regional Office for Europe, in 2020 there were 60.8 health professionals per 10,000 inhabitants in Italy.¹⁶ According to the INAPP, the number of healthcare professionals increased by 2.3% between 2019 and 2020. This rise, however, was insufficient to compensate for the 41,000 reductions between 2008 and 2018 (turnover blocks).¹⁷

During the Italian National Stakeholders Meeting,¹⁸ FNOPI, alongside labour unions and employers' organisations, emphasised the issue of labour short-

caregivers emphasised the necessity of employing a less pejorative term, expressing a preference for "assistenti familiari" or "assistenti domiciliari" ("home assistants" or "home caregivers").

¹³ Luisa D'Agostino e Alessia Romito, "L'evoluzione del mercato del lavoro del comparto sanitario nel contesto della digitalizzazione dei servizi e delle prestazioni" (Istituto nazionale per l'analisi delle politiche pubbliche - INAPP, 2023).

¹⁴ D'Agostino e Romito, "L'evoluzione del mercato del lavoro."

¹⁵ FNOPI, *Scheda sulla professione infermieristica*, Schede di analisi FNOPI, 2020.

¹⁶ WHO Regional Office for Europe, *Health and Care Workforce in Europe: Time to Act* (2022), 132–33, <<https://www.who.int/europe/publications/i/item/9789289058339>> (Accessed 16 January 2024).

¹⁷ D'Agostino e Romito, "L'evoluzione del mercato del lavoro."

¹⁸ The CARE4CARE project methodically engages stakeholders, including trade unions, employers' associations, and civil society organizations, at both national and EU levels. The primary objective is to gather different perspectives, insights, suggestions, and crucial information to enrich and update the research report. In Italy, the national stakeholder meeting was held on 10 April 2024 in Rome, while the European-level discussion took place on 17 April 2024 in Brussels. These meetings served as crucial moments to engage stakehold-

ages. Within this context, several discussions emerged regarding the potential of technology to support healthcare and assistance personnel. The role of platforms as facilitators in matching users' needs with nursing personnel was underlined. In this context, FNOPI stressed the ongoing debate surrounding the possible introduction and dissemination of the community nurse role, as outlined in the Health Pact (*Patto per la salute*), and legislated in Decree-Law no. 34 of May 19, 2020, subsequently converted into Law no. 77 of July 17, 2020 (*Decreto Rilancio*).¹⁹

The main cause of these labour shortages has been the numerous turnover blocks introduced by legislation in order to contain public spending on healthcare.²⁰ Alongside this phenomenon, a trend has emerged in the public health sector to outsource care services using forms of contracting and subcontracting to cooperatives and private companies. This trend is homogeneous throughout the country and concerns both health professionals, social and care workers, and basic care workers. There are two main reasons for this choice:

- a) the decision to circumvent public recruitment competition procedures, and
- b) the containment of personnel costs and NHS expenditure.

The pandemic crisis has forced a temporary change of course. The *Decreto Rilancio*, provided for the integration of the nursing workforce, initially with temporary contracts, then, from 2021, with permanent contracts.²¹ There is no evidence that this is a permanent change of policy.

According to the FNOPI, female healthcare professionals in Italy are distributed in a heterogeneous manner across the country, with regions where their presence exceeds 80% (*Trentino Alto Adige/Südtirol*) and a national average of 76%.²² Concerning the gender pay gap, female health professionals earn about 12.8% less than men considering all contracts (full time and part time); however, the gap drops to 2.6% if only full time contracts are considered.²³

Concerning distribution in the labour market, FNOPI reports that the vast majority of health professionals (more than 75%) work in hospital facilities. Ap-

ers, ensuring that their voices are heard and that their insights contribute significantly to the project outcomes.

¹⁹ CARE4CARE, "Minutes of the Italian National Stakeholders Meeting".

²⁰ FNOPI, *Scheda sulla professione infermieristica*.

²¹ ISTAT. "Elaborazione di dati sul personale in attività nel sistema sanitario pubblico e privato." *Personale sanitario*, 2022. <<http://dati.istat.it/Index.aspx?QueryId=31546>> (Accessed September 26, 2023); FNOPI, "8 Marzo 2022: Infermieristica, professione al femminile, ma non per questo sempre 'rosa'," 2022, <<https://www.fnopi.it/2022/03/08/8-marzo-infermiere-2/>> (Accessed September 26, 2023); FNOPI, *Stato della carenza infermieristica al 2021*, *Schede di Analisi FNOPI*, 2022, <<https://www.fnopi.it/aree-tematiche/carenza-infermieristica-al-23-agosto-2022/>> (Accessed September 26, 2023); FNOPI, *Scheda sulla professione infermieristica*.

²² FNOPI, "8 Marzo 2022".

²³ FNOPI, "8 Marzo 2022".

proximately 14% of health professionals have a part-time contract; 98% of those part-time workers are women. In 2021, there were approximately 37,000 freelance health professionals, while there were approximately 78,000 health professionals employed by private facilities.²⁴

Regarding age, most health professionals are between 36 and 55 years old. Health professionals over 65 years of age with professional seniority of more than 30 years account for approximately 13,000, while those with no professional seniority of more than 30 years account for approximately 25,000. Health professionals up to 28 years of age number about 39,000. The average age of all health professionals in Italy is about 46 years, while that of civil servants alone is about 51 years with marked differences. In the Regions where the turnover block has been completed the age is markedly higher than in the others.²⁵

Concerning geographical distribution, the largest number of health professionals is concentrated in the North-West regions. This is followed by the South, the Centre, the North-East and the Islands. This uneven distribution is partially explained on the basis of population, which is larger in the North than in the other areas of the country, and on the basis of remuneration, which is slightly higher in the Northern regions.²⁶

Regarding social and care workers, data are fragmentary because there is no professional register. Trade unions estimate between 200 and 300,000 workers, 90% of whom are women.²⁷ Trade unions indicate an average age of around 45 years.²⁸ The age of the operators ranges from 30 to 60 years old. There are no data available on Social and health workers employed in the private sector (scientific hospitalisation and care institutions or IRCCS, foundations, research institutions, private nursing homes) and in the public sector (prisons, schools, public health facilities), nor on self-employed workers. Furthermore, there is a lack of data on workers employed on a temporary or permanent basis during the COVID-19 pandemic.²⁹ According to trade unions, social and care workers work a wide range of care duties with very heavy shifts, having to make up for shortages of nursing staff and being burdened with a plethora of tasks that are not provided for in contracts and for which they have no spe-

²⁴ FNOPI, *Scheda sulla professione infermieristica*; FNOPI, *Tutti i numeri degli infermieri. Chi sono, dove lavorano, privati, dipendenti e disoccupati: una professione allo specchio*. Schede di Analisi FNOPI, 2015 *Chi sono, dove lavorano, privati, dipendenti e disoccupati: una professione allo specchio*. Schede di Analisi FNOPI, 2015.

²⁵ FNOPI, *Scheda sulla professione infermieristica*; FNOPI, *Tutti i numeri degli infermieri*.

²⁶ ISTAT. "Elaborazione di dati sul personale in attività nel sistema sanitario pubblico e privato." *Personale sanitario*, 2022. <<http://dati.istat.it/Index.aspx?QueryId=31546>> (Accessed September 26, 2023); FNOPI, *Scheda sulla professione infermieristica*.

²⁷ CARE4CARE, "Minutes of the Italian National Stakeholders Meeting".

²⁸ CARE4CARE, "Minutes of the Italian National Stakeholders Meeting".

²⁹ Federazione Nazionale Migep, "Modifiche al Decreto Legislativo 21 Aprile 2011 n. 67, ai fini dell'introduzione del personale infermieristico e degli operatori socio sanitari tra le categorie usuranti," *Audizione sui disegni di legge nn 934 e 2347* (2022).

cific training.³⁰ During the pandemic, social and care workers and basic care workers experienced a great deal of work-related stress, which led to a significant increase in burnout and occupational accidents and illnesses.

No data are available for basic care workers (*operatore socio-assistenziale*, OSA).

A cross-cutting issue for all care professions (health professionals, social and care workers, primary care workers) working in residential facilities for the elderly, hospices, and long-stay wards, is that the system of standard costs set in public funding/budgeting.³¹ These standard costs refer to a predetermined number of working minutes per patient within which each operator is required to remain. There is a high variability of this minute allocation as it is established in an essentially uncoordinated manner by each Italian Region. The allocation of a very low minute allocation for each operation results in a very high workload for healthcare workers and a negative impact on users' health.³² NURSIND points out that the excessive emphasis on the standardisation and compression of working time has a negative impact on the quality of healthcare.³³

According to data from the INPS Observatory on domestic workers, in 2022, the total number of domestic workers contributing to the INPS was 894,299, reflecting a decrease of 7.9% compared to 2021 (-76,548 workers).³⁴ This decline follows increases in the previous years, driven by the regularisation of employment relationships to allow domestic workers to travel to work during lockdown periods and the entry into force of regulations governing the regularisation of irregular employment relationships (Decree Law no. 34 of 19 May 2020). Similar phenomena were observed in the years following 2009 (Law, no. 102 of 03 August 2009) and up to 2012 (Legislative Decree no. 109 of 16 July 2012), during which regularisation of workers, both EU and non-EU citizens, occurred.³⁵

The data indicates the dual impact of the COVID-19 pandemic on the increase of domestic workers. The first effect is attributed to the containment measures, which restricted movement to those who could demonstrate a legitimate reason, such as having a regular employment relationship. The second effect, also related to the pandemic, is linked to the regularisation procedure for irregular immigrant workers initiated in 2020. This procedure focused on two sectors (agriculture and domestic work), attracting workers from other sectors as well

³⁰ Federazione Nazionale Migeap, "Modifiche al Decreto Legislativo 21 Aprile 2011 n. 67".

³¹ Camera dei Deputati. "Patto per la salute 2019-2021." 2019. <<https://www.camera.it/temi-ap/2020/01/09/OCD177-4262.pdf>> (Accessed September 26, 2023).

³² CGIL FP, "La cura dei diritti / Gli standard assistenziali infermieristici a tutela del personale e dei pazienti" (*FP-CGIL Lombardia*, 2021) <<https://fpcgil.lombardia.it/2021/06/16/la-cura-dei-diritti-gli-standard-assistenziali-infermieristici-a-tutela-del-personale-e-dei-pazienti/>> (Accessed 16 January 2024).

³³ CARE4CARE, "Minutes of the Italian National Stakeholders Meeting".

³⁴ INPS, "Statistiche in breve: lavoratori domestici" (2023), <<https://servizi2.inps.it/servizi/osservatoristatistici/api/getAllegato/?idAllegato=1013>> (Accessed September 26, 2023).

³⁵ Osservatorio DOMINA sul Lavoro Domestico, 5° *Rapporto annuale sul lavoro domestico: analisi, statistiche, trend nazionali e locali* (2023), 94 ff.

and resulting in an overrepresentation of domestic work in the years immediately following regularisation. With the easing of containment measures, many regularised workers shifted sectors, returning to their original fields.

Regarding gender and nationality, there are significant differences. The most pronounced decrease in 2022 was observed among foreign male workers (-21.1%), a group that had seen the most significant increase between 2019 and 2021 (+66.6%). Foreign women, despite a slight decrease in 2022 (-5.6%), remain dominant in the domestic sector, constituting 58.7% of the total. The second-largest group comprises Italian women, representing 27.8% of the total.

Regarding home caregivers, there were 429,426 of them in Italy in 2022, corresponding to 48% of all domestic workers.³⁶

The category of home caregivers (*assistenti domiciliari*, or *badanti*) among domestic workers is more prevalent among nationals from Eastern European countries, such as Georgia (82.4%), Bulgaria (73.8%), Ukraine (65.7%), and Romania (63.0%). Among workers of Asian origin, the presence of caregivers is less significant, dropping below 20% for Bangladesh, the Philippines, and Pakistan.³⁷

Specifically focusing on home caregivers, their average age is slightly higher (51.3 years) compared to other domestic workers (47 years). Moreover, the majority of caregivers are over 50 years old (62.2%), while only a small percentage are under 30 (4.9%). This demographic profile reflects the demanding nature of caregiving roles, often attracting older individuals with more experience.³⁸

In terms of hours worked, home caregivers tend to work longer hours on average compared to other domestic workers. Only a small percentage of caregivers (6.1%) work less than 10 hours per week, with a significant portion (42.2%) working over 40 hours per week. This contrasts with the majority of other domestic workers who work fewer hours, with 84% of them working less than 30 hours per week.³⁹

Italian home caregivers, a vital component of the caregiving sector in Italy, represent a noteworthy portion of the domestic workforce. While constituting a minority, their numbers are significant given Italy's ageing population. Unlike foreign caregivers, Italian home caregivers display a diverse range of ages and backgrounds, reflecting various entry points into the profession. With approximately 48% of caregivers being Italian, they contribute substantially to meeting the care needs of families. Despite their local familiarity, Italian home caregivers face challenges such as long hours and low wages, with 42.9% working over 40 hours per week and 60% earning less than 6,000 euros annually.⁴⁰

³⁶ Osservatorio DOMINA sul Lavoro Domestico, 5° *Rapporto annuale sul lavoro domestico*, 71 ff.

³⁷ Osservatorio DOMINA sul Lavoro Domestico, 5° *Rapporto annuale sul lavoro domestico*, 97–102.

³⁸ Osservatorio DOMINA sul Lavoro Domestico, 5° *Rapporto annuale sul lavoro domestico*, 105.

³⁹ Osservatorio DOMINA sul Lavoro Domestico, 5° *Rapporto annuale sul lavoro domestico*, 107.

⁴⁰ Osservatorio DOMINA sul Lavoro Domestico, 5° *Rapporto annuale sul lavoro domestico*, 110–17.

The level of undeclared work in the domestic sector remains a significant concern. The historical trend shows that the majority of domestic workers have been engaged in irregular employment relationships. While there have been efforts to reduce informality through regularisation measures, the sector still exhibits a high prevalence of undeclared work, with the current rate standing at 51.8% in 2021.⁴¹

Irregularities in the sector include not only undeclared work but also under-declared work (i.e. declared for fewer hours than those actually worked or according to a lower professional classification). In both cases, the worker receives all or part of the wages irregularly. The effect of these forms of irregular work is twofold: the employer saves on the cost of care (by not taxes and social security contributions and by paying a lower wage than that stipulated by collective agreements), the worker receives a payment on which he/she does not pay taxes and contributions.⁴²

The reasons behind the recourse to irregular work stem from the combination of do-it-yourself welfare with the calculation of convenience on the part of workers. Households cut down on welfare costs and workers opt for immediate payments.⁴³

Another problem reported in the analyses on domestic work is the scarcity of irregularity complaints by workers; they only turn to the authorities in cases of serious exploitation, and at the end of their working relationship. Although labour inspectors could carry out inspections at any time, it is very rare that checks on domestic work are carried out *ex officio*. Generally, the labour inspector intervenes upon a direct complaint from the worker.⁴⁴

To promote the regularisation of domestic work, it has been suggested to increase the tax and social security benefits associated with this activity.⁴⁵ Currently, anyone who regularly employs a domestic worker can, when making a tax declaration, deduct the amount of the sums paid quarterly to INPS as long as it does not exceed the threshold of 1,549.37 euros per year. (Article 10(1)(e) and 10(2) Presidential Decree no. 917 of 22 December 1986). Moreover, the employer may also deduct from the gross tax the 19% of the expenses incurred for caregivers of dependent persons in the performance of daily life acts, up to a maximum amount of 2,100 euros per year, but only if the total income does not exceed 40,000 euros (Article 15(1)(i-*septies*) of Presidential Decree no. 917 of 22 December 1986).⁴⁶

⁴¹ Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico*, 118–23.

⁴² Silvia Borelli, *Who Care? Il lavoro nell'ambito dei servizi di cura alla persona* (Napoli: Jovene, 2020), 202.

⁴³ Borelli, *Who Care?*, 202.

⁴⁴ Borelli, *Who Care?*, 203.

⁴⁵ CARE4CARE, “Minutes of the Italian National Stakeholders Meeting”.

⁴⁶ Borelli, *Who Care?*, 203.

3) *Have statistics or databases been published in your country on the care sector or on each of the occupations that are part of this sector, differentiating by gender?*

Data on care workers in Italy are often aggregated; databases and reports do not usually break down care professions by gender. Regarding healthcare professionals, data are published by National Institute of Statistics (*Istituto Nazionale di Statistica*, or ISTAT) and FNOPI. ISTAT data are normally aggregated at national level and are not divided by gender. In contrast, FNOPI data are divided by gender.

As far as social and care workers are concerned, the data are difficult to find. The data examined in this report are derived from the text of the hearing of the 2022 trade unions of these workers at the Senate of the Republic.⁴⁷

There are more data on home caregivers and domestic workers. There are reliable data on these workers divided also by gender available on the INPS website. In addition to the INPS, useful data can be found in the DOMINA Report.⁴⁸

Trade unions possess data on categories of workers that they publish in reports. Apart from data published in reports, trade unions tend not to disclose data unless requested.

After determining that there are few case law precedents on the issue of gender discrimination of female care workers, the research unit submitted a questionnaire to the Italian equality bodies (i.e. the Equality Councillors)⁴⁹ dealing with this issue. Out of a sample of 114 Equality Councillors, 19.38% (17 Councillors) responded. Only a small number of the answers received are relevant for this research.

Moreover, the report encompasses the data collected from the questionnaire responses gathered in anticipation of the Italian National Stakeholders Meeting, which involved trade unions, employers' associations, and other pertinent stakeholders.⁵⁰ Furthermore, it incorporates insights garnered during the Italian National Stakeholders Meeting held in Rome on 10 April 2024, as well as those obtained from the CARE4CARE European Meeting held in Brussels on 17 April 2024.

⁴⁷ Federazione Nazionale Migeap, "Modifiche al Decreto Legislativo 21 Aprile 2011 n. 67".

⁴⁸ Osservatorio DOMINA sul Lavoro Domestico, *4° Rapporto Annuale sul lavoro domestico: analisi, statistiche, trend nazionali e locali* (2022).

⁴⁹ Equality Counsellors are a figure established to promote and monitor the implementation of the principles of equal opportunities and non-discrimination between men and women in employment.

⁵⁰ Consigliera Nazionale di Parità, "Responses to the Questionnaire"; CGIL, "Responses to the Questionnaire in Preparation for the Italian National Stakeholders Meeting"; CISL, "Responses to the Questionnaire in Preparation for the Italian National Stakeholders Meeting"; CISL FISASCAT, "Responses to the Questionnaire in Preparation for the Italian National Stakeholders Meeting"; CUB Sanità, "Responses to the Questionnaire in Preparation for the Italian National Stakeholders Meeting"; NOSOTRAS, "Responses to the Questionnaire in Preparation for the Italian National Stakeholders Meeting"; UNEBA, "Responses to the Questionnaire in Preparation for the Italian National Stakeholders Meeting".

The table below lists the key databases and links to websites containing reports or data relevant to the research.

Table 1 – Key databases and web sources used in the research.

Author	Year	Title	Link
FNOPI	2015	<i>Tutti i numeri degli infermieri. Chi sono, dove lavorano, privati, dipendenti e disoccupati: una professione allo specchio</i>	< https://www.fnopi.it/archivio_news/attualita/2093/Scheda%20n%202%20L-analisi%20dei%20dati%20Istat.pdf >
OECD	2019	<i>The State of Health in the EU. Italy: Health Profile 2019</i>	< https://www.oecd.org/italy/italy-country-health-profile-2019-cef1e5cb-en.htm >
CEASE-IT	2021	<i>Studio multicentrico nazionale Gli episodi di violenza rivolti agli infermieri italiani sul posto di lavoro</i>	< https://www.fnopi.it/wp-content/uploads/2022/06/UNIGE-studio-multicentrico-Universita-Genova-1.pdf >
FNOPI	2021	<i>Scheda sulla professione infermieristica</i>	< https://www.fnopi.it/wp-content/uploads/2021/05/SCHEDA-INFERMIERI-12-maggio.pdf >
FNOPI	2022	<i>8 marzo 2022: infermieristica, professione al femminile, ma non per questo sempre “rosa”</i>	< https://www.fnopi.it/2022/03/08/8-marzo-infermiere-2/ >
FNOPI	2022	<i>Stato della carenza infermieristica al 2021</i>	< https://www.fnopi.it/aree-tematiche/carenza-infermieristica-al-23-ago-sto-2022/ >
ISTAT	2022	<i>Elaborazione di dati sul personale in attività nel sistema sanitario pubblico e privato</i>	< http://dati.istat.it/Index.aspx?QueryId=31546 >
MIGEP	2022	<i>Audizione sui disegni di legge nn. 934 e 2347</i>	< https://www.quotidianosanita.it/allegati/allegato6181410.pdf >
Ministero della Salute	2022	<i>Osservatorio Nazionale sulla Sicurezza degli Esercenti le Professioni Sanitarie e socio-sanitarie. Relazione attività anno 2022</i>	< https://www.fnopi.it/wp-content/uploads/2023/03/Osservatorio-nazionale-sulla-sicurezza-degli-esercenti-le-professioni-sanitarie-e-socio-sanitarie.pdf >
Senato	2022	<i>Audizioni informali di rappresentanti di CGIL, CISL, UIL e FNOPI, intervenuti in videoconferenza, sui disegni di legge nn. 934 e 2347 (inserimento infermieri e OSS in categorie usuranti)</i>	< https://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=18&id=1331859&part=doc_dc >
WHO	2022	<i>Health and care workforce in Europe: time to act</i>	< https://www.who.int/europe/publications/i/item/9789289058339 >
INPS	2023	<i>Osservatorio sui lavoratori domestici</i>	< https://servizi2.inps.it/servizi/osservatoristatistici/12 >

Author	Year	Title	Link
DOMINA	2023	<i>5° Rapporto annuale sul lavoro domestico</i>	< https://www.osservatoriolavorodomestico.it/rapporto-annuale-lavoro-domestico-2023 >
Fondazione Leone Moressa	2023	<i>Rapporto FLM 2023</i>	< http://www.fondazioneleonemoressa.org/2023/09/29/presentazione-rapporto-flm-2023/ >
INAPP	2023	<i>L'evoluzione del mercato del lavoro del comparto sanitario nel contesto della digitalizzazione dei servizi e delle prestazioni</i>	< https://oa.inapp.org/xmlui/bitstream/handle/20.500.12916/3905/INAPP_DAgostino-Romito_Evoluzione-mdl-comparto-sanitario-digitalizzazione_WP-103_2023.pdf >

4) Describe or comment on what the statistics or databases you have found show in relation to the participation of male and female workers in the care sector workforce, either taking this sector as a whole, or in relation to each of the occupations that make up this sector.

Please, refer to the data discussed in answer to question 2 above.

5) If legislation exists on the care sector in general, or on the occupations that make up the care sector, please describe whether it is gender-neutral in terms of the workers, or whether it makes any reference to the presence of women in this sector or these occupations (e.g. acknowledging the majority presence of women in the sector, or granting them any special attention in terms of rights, etc.). If special reference is made to women, please specify.

There is no comprehensive legislation concerning women in the care sector, other than home caregivers.⁵¹ This sector is subject to the general regulations that apply to all workers. Moreover, Legislative Decree no. 198 of 11 April 2006 expressly forbids gender discrimination (see question 1 on gender). In general, only positive actions for vulnerable people are allowed.⁵²

⁵¹ Law no. 339 of 2 April 1958 distinguishes domestic workers between clerical workers and manual workers. However, the classification into categories and the specification of tasks are regulated by collective agreements. Remuneration can be either in cash or in kind. However, it is the collective agreement that establishes the minimum wage as well as the annual adjustment. Working hours are determined by the collective agreement and may not exceed a maximum weekly limit of 54 hours for cohabiting workers and 40 hours for non-cohabiting workers. In relation to other aspects of the employment relationship of domestic servants, see answers to questions 11, 12, 13, 15, 17, 19 on gender.

⁵² Positive action, also known as affirmative action or positive discrimination, refers to all public measures that benefit members of a minority or vulnerable group in order to remedy a social difference through the legal system. The first regulation of positive actions was established in the Italian legal system with Law no. 125 of 10 April 1991, one of the most sophisticated regulations on equality between men and women in the workplace, which was then transfused into the Equal Opportunities Code. Shortly after, law no. 215 of 25 February 1992, relating to positive activities for female entrepreneurship, was also passed, and was

The Italian Constitution supports motherhood. Parenthood legislation applies to all workers, including those in the care sector, with some exceptions for home caregivers (See answer to question 12 on gender).

Recruitment differs between the public and private sectors for care workers. The former involves a competition based on qualifications and examinations; the latter is discretionary. There are established regulations aimed at preventing discrimination based on sex or gender in employment access. In relation to this matter, the relevant legislation for gender equality includes Law no. 903 of 9 December 1977, Law no. 125 of 10 April 1991, and Legislative Decree no. 198 of 11 April 2006. Furthermore, protection against discrimination concerning age, nationality, ethnic-racial origin, religious beliefs, political opinions, and trade union membership is outlined in Legislative Decree no. 215 of 9 July 2003, and Legislative Decree no. 216 of 9 July 2003. The combination of these legislations results in a broad prohibition of discrimination in employment access, ensuring compliance with EU law.

6) Does the legislation or, if applicable, collective agreements provide for occupational classification system in care sector? If so, do you consider any gender bias in this occupational classification (if so, please explain).

In Italian labour law, collective agreements tendentially determine the occupational classification system. Collective agreements in the care sector therefore determine tasks, qualifications and occupational categories.⁵³

The work task can be defined as the set of activities, assignments and operations that the employee undertakes in agreement with the employer.

The qualification represents the professional status of the worker, i.e. the set of knowledge, skills and competences of a specific professional figure. Collective agreements outline the qualifications within a company, categorising them and specifying their respective tasks, as stated in Article 2071 of the Civil Code. From this qualification derives a series of rights and duties inherent to the employment relationship, as well as economic, regulatory and social security treatment. The employer, at the time of hiring, is required to notify the employee of his/her qualification in relation to the duties for which he/she was hired (Article 96 of the Civil Code).

Occupational categories identify and group the various professional profiles, so as to delineate the legal and economic regime to which the worker is subject under the employment relationship. Categories can be distinguished between those of legal source and those of contractual source. The former are the four figures identified by Article 2095 of the Civil Code: managers, middle manage-

later incorporated into the Equal Opportunities Code. The discipline's innovativeness, however, contrasts with its limited effectiveness. Currently, the Equal Opportunities Code (Legislative Decree no. 198 of 11 April 2006) contains the discipline of positive actions for women in Italy (see question 1 on gender). Cf. Alessi, "Le Azioni Positive," 508 ff.

⁵³ Riccardo Del Punta, *Diritto del lavoro*, a cura di Roberto Romei, Maria Luisa Vallauri, e William Chiaromonte (Milano: Giuffrè, 2023), 505–11.

ment, clerical workers and manual workers (the same article refers to special laws and collective agreements for the exact determination these categories). The latter are those introduced by collective agreements and add to the legal categories the figures of officials and intermediaries.⁵⁴

Collective bargaining has introduced the *inquadramento unico* (unitary classification) for all workers. This system is based on a plurality of professional levels, common to the categories of manual and clerical workers, ordered on a single scale. Belonging to a given professional level is established based on the activity performed.⁵⁵ In practice, the *inquadramento unico* has no impact on the professional classification of care workers.⁵⁶

Under Italian collective agreements and labour legislation, gender is completely irrelevant for the professional classification of workers.

7) *Have there been any legal disputes or conflicts publicised by the media in your country over “job classification” in the care sector and gender discrimination? If so, please summarise or comment on the case(s).*

Since the research unit did not find any case law in the legal databases on job classification discrimination, it submitted a questionnaire to the Italian equality bodies (i.e. Equality Councillors) to inquire whether they collected complaints of discrimination by female care workers that had not reached the courts.

Out of a sample of 114 Equality Councillors, 19.38% (17 Councillors) responded. Among the replies received, only 2 Councillors stated that they had taken action against or assisted female workers who had been discriminated at work. However, only 1 of the 2 responses concerned job classification disputes. However, in compliance with privacy legislation, the Councillor has not disclosed any data relating to this dispute.

8) *Does legislation or, where applicable, collective agreements provide for specific provisions on employment contracts in the care sector, which are different from employment contracts in other productive sectors? If so, do you consider that there is any gender bias in relation to employment contracts? (If so, please explain)*

In Italian labour law, there are no special regulations that distinguish employment contracts in the care sector. Employment contracts are governed by labour law in every sector. The principle of tendential non-derogation of the form of contract is enshrined in Italian labour law. In other words, the job relationship is governed by regulations that the parties cannot deviate from. These rules are outlined in both legislation and collective bargaining agreements. This non-derogation principle only applies to rules that are detrimental to the em-

⁵⁴ Del Punta, *Diritto del lavoro*, 507–11.

⁵⁵ Alessandro Failla, “I poteri del datore di lavoro,” in Chiaromonte, Vallauri, Monaco, *Elementi di diritto del lavoro*, 115–16.

⁵⁶ Roberta Nunin, “La classificazione dei lavoratori subordinati in categorie e l’inquadramento unico” in *Trattato di Diritto del lavoro. Vol. IV: Contratto di lavoro e organizzazione. Tomo I: Contratto e rapporto di lavoro*, a cura di Mattia Persiani, e Franco Carinci (Padova: CEDAM, 2012).

ployment relationship. However, Article 8 of Decree-Law no. 138 of 13 August 2011, converted into Law no. 148 of 14 September 2011, provides that the social partners may derogate in a pejorative sense within company collective agreements aimed at improving employment, the quality of employment contracts, and the management of company employment crises. Furthermore, Decree-Law 48 of 5 May 2023 allowed the social partners to stipulate collective agreements derogating from the national law in which it is possible to identify the grounds for concluding fixed-term contracts.

Gender discrimination in employment contracts is prohibited under Italian labour law. Law no. 903 of 9 December 1977 repealed all legal and contractual gender-related barriers. However, domestic work legislation provides for several gender-related exceptions to the general labour regulation. Particularly, a special and less extensive discipline is provided for parents employed with a subordinate contract in domestic and family services (Article 62 of Legislative Decree no. 151 of 26 March 2001). They are entitled to maternity leave and paternity leave, and to the relevant remuneration. Article 25 of the collective agreement for domestic helpers and carers of 8 September 2020 (FIDALDO CCNL) stipulates that it is forbidden to work for women during the two months preceding the presumed date of birth, except for any advance or postponement provided for by the law; for the period between that date and the actual date of birth; during the three months after the birth, except for authorised postponements. These periods must be counted in the length of service for all purposes, including those relating to Christmas bonuses and holidays. Female domestic workers can apply for household allowances only on a deferred basis, with payments made semi-annually (instead of monthly); these allowances are also calculated not on wages received, but on hours subject to insurance (Article 14 Presidential Decree no. 1403 of 31 December 1971). In compliance with this legislation, gender discrimination in employment access is prohibited, as outlined in the collective agreement for the public health sector and other relevant statutes.⁵⁷

Furthermore, there is no maternity protection for occasional work paid with the *libretto di famiglia* (family booklet).⁵⁸ The *libretto di famiglia* (family booklet), which is a particular form of employment contract that lies halfway between self-employment and subordinate employment, allows non-entrepreneur natural persons to manage operations relating to occasional work (registration, deposits, baby-sitting bonus and reimbursements) carried out by self-employed persons. The *libretto di famiglia* is a prefinanced nominative payment booklet consisting of payment slips with a nominal value of 10.00 euros, aimed at paying for work activities lasting no more than one hour. The activities that the user can remunerate

⁵⁷ Borelli, *Who Care?*, 177.

⁵⁸ INPS, "Prestazioni di lavoro occasionale: libretto famiglia" (*Lavoro*, 2023) <<https://www.inps.it/it/it/dettaglio-scheda.schede-servizio-strumento.schede-aree-tematiche.prestazioni-di-lavoro-occasionale-libretto-famiglia-51098.prestazioni-di-lavoro-occasionale-libretto-famiglia.html>> (Accessed September 26, 2023).

by means of the *libretto di famiglia* are specified by law and consist of: minor domestic work, including gardening, cleaning or maintenance work; home care for children and for older, sick, or persons with disability; private lessons. Occasional work services are subject to the following economic limits (referring to the calendar year in which the work is carried out): equal to 5,000 euros for each provider, with reference to all the users; not exceeding 10,000 euros for each user, with reference to all the providers; equal to 2,500 euros for the total services rendered by each provider in favour of the same user. The amounts received by the provider are calculated net of: contributions; insurance premiums; management costs.⁵⁹

Article 29(15–18) of Law no. 56 of 29 April 2024, which converts, with modifications, Decree-Law no. 19 of 2 March 2024, have introduced additional provisions regarding care work, particularly for home caregivers. The legislature aims to progressively enhance the quality and quantity of care and assistance services for elderly individuals who are not self-sufficient, and to regularise care work provided in their homes.

Starting from the date communicated by INPS upon the conclusion of admission procedures for funding under the National Program for Youth, Women, and Employment 2021–2027, and until 31 December 2025, employers hiring or converting domestic workers to indefinite contracts for assisting elderly individuals aged at least eighty years, already receiving the accompanying allowance, are granted a 100% exemption from total social security contributions and insurance premiums for up to 24 months. This exemption is capped at 3,000 euros annually, recalibrated and applied quarterly, while maintaining pension contribution rates. The tax exemption for newly hired employees to promote job creation is a measure that has been present in Italian law for many years, but had not yet been extended to the domestic sector.

Employers availing of this benefit must have a current Equivalent Economic Situation Indicator (ISEE)⁶⁰ not exceeding 6,000.00 euros for facilitated socio-healthcare benefits.

Exceptions to this benefit include situations where less than 6 months have elapsed since the termination of a domestic work relationship with duties as an assistant to elderly individuals between the same worker and employer, or within the same household. Additionally, the benefit does not apply to the hiring of relatives or relatives by marriage, unless the employment concerns specific duties outlined in relevant legislation.

The contribution exemption is subject to maximum expenditure limits: 10 million euros for 2024, 39.9 million euros for 2025, 58.8 million euros for 2026,

⁵⁹ William Chiaromonte, “Subordinazione, autonomia e dintorni,” in Chiaromonte, Monaco, Vallauri, *Elementi di diritto del lavoro*, 76–9; Maurizio Falsone, “La disciplina delle prestazioni occasionali. il libretto famiglia. il contratto di prestazione occasionale (commento all’art. 54 Bis d.l. n. 50/2017),” in *Commentario breve alle leggi sul lavoro*, a cura di Raffaele De Luca Tamajo et al. (Padova: CEDAM, 2022); Costantino Cordella, “Libretto Famiglia e Contratto Di Prestazione Occasionale,” *Diritto delle relazioni industriali* 28 (2018): 1158.

⁶⁰ The ISEE (Equivalent Economic Situation Indicator) is the indicator used to assess and compare the economic situation of households applying for facilitated social benefits.

27.9 million euros for 2027, and 0.6 million euros for 2028. These funds are allocated within the framework of the National Program for Youth, Women, and Employment 2021–2027, pending Program modifications and admission of the measure to funding, complying with applicable procedures, territorial constraints, and eligibility criteria.

INPS monitors the reduced contribution revenue pursuant to Article 29(15–17) of Law no. 56 of 29 April 2024. If prospective data indicate that the spending limit has been reached, INPS discontinues further applications for contribution relief.

Concerning the annual ISEE threshold of 6,000.00 euros established for eligibility for this contribution relief measure, it is noteworthy that this figure is exceptionally low. For instance, it falls below the threshold required to qualify for the inclusion allowance (set at 9,360.00 euros),⁶¹ which serves as a poverty alleviation measure. Moreover, according to ISTAT data, an ISEE of 6,000.00 euros per annum falls beneath the absolute poverty threshold, the benchmark employed in Italy for shaping public policy.⁶² Consequently, it can be inferred that the contribution relief measure will only benefit a small number of individuals who, in general, are unable to afford to hire a home caregiver.

9) *Have there been any legal disputes or conflicts reported in the media in your country over “employment contracts” in the care sector and gender discrimination? If so, please summarise or comment on the case(s).*

Since the research unit could not find any result concerning disputes or conflicts over employment contracts, it submitted a questionnaire to the Italian equality bodies (i.e. Equality Councillors) on whether they collected complaints of discrimination by female care workers that did not reach the courts.

A specific question was addressed to the Equality Councillors regarding gender discrimination disputes or difficulties involving employment contracts. Only two Councillors responded, stating that they had taken action or assisted employees discriminated against; however, only one of the two responses dealt with employment contract issues. That said, in accordance with privacy laws, the Councillor did not disclose any information about this issue.

Five councillors replied that they had assisted workers in discrimination cases. Two responses concerned discrimination cases related to the violation of parenting rules. One response concerned two cases of discrimination and harassment of health and care workers in two different nursing homes. One articulated response concerned actions taken to improve work-life balance and actions concerning the protection of female workers subjected to sexual violence.

⁶¹ Ministero del Lavoro e delle Politiche Sociali, “Assegno Di Inclusione” (*Nuove misure inclusione e accesso lavoro*) <<https://www.lavoro.gov.it/temi-e-priorita/decreto-lavoro/Pagine/assegno-di-inclusione>> (Accessed September 26, 2023).

⁶² ISTAT, “Le statistiche dell’ISTAT sulla povertà, anno 2022” (2023); Donatella Grassi e ISTAT (a cura di), *La misura della povertà assoluta* (ISTAT, 2009).

As part of the data collection process for the Italian National Stakeholders Meeting, the National Equality Councillor's office contributed additional instances of discrimination faced by care workers based on gender, particularly regarding their working and living conditions. These insights were supplemented by discussions held during the Italian National Stakeholders Meeting.⁶³

In one case, a female employee of a public health institution suffered discrimination when her request to change from full-time to part-time employment was denied by the administration on the grounds of maternity. This decision was deemed indirectly discriminatory under Article 25 of the Equal Opportunities Code, amended in November 2021 to address equal pay issues.

Similarly, a working mother in a residential care facility for elderly people (RSA) encountered difficulties, which resulted in an inspection by the competent authority. Following a warning to the RSA to rectify the situation, the issue was resolved.

Another case concerned a young mother employed in an RSA nursing home who was offered a discriminatory part-time contract because of her family responsibilities. Despite efforts to negotiate a fair agreement, the employer refused to cooperate, leading the employee to accept full-time employment for fear of losing her job.

Furthermore, a foreign employee from Albania, employed in personal services,⁶⁴ suffered harassment, and was forced to resign upon her return from maternity leave, under the pretext of a mandatory transfer to another location. Despite legal recourse, the employer's discriminatory behaviour could not be effectively challenged due to procedural constraints.

The National Equality Councillor's office also highlighted efforts to address work-life balance issues in the care sector. As part of this strategy, In Emilia-Romagna Region the Equality Councillor signed a memorandum of understanding with Local Health Unit of Romagna (*Azienda Unità Sanitaria Locale della Romagna* or AUSL Romagna) in March to promote the reconciliation of work and family responsibilities.

10) Do the legislation or, if applicable, collective bargaining agreements make any provision for wages in each of the care sector occupations, differentiating them in terms of their structure or amount from workers in the general or other production sectors?

Remuneration is the compensation for the work carried out by the employee, entitling them to a remuneration commensurate with the quantity and quality of their work. This remuneration should, in any case, be adequate to ensure

⁶³ Consigliera Nazionale di Parità, "Responses to the Questionnaire"; CARE4CARE, "Minutes of the Italian National Stakeholders Meeting".

⁶⁴ The concept of "personal services" encompasses a wide range of activities, which are detailed in regional legislation. This category encompasses interventions designed to prevent, reduce, alleviate, or eliminate conditions of disability, necessity, and individual or family distress. These interventions involve the provision of socio-assistance and socio-healthcare services aimed at addressing various social and healthcare needs.

both the employee and their family a dignified standard of living, as enshrined in Article 36 of the Constitution.⁶⁵

In Italy, the minimum wage is not established by law. Generally, remuneration is determined freely by the parties involved, yet subject to a minimum threshold. However, due to the non-implementation of Article 39, second part, of the Constitution, which stipulates that collective agreements have universal effect, the judiciary has identified this threshold in the minimum wage values set by collective agreements signed by the most representative unions in the sector. Remuneration may be provided in cash or in kind and is determined by regular monthly payments, payments made more frequently than monthly, and severance pay.⁶⁶

The law does not provide an explicit definition of remuneration. In contrast, the Supreme Court defines it as everything the worker receives from the employer in exchange for his work and because of the personal subjection to the employment relationship (Cass. SS.UU. 13 Dicembre 1984, no. 1069). The four principles that govern remuneration are consideration, obligatory nature, continuity, and irreducibility. These principles cannot be derogated by collective agreement or the parties.

The most common forms of remuneration include time-based wages, piece-work compensation, in-kind benefits, as well as profit-sharing, commissions, and product sharing schemes. The remuneration is paid on a monthly basis. Employer-paid wages comprise both fundamental components and supplementary or in-kind elements. Fundamental elements consist of the minimum contractual remuneration stipulated by collective agreements corresponding to each contractual qualification, contingency allowances (formerly used for adjusting wages to cost-of-living increments until 31 December 1991, but now static), separate pay elements (such as the 10.33 euros per month EDR introduced from 1 January 1993), and length-of-service increments. These amounts vary by qualification and are periodically adjusted according to the relevant collective agreement's terms and conditions.⁶⁷

In addition to the basic elements, remuneration may consist of other accessory elements. These elements are established by collective or individual agreements and are of two types:⁶⁸

- 1) *Superminimum* (consisting of sums agreed in the individual contract between the parties, or as part of company agreements).
- 2) Allowances (consisting of sums agreed in collective agreements and intended to compensate for performing work that entails greater burdens and difficulties for the worker).

In addition to monetary benefits, the employer may also provide benefits in kind such as accommodation, canteen, and fringe benefits.

⁶⁵ Oronzo Mazzotta, *Diritto del lavoro* (Milano: Giuffrè, 2022), 585.

⁶⁶ Del Punta, *Diritto del lavoro*, 585–92.

⁶⁷ Del Punta, *Diritto del lavoro*, 595–600.

⁶⁸ Mazzotta, *Diritto del lavoro*, 594–613.

The Italian system provides for compensation paid on a multi-month (periodic) basis, which may be compulsory or voluntary. The forms of remuneration in this category include the thirteenth-month wage, the fourteenth-month wage and loyalty/productivity/performance bonuses. The thirteenth-month wage is provided for by law (Presidential Decree no. 1070 of 28 July 1960) and is currently regulated by collective agreements. The thirteenth month's wage is paid once a year, usually in December. This wage is normally equal to one month's ordinary salary. The fourteenth-month wage is an additional monthly payment provided for by some collective agreements. The amount and modalities are similar to those of the thirteenth-month wage, but usually, the fourteenth-month wage is paid in the summer. Bonuses are regulated by collective agreements and are often linked to the achievement of a production, seniority, or productivity goal.⁶⁹

The elements of remuneration are compiled by collective agreements in tables that are used to determine the correct wage to be paid. The items included in these tables are numerous and have a decisive influence on the salary. Thus, the wage actually paid to an employee to whom all the allowances provided for in the collective agreement are applied may be much higher than the basic wage and may fluctuate significantly over time. In this system, it is rather complex to determine the value of the work performed. Furthermore, collective agreements do not value soft skills or do so only to a very limited extent, giving much more weight to qualifications and hard skills. This is problematic precisely in the care sector, in which interpersonal skills, empathy and other soft skills are indispensable.

As we have seen, Italy has historically adopted the wage determination model based on collective bargaining. This model has allowed a progressive increase in the national wage. However, the precondition for the functioning of the bargaining system is a high rate of unionisation and enforcement of collective agreements. The unionisation rate is difficult to measure in Italy, but since the 1980s there has been a reduction in the number of trade union members. Visser's studies, conducted between 2004 and 2016, showed a national downward trend, placing Italian national unionisation at around 50% in 2003, 40% in 2005, and around 35% in 2016.⁷⁰ Additionally, the variability of unionisation in relation to the sector of work must be considered: in some sectors, it is very high, while in others, such as domestic work, it is very low. Regarding the application of collective agreements, measurement is virtually unfeasible because there is no authority to record this data. Moreover, as there is no certification of representation and the constitutional mechanism of collective bargaining is not applied, the statistics on this issue have very limited value.

⁶⁹ Mazzotta, *Diritto del lavoro*, 594–613.

⁷⁰ Jelle Visser, *I sindacati in transizione. Documento OIL/ACTRAV* (Organizzazione Internazionale del Lavoro, 2020); Jelle Visser, "The Rise and Fall of Industrial Unionism," *Transfer: European Review of Labour and Research* 18 (2012): 129; Jelle Visser, "L'iscrizione al Sindacato in 24 Paesi" *Economia & lavoro* 42 (2008): 17.

The adoption of Directive 2022/2041 on adequate minimum wages in the EU, does not oblige member states to introduce legal minimum wages, nor does it establish a common threshold valid throughout the EU. It merely establishes some criteria to ensure minimum wages, above the subsistence threshold, taking into account the cost of living and purchasing power of the relevant member state. The two alternative ways to achieve this are to set a statutory minimum wage or to extend the coverage of collective bargaining. Coverage will have to reach 80%, where necessary through an action plan under EU monitoring.

All available estimates for Italy indicate a coverage rate, at least formally, well above 80% (100% for the OECD, 99% for the ILO, 97% for Eurofound's European Business Survey); from a formal point of view, therefore, no action by the Italian legislator seems necessary to comply with the directive.⁷¹

It is worth mentioning, however, that in July 2023 a bill (A.C. 1275) for the establishment of a legal minimum wage was submitted to the Italian Parliament by the opposition parties.⁷² The proposal aims to introduce a minimum wage of 9.00 euros per hour. According to the proponents, this figure would be calculated on the basis of 50% of the national average wage revalued in light of last year's inflation. Again, according to the proponents, this minimum level would correspond to approximately 70% of the median wage. The parliamentary process was suspended due to the government's decision to entrust the CNEL with a study on the subject, before also taking a position in relation to the transposition of the 2022/2041 directive.

The document drawn up by the CNEL, and approved on 12 October 2023,⁷³ expressed a negative opinion on the need to legislate on the minimum wage, also in view of the high rate of coverage of collective bargaining, which far exceeds the 80% threshold stipulated in the directive. According to the CNEL, therefore, collective bargaining is still the medium to be privileged and valorised for the definition of an adequate wage. Nevertheless, it is acknowledged, as also evidenced from discussions with national stakeholders engaged in the Care4Care project, that reliance solely on minimum wages established by collective agreements may not consistently ensure an adequate wage, primarily due to the time required for agreement renewal. This stance has, temporarily, halted the legislative progression.

Neither collective bargaining nor the law sets out any provisions for wages that are differentiated in terms of structure from those applied in other sectors. Indeed, in the care sector, as in all other sectors, collective agreements differentiate pay according to professional qualification. As a matter of fact, anti-discrimi-

⁷¹ Giovanni Orlandini and Guglielmo Meardi, "Round Table. Implementing the EU Directive on Adequate Minimum Wages in Southern Europe: The Odd Case of Italy" *Transfer: European Review of Labour and Research* 29 (2023): 253, 255–57.

⁷² Camera dei Deputati, "Proposta di legge concernente disposizioni per l'istituzione del salario minimo," *Atti parlamentari* (2023).

⁷³ CNEL, *Osservazioni e proposte sul salario minimo in Italia* (2023).

nation laws and the principle of equal treatment prohibit income discrimination. Gender-differentiated salaries are not allowed.

11) *Have there been any legal disputes or conflicts publicised by the media in your country over “wages” in the care sector and gender discrimination?*

Since there is no specific case law on gender discrimination on remuneration, the research unit submitted a questionnaire to the Italian equality bodies (i.e. Equality Councillors) on whether they collected complaints of discrimination by female care workers that did not reach the courts.

Concerning salary-related gender discrimination disputes, a specific question was submitted to the Italian equality bodies (i.e. the Equality Councillors). Only two Councillors declared that they had taken action or assisted workers on the basis of wage discrimination. However, in accordance with privacy laws, Councillors did not disclose any information about these conflicts.

Despite the scarcity of cases, a gender pay gap exists, with female health professionals earning around 12.8% less than men across all contracts (full-time and part-time); however, the gap narrows to 2.6% when just full-time contracts are included.⁷⁴

As part of the data collection process for the Italian National Stakeholder Meeting, the office of the National Equality Councillor and the social partners provided additional input confirming a trend towards a low economic valuation of care services. During the discussion at the Italian National Stakeholder Meeting, FNOPI, trade unions (*Confederazione Generale Italiana del Lavoro* or CGIL, *Confederazione Italiana Sindacati Lavoratori* or CISL, *Confederazione Unitaria di Base* or CUB Sanità, *Confederazione dei Comitati di base* or COBAS, *Sindacato delle Professioni Infermieristiche* or NURSIND) and some employers' organisations (*Unione Nazionale Istituzioni e Iniziative di Assistenza Sociale* or UNEBA) emphasised that the remuneration for all care workers is significantly low and that there are no career prospects with a consequent flattening of the pay curve, especially for care professionals.⁷⁵

The root causes of this wage disparity issue are underscored by several factors, notably the inadequate public investment in the healthcare sector, the transfer of care financial burdens from the public sphere to private entities (families), and the predominant presence of female employees within the sector. Specifically, the feminisation of care work, as highlighted by CGIL, results in a depreciated perception of the profession, leading to inadequate economic recognition. This trend reflects broader societal structures that perpetuate the undervaluation of care work.⁷⁶

⁷⁴ FNOPI, “8 Marzo 2022”.

⁷⁵ CARE4CARE, “Minutes of the Italian National Stakeholders Meeting”; Consigliera Nazionale di Parità, “Responses to the Questionnaire”; CGIL, “Responses to the Questionnaire”; CISL, “Responses to the Questionnaire”; FISASCAT, “Responses to the Questionnaire”; CUB Sanità, “Responses to the Questionnaire”; NOSOTRAS, “Responses to the Questionnaire”; UNEBA, “Responses to the Questionnaire”.

⁷⁶ CARE4CARE, “Minutes of the Italian National Stakeholders Meeting”.

12) Do the legislation or, if applicable, collective agreements for the care sector or for each care sector job make specific provision for reconciling work and family life?

- Do the legislation or, if applicable, collective agreements make any reference to reconciling work and family life “for women workers” in the care sector in general or in each care sector job? If so, please summarise or comment.

In recent years, the issue of work-life balance has received particular attention, both from a social and political viewpoint.

From a legislative perspective, Legislative Decree no. 151 of 26 March 2001 regulated parenthood, while Law no. 104 of 5 February 1992 provides for assistance measures for people with disabilities.

Other provisions more strictly concerning the world of work are those on *lavoro agile* (remote working) (Law no. 81 of 22 May 2017) and those on part-time work (Legislative Decree no. 81 of 15 June 2015).

The *lavoro agile* (remote working) is a mode of execution of the subordinate employment relationship characterised by the absence of hourly or spatial constraints and an organisation by phases, cycles and objectives, established by agreement between employee and employer. The remote working aims to help the worker to balance life and work times and to encourage the growth of his or her productivity. Law no. 81/2017 emphasises organisational flexibility, the voluntary nature of the remote working agreement, and the use of equipment that allows remote work (laptops, tablets and smartphones). Remote workers are guaranteed equal economic and regulatory treatment with their colleagues who perform their work in ordinary ways.⁷⁷

In addition to remote working, the legislator provides for teleworking as a form of work-life balance. Teleworking is regulated by Article 2(1)(b) of Presidential Decree no. 70 of 8 March 1999 and by the Framework Trade Union Agreement of 9 June 2004. Teleworking is a mode of performing subordinate work carried out with the prevalent support of information technology.

The regulatory framework has recently been amended by Legislative Decree no. 105 of 30 June 2022 - implementing Directive (EU) 2019/1158 on work-life balance for parents and carers. These provisions, including those relating to compulsory paternity leave, by express legislative provision apply to public sector employees as well, subject to any operational guidance provided by the competent Civil Service Department (see Circ. INPS 122/2022).

Regarding the maternity leave and allowance, the mother is entitled to leave from work during the two months preceding and the three months following the birth. Alternatively, she may abstain from work from the month preceding the presumed date of birth and for the four months following the birth, or exclusively within the five months following the birth, as long as the competent doctor certifies that this option does not prejudice the health of the woman and the child (Article 16(1)(1), and 20 of Legislative Decree no. 151 of 26 March 2001).

⁷⁷ Marco Novella e Patrizia Tullini, a cura di, *Lavoro digitale* (Torino: Giappichelli, 2022).

Maternity leave may be suspended, at the mother's request, in the event of hospitalisation of the newborn child, and the mother may enjoy it, in whole or in part, from the date of the child's discharge. Moreover, in the case of early childbirth, the days not taken before childbirth are added to the period of maternity leave after childbirth (even if the sum of the periods exceeds the overall limit of five months) (Article 16-bis Legislative Decree no. 151 of 26 March 2001).

Maternity leave is also granted in the case of adoption, for five months, from the child's entry into the worker's family (in the case of international adoption, the period can be brought forward to allow for the stay abroad preparatory to the child's entry into the family), as well as in the case of fostering (for three months, within the five months following fostering). In general, female workers are entitled to a daily allowance equal to 80% of their salary (or income if self-employed) (Article 26, Legislative Decree no. 151 of 26 March 2001). The allowance in question - paid for the whole period of maternity leave and covered by INPS (Article 23 Legislative Decree no. 151 of 26 March 2001) - is also due to the working father for the whole period of maternity leave or for the residual part which would have been due to the woman, in the event of the death or serious illness of the mother or of abandonment, as well as in the event of the child being entrusted exclusively to the father.

For self-employed women enrolled in a compulsory social security scheme managed by a private law body, maternity leave is granted for the two months preceding and the three months following the date of delivery. In the event of serious complications of pregnancy, leave is also granted for the periods preceding the two months before delivery (Articles 68 and 70 of Legislative Decree no. 151 of 26 March 2001).

The pregnancy of self-employed workers who work continuously for the principal does not entail the termination of the employment relationship, the performance of which, at the worker's request, remains suspended, without the right to remuneration, for a period not exceeding one hundred and fifty days per calendar year, unless the principal's interest ceases to exist. Moreover, subject to the consent of the principal, the possibility of replacement of self-employed women workers by other self-employed workers trusted by the workers themselves is provided for (Article 14 of Law 81/2017).

For self-employed women workers, registered with the INPS Separate Pension Scheme, the maternity allowance is paid for a further three months from the end of the maternity period in the event of an income of less than 8,145 euros per year (Article 1(239), Law no. 234 of 30 December 2021).

Moreover, for female workers enrolled in the INPS Separate Pension Scheme, the allowance in question is also granted in the case of non-payment of contributions by the principal (so-called automaticity of benefits), in the case of adoption or fostering (for 5 months following the child's entry into the family), as well as regardless of the actual abstention from work, as regards the maternity allowance due for the 2 months prior to the date of birth and for the 3 months following (Article 64, Legislative Decree no. 151 of 26 March 2001). The latter

provision also applies to self-employed women (Article 71, Legislative Decree no. 151 of 26 March 2001).

Regarding maternity leave and benefits for home caregivers, please refer to the answer to the question 8, above. Regarding paternity leave, the legal system regulates two types of paternity leave, compulsory and alternative leave.

Compulsory parental leave is available to working fathers from two months before to five months after childbirth and lasts 10 days, increased to 20 days in the case of multiple births. This leave is fully paid and covered by notional contributions (Articles 29 and 30, Legislative Decree no. 151 of 26 March 2001). Compulsory leave is also available to the father during the working mother's maternity leave and even if he takes alternative paternity leave. It is also granted to adoptive or foster fathers, as well as to employees of public administrations, domestic workers and agricultural workers. For domestic and agricultural workers, the contribution requirement for taking alternative maternity or paternity leave does not have to be met, but the existence of an employment relationship in place at the time of taking compulsory leave remains necessary.

For other employees, compulsory paternity leave may also be granted in the event of termination or suspension of employment, provided that no more than 60 days have elapsed between the beginning of the suspension or termination and the beginning of the paternity leave period. Compulsory paternity leave is not due either to working fathers registered with the INPS Separate Pension Scheme or to self-employed fathers.

The alternative paternity leave (Article 28, Legislative Decree no. 151 of 26 March 2001) is payable to the working father for the whole duration of the maternity leave or for the residual part that would have been due to the working woman, in the event of death or serious illness of the mother or of abandonment, as well as in the event of exclusive custody of the child to the father. The allowance is the same as for maternity leave, i.e. 80% of salary if employed, or of income if self-employed, since it is also payable to the self-employed or self-employed father for the period during which the self-employed or self-employed mother would have been entitled to it.

The prohibition of dismissal also applies in the case of compulsory or alternative paternity leave.

Concerning parental leave, the law provides that parents may optionally abstain from work during the first 12 years of the child's life, with a maximum overall limit of 10 months, raised to 11 if the working father exercises his right to abstain from work for a continuous or fractioned period of not less than three months. While on parental leave, an allowance of 30 per cent of pay is paid. The Budget Law for 2023 provided for an increase from 30 per cent to 80 per cent of this allowance for employed mothers and employed fathers, alternatively, up to a maximum of one month to be taken within the sixth year of the child's life with reference to workers who end their maternity or paternity leave after 31 December 2022. For public sector employees, according to the respective collective agreements, the allowance is generally equal to 100 per cent of remuneration for the first 30 days. Periods of parental leave are counted in the length of service

and do not entail a reduction in holidays, rest, 13th month pay or Christmas bonuses, with the exception of additional emoluments linked to actual presence on duty, unless otherwise provided for by collective bargaining.

The allowance for parental leave is also granted to self-employed workers registered with INPS for a period of three months, within the first year of the child's life. This leave is also granted to workers registered in the INPS Separate Pension Scheme, who do not have a pension and are not enrolled in other compulsory social security schemes, for a period of three months for each parent and for a further three months alternatively, within the first 12 years of the child's life. The indemnifiable period may not exceed an overall limit of nine months between both parents (Article 8, Law 81/2017).

A special and less extensive discipline is provided for parents working in domestic and family services (Article 62 of Legislative Decree no. 151 of 26 March 2001). They are entitled to maternity leave and paternity leave, and to the relevant remuneration. Article 25 of the collective agreement for domestic helpers and carers of 8 September 2020 (FIDALDO CCNL) stipulates that it is forbidden to work for women during the two months preceding the presumed date of birth, except for any advance or postponement provided for by the law; for the period between that date and the actual date of birth; during the three months after the birth, except for authorised postponements. These periods must be counted in the length of service for all purposes, including those relating to Christmas bonuses and holidays. Female domestic workers can apply for household allowances only on a deferred basis, with payments made semi-annually (instead of monthly); these allowances are also calculated not on wages received, but on hours subject to insurance (Article 14 Presidential Decree no. 1403 of 31 December 1971).⁷⁸

Domestic workers and home caregivers are excluded from the rules limiting dismissal (Article 62 of Legislative Decree no. 151 of 26 March 2001 and Articles 2240 and 2244 of the Civil Code).

Generally, Italian labour law mandates that employers provide reasons for dismissal, which may include just cause, subjective breaches of contract, and objective reasons related to job duties. Just cause constitutes a severe breach of the worker's obligations, warranting immediate termination without notice. Subjective reasons arise from significant breaches of contractual duties, with examples outlined in collective agreements. Objective reasons pertain to factors inherent to the job's productivity and organization, with the employer required to explore alternative tasks before dismissing for objective reasons. Dismissal procedures must adhere to formal requirements, including written notification and adherence to legal procedures.⁷⁹ Moreover, female workers cannot be dismissed from the beginning of the pregnancy period (300 days before the expected date of childbirth) until the end of maternity leave and up to 1 year of the child's age.

⁷⁸ Borelli, *Who Care?*, 177.

⁷⁹ Del Punta, *Diritto del lavoro*, 693–703; Mazzotta, *Diritto del lavoro*, 684–700.

Conversely, domestic workers can be dismissed at will, orally, and without being subject to any specific procedure, even during maternity. However, it should be noted that the FIDALDO CCNL states that

from the beginning of the pregnancy, provided it occurred in the course of the employment relationship, and until the end of the period of compulsory abstention from work, the female worker may not be dismissed, except for just cause. Resignations by a domestic worker or a home caregiver during this period are ineffective and of no effect if not communicated in writing or if not made in the protected forums provided for by law. Absences not justified within five days, where there are no force majeure reasons, are to be considered just cause for dismissal. In the event of voluntary resignation during the protected period, the employee is not required to give notice.⁸⁰

A particularly significant phenomenon is part-time work. This form of work, although not constituting a separate contractual classification, operates as a flexible arrangement with reduced working hours compared to the standard full-time schedule, usually set at 40 hours per week or as stipulated in collective bargaining agreements.

The regulation of part-time contracts is delineated in Legislative Decree no. 81 of June 15, 2015 (Articles 4–12). The reduction in working time can manifest in several forms:

- **Horizontal Reduction:** This occurs when the employee works fewer hours each day than the standard daily schedule, encompassing all days of the week.
- **Vertical Reduction:** In this scenario, the employee maintains a full-time workload but only works certain days of the week, month, or year.
- **Mixed Reduction:** This type involves a blend of both horizontal and vertical reductions, offering a flexible arrangement that combines elements of the preceding two forms.

Part-time can be a work-life balance solution. However, often in the care sector and especially among domestic workers, part-time is involuntary. This form of contract can hide, as pointed out during the Italian National Stakeholder Meeting, under-declared work. The level of undeclared work in the domestic sector remains a significant concern. The historical trend shows that the majority of domestic workers have been engaged in irregular employment relationships. While there have been efforts to reduce informality through regularisation measures, the sector still exhibits a high prevalence of undeclared work, with the current rate standing at 51.8% in 2021.⁸¹

The irregularities detected in the sector include, in addition to undeclared work, under-declared work (i.e. declared for fewer hours than those actually

⁸⁰ Borelli, *Who Care?*, 177.

⁸¹ Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico*, 118–23.

worked or according to a lower professional classification). In both cases, the worker receives all or part of the wages irregularly. The effect of these forms of irregular work is twofold: the employer saves on the cost of care (by not paying taxes and social security contributions and by paying a lower wage than that stipulated by collective agreements), the worker receives a payment on which he/she does not pay taxes and contributions.⁸²

- *Have there been any court rulings on this matter? If so, please summarise or comment.*

There are no specific cases concerning work-life balance, however there is an important case concerning the dismissal of an employee who refused to change from full-time to part-time.

In its recent ruling no. 12244 of 9 May 2023, the Court of Cassation dealt with the interpretation of Article 8(1) of Legislative Decree no. 81 of 2015, concerning the transformation of an employment contract from full-time to part-time and vice versa. The Court clarified that the employee's refusal to switch to part-time cannot be the sole reason for dismissal but does not preclude the possibility of dismissal for objective justifications. This ruling reiterates previous case law, emphasising that an employer's decision to terminate a contract after such a refusal must be justified by real economic or organisational needs. The decision emphasises the importance of balancing workers' rights with the employer's legitimate interest in effectively managing its workforce.

Out-of-court cases have been documented by the office of the National Equality Councillor. For insights into discrimination against mothers, specifically regarding work-life balance within the domestic sector, please refer to the response to question 9 above.

- *Do the legislation or, if applicable, collective agreements, provide for different provisions in terms of work-life balance for staff in each of these care sector occupations compared to ordinary workers or workers in other production sectors? If so, please summarise or comment on the case(s).*

These work-life balance measures apply generally to all sectors. However, as far as the care sector is concerned, there are no specific work-life balance measures, and the application of remote working and teleworking contracts are hardly feasible.

- *Have there been any court rulings on differences in conciliation between the care sector and other sectors? If so, please summarise or comment on the case(s).*

While there is no dedicated case law addressing work-life balance, out-of-court cases have been documented by the office of the National Equality Councillor. For insights into discrimination against mothers, specifically regarding work-life balance within the domestic sector, please refer to the response to question 9 above.

⁸² Borelli, *Who Care?*, 202.

13) *Have statistics or databases been published in your country on occupational accidents or illnesses arising from the work of personnel in the care sector as a whole or in each of the care sector jobs according to the workers' gender?*

The National Institute for Insurance against Accidents at Work (*Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro* or INAIL) has a database collecting all information on occupational accidents and illnesses. Both in aggregated form and in the form of microdata. This database is public and freely accessible online (see table). INAIL also periodically publishes a report on occupational diseases by health sector, the most recent being in 2019.

ISTAT publishes reports on the statistical incidence of occupational diseases.

Another useful report is the Quarterly Note on Employment Trends (*Nota trimestrale sulle tendenze dell'occupazione*) which is issued by the Ministry of Labour and describes the data provided by ISTAT, INPS, INAIL and the National Agency for Active Labour Policies (ANPAL). The Higher Institute of Health (*Istituto superiore di sanità*, or ISS) publishes reports on occupational accident trends.

These are the main databases:

Table 2 – Main institutional databases and statistical sources.

Author	Year	Title	Link
INAIL	2023	<i>Banca dati statistica</i>	< https://bancadaticsa.inail.it/bancadaticsa/login.asp >
INAIL	2019	<i>Le malattie professionali nella sanità</i>	< https://www.inail.it/cs/internet/docs/alg-pubbl-malprof-le-malattie-professionali-nella-sanita.pdf >
ISS	2023	<i>Salute sul lavoro</i>	< https://www.epicentro.iss.it/ >
INPS, Ministero del Lavoro	2022	<i>Nota trimestrale sulle tendenze dell'occupazione</i>	< https://www.inps.it/it/it/dati-e-bilanci/note-trimestrali-sulle-tendenze-dell-occupazione.html >
WHO	2022	<i>Health and care workforce in Europe: time to act</i>	< https://www.who.int/europe/publications/i/item/9789289058339 >

14) *Describe or comment on any statistics or databases you have found regarding the participation of male and female workers in the care sector workforce, either in general, or in relation to each of the various occupations that make up the care sector.*

The WHO has identified a number of issues affecting the care sector, including a lack of health and care workers, insufficient recruitment, inefficient work organisation, unappealing employment and working conditions, a lack of gender-responsive policies to improve gender balance, and insufficient investment.⁸³

⁸³ WHO Regional Office for Europe, *Health and Care Workforce in Europe: Time to Act*, 2.

In a 2019 report, the OECD and the European Commission's European Observatory of Health Policies and Systems highlighted that Italy employs fewer healthcare professionals than most Western European countries. In 2019, there were 5.8 healthcare professionals per 1,000 inhabitants in Italy, in contrast to 8.5 in the EU. Furthermore, the number of healthcare professionals has been consistently declining; Italy had approximately 557,000 healthcare professionals in 2016, which decreased to about 456,000 by 2022. FNOPI estimates that Italy would need between 50,000 and 60,000 additional healthcare professionals to reach the EU average.⁸⁴

During the Italian National Stakeholders Meeting, FNOPI, alongside labour unions and employers' organisations, emphasised the issue of labour shortages. Within this context, several discussions emerged regarding the potential of technology to support healthcare and assistance personnel. The role of platforms as facilitators in matching users' needs with nursing personnel was underlined. In this context, FNOPI stressed the ongoing debate surrounding the possible introduction and dissemination of the community nurse role, as outlined in the Health Pact (*Patto per la salute*), and legislated in Decree-Law no. 34 of May 19, 2020, subsequently converted into Law no. 77 of July 17, 2020 (*Decreto Rilancio*).⁸⁵

The main cause of these labour shortages has been the numerous turnover blocks introduced by legislation to contain public spending on healthcare.⁸⁶ Alongside this phenomenon, a trend has emerged in the public health sector to outsource care services using forms of contracting and subcontracting to co-operatives and private companies. This trend is homogeneous throughout the country and concerns both health professionals, social and care workers, and basic care workers. There are two main reasons for this choice:

- a) the decision to circumvent public recruitment competition procedures, and
- b) the containment of personnel costs and NHS expenditure.

The pandemic crisis has forced a temporary change of course. The *Decreto Rilancio*, provided for the integration of the nursing workforce, initially with temporary contracts, then, from 2021, with permanent contracts.⁸⁷ There is no evidence that this is a permanent change of policy.

Throughout the pandemic's years, the WHO has certified that:

Many countries entered the health emergency with insufficient numbers of HCWs, suboptimal skill-mixes and imbalanced geographical distributions. This was exacerbated during the COVID-19 pandemic as HCWs had higher rates of infection than the general population and experienced the negative impacts of

⁸⁴ FNOPI, *Scheda sulla professione infermieristica*.

⁸⁵ CARE4CARE, "Minutes of the Italian National Stakeholders Meeting".

⁸⁶ FNOPI, *Scheda sulla professione infermieristica*.

⁸⁷ ISTAT. "Elaborazione di dati sul personale in attività nel sistema sanitario pubblico e privato." *Personale sanitario*, 2022. <<http://dati.istat.it/Index.aspx?QueryId=31546>> (Accessed September 26, 2023); FNOPI, "8 Marzo 2022"; FNOPI, *Stato della carenza infermieristica al 2021*; FNOPI, *Scheda sulla professione infermieristica*.

burnout and stress. [...] High levels of psychological impacts have been reported by several countries in the Region, with over 80% of nurses reporting negative psychological impacts due to the pandemic in some countries (19,20). Up to nine out of 10 nurses had declared an intention to quit their jobs.⁸⁸

The pandemic has caused numerous victims especially among female health professionals. In fact, female health professionals account for 34% of the deaths recorded among Italian health professionals. A further issue concerns gender-based violence. According to FNOPI, about 180,000 health professionals have suffered violence in the workplace during their careers, 100,000 of these violences were physical assaults.⁸⁹

Concerning distribution in the labour market, FNOPI reports that the vast majority of health professionals (more than 75%) work in hospital facilities. Approximately 14% of health professionals have a part-time contract, 98% of them are women. In 2021, there were approximately 37,000 freelance health professionals, while there were approximately 78,000 health professionals employed by private facilities.⁹⁰

Regarding age, most health professionals are between 36 and 55 years old. Health professionals over 65 years of age with professional seniority of more than 30 years account for approximately 13,000, while those with no professional seniority of more than 30 years account for approximately 25,000. Health professionals up to 28 years of age number about 39,000. The average age of all health professionals in Italy is about 46 years old, while that of civil servants alone is about 51 years with marked differences. In the Regions where the turnover block has been completed the age is markedly higher than in the others.⁹¹

Concerning geographical distribution, the largest number of health professionals is concentrated in the North-West regions. This is followed by the South, the Centre, the North-East and the Islands. This uneven distribution is partially explained on the basis of population, which is larger in the North than in the other areas of the country, and on the basis of remuneration, which is slightly higher in the Northern regions.⁹²

According to FNOPI, female health professionals in Italy are about 76% distributed unevenly across the country. In the North-West female health professionals make up 83.83% of the total, while in the North-East they make up 83.28%. The

⁸⁸ WHO Regional Office for Europe, *Health and Care Workforce in Europe: Time to Act*, 21.

⁸⁹ WHO Regional Office for Europe, *Health and Care Workforce in Europe: Time to Act*, 21; an issue that has been raised also by the media, see Mariavittoria Savini, "Aggressioni personale sanitario, Schillaci: "Numeri allarmanti, le infermiere le più colpite", *RaiNews*, 12 March 2023, <<https://www.rainews.it/articoli/2023/03/aggressioni-personale-sanitario-schillaci-numeri-allarmanti-le-infermiere-le-piu-colpite--480d5bbe-a810-463e-b64b-fe6074b6ca69.html>> (Accessed April 29, 2024).

⁹⁰ FNOPI, *Scheda sulla professione infermieristica*; FNOPI, *Tutti i numeri degli infermieri*.

⁹¹ FNOPI, *Scheda sulla professione infermieristica*; FNOPI, *Tutti i numeri degli infermieri*.

⁹² ISTAT. "Elaborazione di dati sul personale in attività nel sistema sanitario pubblico e privato." *Personale sanitario*, 2022. <<http://dati.istat.it/Index.aspx?QueryId=31546>> (Accessed September 26, 2023); FNOPI, *Scheda sulla professione infermieristica*.

peak of female health professionals is recorded in Trentino-Alto Adige/Südtirol with 86.39%. In the Centre, female health care professionals make up 77.64%, in the South 67.37% and in the Islands 64.38%, with Sardinia at 79.23% and Sicily with the lowest figure in Italy at 59.05%.⁹³ Concerning the pay gap, female health professionals earn about 12.8% less than men considering all contracts (full time and part time); however, the gap drops to 2.6% if only full time contracts are considered.⁹⁴

Work-related stress and burnout were common even before the pandemic, according to the findings of the report *Le malattie professionali nella sanità* (Occupational Diseases in Healthcare). However, the most common occupational diseases in the care sector until 2019 were those affecting the musculoskeletal system. Supporting, lifting, transferring, and repositioning patients were all operations that put healthcare personnel at risk of lower back injuries or other musculoskeletal illnesses. Musculoskeletal diseases were associated with various conditions, including an increase in the number of obese persons, an increase in the average age of carers, and limited access to mechanical aids (lifts).⁹⁵

Regarding social and care workers, data are fragmentary because there is no professional register. Trade unions estimate between 200 and 300,000 workers, 90% of whom are women.⁹⁶ Trade unions indicate an average age of around 45 years.⁹⁷ The age of the operators ranges from 30 to 60. There are no data available on Social and health workers employed in the private sector (scientific hospitalisation and care institutions or IRCCS, foundations, research institutions, private nursing homes) and in the public sector (prisons, schools, public health facilities), nor on self-employed workers. Furthermore, there is a lack of data on workers employed on a temporary or permanent basis during the COVID-19 pandemic.⁹⁸ According to trade unions, social and care workers work a wide range of care duties with very heavy shifts, having to make up for shortages of nursing staff and being burdened with a plethora of tasks that are not provided for in contracts and for which they have no specific training.⁹⁹

During the pandemic, social and care workers and basic care workers experienced a great deal of work-related stress, which led to a significant increase in burnout and occupational accidents and illnesses.

According to data from the INPS Observatory on domestic workers, in 2022, the total number of domestic workers contributing to the INPS was 894,299, reflecting a decrease of 7.9% compared to 2021 (-76,548 workers).¹⁰⁰ This decline

⁹³ FNOPI, “8 Marzo 2022”.

⁹⁴ FNOPI, “8 Marzo 2022”.

⁹⁵ INAIL, “Le malattie professionali nella sanità” (Inail - Dipartimento di medicina, epidemiologia, igiene del lavoro e ambientale, 2019).

⁹⁶ CARE4CARE, “Minutes of the Italian National Stakeholders Meeting”.

⁹⁷ CARE4CARE, “Minutes of the Italian National Stakeholders Meeting”.

⁹⁸ Federazione Nazionale Migep, “Modifiche al Decreto Legislativo 21 Aprile 2011 n. 67”.

⁹⁹ Federazione Nazionale Migep, “Modifiche al Decreto Legislativo 21 Aprile 2011 n. 67”.

¹⁰⁰ INPS, “Statistiche in breve: lavoratori domestici” (INPS, 2023) <<https://servizi2.inps.it/servizi/osservatoristatistici/api/getAllegato/?idAllegato=1013>> (Accessed September 26, 2023).

follows increases in the previous years, driven by the regularisation of employment relationships to allow domestic workers to travel to work during lockdown periods and the entry into force of regulations governing the regularisation of irregular employment relationships (Decree Law no. 34 of 19 May 2020). Similar phenomena were observed in the years following 2009 (Law, no. 102 of 03 August 2009) and up to 2012 (Legislative Decree no. 109 of 16 July 2012), during which regularisation of workers, both EU and non-EU citizens, occurred.¹⁰¹

The data indicates the dual impact of the COVID-19 pandemic on the increase of domestic workers. The first effect is attributed to the containment measures, which restricted movement to those who could demonstrate a legitimate reason, such as having a regular employment relationship. The second effect, also related to the pandemic, is linked to the regularisation procedure for irregular immigrant workers initiated in 2020. This procedure focused on two sectors (agriculture and domestic work), attracting workers from other sectors as well and resulting in an overrepresentation of domestic work in the years immediately following regularisation. With the easing of containment measures, many regularised workers shifted sectors, returning to their original fields.

Regarding gender and nationality, there are significant differences. The most pronounced decrease in 2022 was observed among foreign male workers (-21.1%), a group that had seen the most significant increase between 2019 and 2021 (+66.6%). Foreign women, despite a slight decrease in 2022 (-5.6%), remain dominant in the domestic sector, constituting 58.7% of the total. The second-largest group comprises Italian women, representing 27.8% of the total.

The category of home caregivers (*assistenti domiciliari*, or *badanti*) among domestic workers is more prevalent among nationals from Eastern European countries, such as Georgia (82.4%), Bulgaria (73.8%), Ukraine (65.7%), and Romania (63.0%). Among workers of Asian origin, the presence of caregivers is less significant, dropping below 20% for Bangladesh, the Philippines, and Pakistan.¹⁰²

Specifically focusing on home caregivers, their average age is slightly higher (51.3 years) compared to other domestic workers (47 years). Moreover, the majority of caregivers are over 50 years old (62.2%), while only a small percentage are under 30 (4.9%). This demographic profile reflects the demanding nature of caregiving roles, often attracting older individuals with more experience.¹⁰³

In terms of hours worked, home caregivers tend to work longer hours on average compared to other domestic workers. Only a small percentage of caregivers (6.1%) work less than 10 hours per week, with a significant portion (42.2%) working over 40 hours per week. This contrasts with the majority of other domestic workers who work fewer hours, with 84% of them working less than 30 hours per week.¹⁰⁴

¹⁰¹ Osservatorio DOMINA sul Lavoro Domestico, 5° Rapporto annuale sul lavoro domestico, 94 ff.

¹⁰² Osservatorio DOMINA sul Lavoro Domestico, 5° Rapporto annuale sul lavoro domestico, 97–102.

¹⁰³ Osservatorio DOMINA sul Lavoro Domestico, 5° Rapporto annuale sul lavoro domestico, 105.

¹⁰⁴ Osservatorio DOMINA sul Lavoro Domestico, 5° Rapporto annuale sul lavoro domestico, 107.

Italian home caregivers, a vital component of the caregiving sector in Italy, represent a noteworthy portion of the domestic workforce. While constituting a minority, their numbers are significant given Italy's ageing population. Unlike foreign caregivers, Italian home caregivers display a diverse range of ages and backgrounds, reflecting various entry points into the profession. With approximately 48% of caregivers being Italian, they contribute substantially to meeting the care needs of families. Despite their local familiarity, Italian home caregivers face challenges such as long hours and low wages, with 42.9% working over 40 hours per week and 60% earning less than 6,000 euros annually.¹⁰⁵

15) Do the legislation or, if applicable, collective agreements, for each of these occupations in the care sector, make specific provision for women in terms of occupational safety and health? If so, please provide details.

Occupational safety and health (OSH) is guaranteed by: Article 32 Italian Constitution, that reads "The Republic safeguards health as a fundamental right of the individual and as a collective interest"; Article 2087 Civil Code, that provides for the duty of the employer to protect physical integrity and moral personality of his/her employees; Legislative Decree 9 April 2008, no. 81 (*Testo Unico sulla Salute e Sicurezza sul Lavoro*) implements the employer's OSH obligations. This decree is applied to all workers, with the relevant exception of domestic workers (i.e. home caregivers).

Domestic workers find a specific, although minimal, protection on occupational health and safety at work in Law no. 339 of 2 April 1958.¹⁰⁶

Indeed, domestic workers are explicitly excluded from the scope of application of Legislative Decree no. 81 of 9 April (Article 2(1)(a)), coherently with Directive 391/1989 (furthermore, Legislative Decree no. 81 of 9 April has repealed Presidential Decree no. 547 of 27 April 1955 that extended several health and safety guarantees to domestic workers). However, the applicable law for domestic workers provides for a guarantee that may be read as extensive, as prescribes the employer's obligation to

provide the worker [...] with an environment that is not harmful to the worker's physical and moral integrity, as well as healthy and sufficient nutrition; protect his health particularly if there are sources of infection in the family (Article 6, Law no. 339 of 2 April 1958).

In practice, however, a much-reduced scope of the safety obligation has been established compared to what is applicable to the business environment, which

¹⁰⁵ Osservatorio DOMINA sul Lavoro Domestico, 5° *Rapporto annuale sul lavoro domestico*, 110–17.

¹⁰⁶ Sergio Pasquinelli e Giselda Rusmini, a cura di, *Badare non basta. Il lavoro di cura: attori, progetti, politiche* (Roma: Ediesse, 2013); Gisella De Simone, "I lavoratori domestici come attori della conciliazione," in *Persone, lavori, famiglie. Identità e ruoli di fronte alla crisi economica*, a cura di Maria Vittoria Ballestrero, e Gisella De Simone (Torino: Giappichelli 2009); Luca Nogler, *Lavoro a domicilio. Art. 2128* (Milano: Giuffrè, 2000).

makes its fulfilment less burdensome for the domestic employer, creating an important breach of protection.

In case of illness, the job retention period is established by the applicable collective agreement. In the FIDALDO collective agreement, it is set that the domestic worker is entitled to job retention for 10 days in case of seniority up to 6 months; 45 days in case of seniority between 6 months and 2 years; 180 days in case of seniority longer than 2 years. During these periods, the employer must pay an allowance for a period of, respectively, 8, 10, and 15 days, for one year and an amount equivalent to 50% of pay until the 3rd day and 100% from the 4th day onward. Some CCNLs provide for shorter illness protection periods and lower economic compensations.

In the event of an occupational injury or illness, the FIDALDO collective agreement ensures the same illness protection period seen above. However, in this case, the employer must pay wages only for the first 3 days of leave. Many of the applicable collective agreements reduce the illness protection period.

The collective agreements poorly articulate the health and safety regime for domestic workers, by providing, in the best cases, for norms that entail the employer to inform the worker about possible risks. No duty to train the workers on health and safety procedures is provided for, in violation of ILO Convention 201, no. 19, which has been ratified by Italy. However, as pointed out by stakeholders in the national meeting held in Rome on April 10, 2024, trade unions (*Federazione italiana lavoratori commercio, albergo, mensa e servizi* or CGIL-FILCAMS, *Federazione Italiana Sindacati Addetti Servizi Commerciali, Affini e del Turismo* or CISL-FISASCAT, *Unione Italiana Lavoratori del Turismo, del Commercio e dei Servizi* or UILTUCS, *Federazione Cof* or FEDERCOLF) and employers' organisation (*Associazione Nazionale Famiglie Datori di Lavoro Domestico* or Domina and *Federazione Italiana datori di lavoro domestico* or FIDALDO) established the National Bilateral Body for Employers and Family Collaborators (*Ente Bilaterale Nazionale del Comparto di Datori di Lavoro e dei Collaboratori Familiari* or EBINCOLF) on 23 December 2002. This organisation provides professional training and qualifications for domestic workers, including courses on health and safety.

In the Italian legal system, specific provisions for women in terms of occupational health and safety recur only as concerns pregnancy, and the same applies in the care sector. However, home caregivers have a special regulation concerning parental leaves as proved for by Article 62 Legislative Decree no. 151 of 26 March 2001 see above answer to question 12 on gender.

It is forbidden to employ women: a) during the 2 months preceding the presumed date of delivery, except for any anticipation or postponement provided for by law; b) during any period between that date and the actual date of delivery; c) during the 3 months after delivery. (see, *inter alia*: Article 16, Legislative Decree no. 151 of 26 March 2001; Article 25, CCNL FIDALDO on domestic workers).

Anticipations or postponements are provided for in case of jobs that entail possible risks for the mother or the child, for instance due to exposure to toxic substances or due to tasks that entail lifting of weights (Article 7, Legislative

Decree 26 March 2001, no. 151). Therefore, such special protection applies to care workers, as well, although the specific working conditions must be considered in this respect.

Moreover, a restriction on night work for pregnant women applies, indeed it is forbidden for women to work from midnight to 6 a.m., from the establishment of pregnancy until the child is one year old (Article 11, Legislative Decree no. 66 of 8 April 2003).

Sexual and other forms of harassment are classified as discrimination under Article 26 of Legislative Decree no. 198 of 11 April 2006. A female or male employee's dignity is violated as a result of harassment, which is described as "unwanted conduct on grounds of sex with the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment." Sexual harassment, on the other hand, is defined as

any unwanted conduct of a sexual nature, expressed in physical, verbal, or non-verbal form, with the purpose or effect of violating the dignity of an employee and of creating an intimidating, hostile, degrading, humiliating, or offensive environment (Article 26(2) of Legislative Decree no. 198 of 11 April 2006).

By adding paragraph 2-bis to Article 26 and adding the phrase "less favourable treatment suffered by a worker or employee for the fact that they have refused the conduct referred to in paragraphs 1 and 2 or have been subjected to it," Legislative Decree no. 5 of 2010 expanded the definition of discrimination.

Hence, now It is also forbidden to take any action (such as disciplinary action or dismissal) in retaliation against a worker who files a complaint to have the harassing behaviour substantiated (Article 26(3) of Legislative Decree no. 198 of 11 April 2006).

Harassment is prohibited by law because it is detrimental to the dignity of the victim. In order to repress harassment, it is not necessary to look for a term of comparison (the more favourable treatment given to the employee of the opposite sex), but it is sufficient to prove the fact. Furthermore, it is not necessary to detect the intent of the agent, it is sufficient to verify the effect (of injury to the dignity of the person) produced on the harassed person because there is a form of strict liability.

In order for behaviour to qualify as harassment, it must be undesired. Therefore, the viewpoint of the person who is subjected to the behaviour, rather than the person who engages in it, is crucial.

Discrimination is equated with harassment both in terms of the consequences and the legal process.

The Equal Opportunities Code's emergency procedure, which can be used to combat any form of discrimination ("in all cases of individual legal action," as Article 38(6) specifies), can be used by the harassed person to seek "compensation for damages, including non-pecuniary damages." Moreover, the Equality Councillor is allowed to bring the lawsuit on behalf of the harassed party.

Since the employer has a general duty, under Article 2087 of the Civil Code, to take all necessary measures to preserve, in the workplace, not only

the physical integrity but also “the moral personality of employees,” compensation for damages must always be claimed against the employer, even when it is not the harasser.

The option to take direct action against the harasser and claim related non-contractual liability remains available if the harasser is a hierarchical superior or a work colleague.

Following the fulfilment of the required number of ten ratifications, the 2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) came into force on 1 August 2014. Italy ratified the Convention with Law no. 77 of 27 June 2013 which was important in promoting this Convention.

Directive 2102/29/EU was implemented in Italy by Legislative Decree no. 212 of 15 December 2015. The Decree introduced major novelties to the criminal procedure that granted the victim additional rights, faculties, and powers. Still, it did not change the rights to access to care for the victims.

The law 53/2022 strengthened mechanisms to monitor and assess sexual harassment and gender-based harassment also within the workplace.

According to the 2021 Violence Against Nurses in the Workplace: a Multicentre, Descriptive Analytic Observational Study (CEASE-IT), almost one-third of all respondents experienced verbal or physical harassment in the previous year. This figure is consistent with the Ministry of Health’s recently released data. In line with the working realities, there was a definite female predominance in the examined sample (76% of respondents). When interviewees’ numbers are compared to workplace harassment statistics, it becomes clear that harassment primarily affects women. The CEASE-IT study also reveals that male aggressors are present in 51.8% of the cases.¹⁰⁷

16) Have there been any court rulings on this matter? If there have been court rulings, please summarise or comment on them.

Stakeholders emphasise a problem of awareness-raising and adequate training of workers in occupational health and safety, both in the health sector and in other sectors.¹⁰⁸ With regard to occupational health and safety case law, several decisions have attracted national attention, mainly of a criminal nature. Notable cases include:

- Court of Cassation, 1 June 2021, no. 21521: In this case, a professional nurse working in a hospital contracted hepatitis while performing her duties. The

¹⁰⁷ Gruppo di Studio Italiano CEASE-IT, “Studio multicentrico nazionale. Gli episodi di violenza rivolti agli infermieri italiani sul posto di lavoro” (Università degli Studi di Genova, 2021); Ministero della Salute, “Osservatorio nazionale sulla sicurezza degli esercenti le professioni sanitarie e socio-sanitarie. Relazione attività anno 2022” (Ministero della Salute, 2022).

¹⁰⁸ CARE4CARE, “Minutes of the Italian National Stakeholders Meeting”; Raffaella Maioni, a cura di, *Viaggio nel lavoro di cura: chi sono, cosa fanno e come vivono le badanti che lavorano nelle famiglie italiane* (Roma: Ediesse, 2016).

incident occurred during a venous blood sampling from a patient suffering from HCV and HBV, and the nurse accidentally pricked herself with the needle she was using. The judges at first instance attributed the illness contracted by the worker to the competent doctor, who did not cooperate with the employer in assessing the biological risk of possible infectious diseases for healthcare personnel.

- Court of Cassation, 16 June 2017, no. 14566: In this case, a nurse was assaulted while on duty in the emergency room of a health facility. The Court of Cassation sentenced the employer to pay damages and reiterated that the employer has a legal obligation to protect its employees, as set out in Article 2087 of the Civil Code, which requires it to safeguard the physical and moral integrity of employees during the performance of their duties.
- Court of Cassation, 27 September 2010, no. 34804: A hospital manager was convicted of serious injuries inflicted on an employee. The judgement states that the manager, who was responsible for the procurement and management of goods and services with spending power, failed to provide safe transport trolleys to employees and to ensure adequate training on the safe use of the devices, resulting in the conviction.
- Court of Cassation, 7 June 2010, no. 21519: A mental health department manager was convicted of injuries caused to an employee who tripped over a brick in the hospital yard. The conviction was handed down because the manager neglected to promptly report dangerous conditions to the technical department, thus violating his work safety duties.
- Court of Cassation, 15 May 1998, no. 5689: This case concerns the liability of a department manager for injuries caused by inadequately trained staff. The manager was held liable for failing to ensure that staff received adequate training, resulting in injuries to a professional nurse.

17) *Is there any specific provision for termination of contract that differentiates between men and women in each of these occupations? If so, please provide details.*

Workers in the care sector are subject to the ordinary rules on dismissal laid down by the general legislation that regulates termination of employment contract.

Therefore, no differentiation is allowed between men and women.

However, among the remedies, the gender factor may play a role an element of discriminatory dismissal. Although in the Italian legal system there are different regimes with regard to protections against unlawful dismissal—depending on the date of recruitment before or after 7 March 2015 and depending on the size of the enterprise—when a discriminatory dismissal occurs, the protections against discriminatory dismissal is the same: the law provides that - in the event of discriminatory dismissal, dismissal during marriage, maternity leave - the court orders the employer to reinstate the employee in the workplace and to pay damages; however, the employee may ask the employer, instead of reinstatement, for an indemnity equal to 15 months' of the last global de facto salary in addition to damages (full reintegration protection).

The gender factor is also relevant in other hypotheses that place specific dismissal prohibitions in favour of women.

It is forbidden to introduce clauses of any kind during the formation of the contract that provide for the termination of the employment relationship of female employees as a consequence of marriage (so-called bachelorette clauses). Any agreements of this kind are void and have no effect.

The provision, now contained in Article 35 of Legislative Decree no. 198/2006, dates back to Law no. 7 of 9 January 1963, which first placed the prohibition with the intention of safeguarding female workers from the risk of being dismissed on account of marriage, considered to be an event that entailed a greater “risk” of incurring a pregnancy, and therefore a source of risk of aggravating the employer’s economic and organisational burdens. The special protection has remained circumscribed by the letter of the law to working women for several reasons: because it is for women that the birth of their offspring represents an obstacle to work; because, such an event involves the woman’s body, which is entitled to be preserved from the strain of work. The application of this provision to workers involved in family and domestic services is expressly ruled out.

The same Article 35 of Legislative Decree no. 198/2006 sanctions with nullity any dismissal announced on the grounds of marriage. The reinforced protection is addressed to female workers only, as they are the recipients of reinforced protection related to two events, pregnancy and puerperium, which remain a female prerogative.

The reinforced limit to the employer’s power to terminate the contract with the worker is circumscribed to a very precise period, which goes from the day of the request for civil marriage bans to one year after the celebration of the marriage.

A special form of protection is also reserved for the worker in the case of maternity.

Article 54 of Legislative Decree no. 151 of 26 March 2001 provides for the prohibition to dismiss the mother worker from the beginning of pregnancy until the child is one year old. The limit also applies in the case of adoption and fostering.

During this “protected” period, there is a real prohibition for the employer to dismiss the employee, the violation of which entails an administrative sanction (Article 54 paragraph 8 of Legislative Decree no. 151 of 26 March 2001) and the nullity of the dismissal, which has no effect on the contract, with the consequence that the employment relationship is reinstated.

The prohibition operates in connection with the objective state of pregnancy, without the employer’s knowledge of the employee’s condition being relevant, nor even the employee’s knowledge of her own state, who in any event has no obligation to communicate her state of pregnancy, except - in due course - in order to be able to take advantage of the leave and permits provided for by law and by collective bargaining.

Domestic workers are excluded from the scope of this provision, and they can be dismissed without the employer having to justify it, even in connection with the events of birth or adoption. The latest *CCNL colf e badanti* signed on 15 January 2019, however, states in Article 25 that

from the beginning of the pregnancy, provided that it occurred during the course of the employment relationship, and until the end of the period of compulsory abstention from work, the worker cannot be dismissed, except for just cause.

Jurisprudence has been oriented in the same direction, which has held that dismissal during maternity leave is unlawful, pursuant to Article 62 of Legislative Decree no. 151 of 26 March 2001.

There is a specific regulation in place regarding employee resignation. This is a procedural provision that seeks to ensure that the employee's decision to terminate their employment is an expression of their free will and not the result of employer pressure. The employee's resignation does not go into effect during the "protected period" (from the beginning of pregnancy until the child turns three) until it has been approved by the inspection service of the relevant Ministry of Labour.

18) Have there been any court rulings on this matter? If there have been court rulings, please summarise or comment on them.

While cases of discrimination in labour law remain relatively few, instances specifically concerning discriminatory dismissals on gender grounds are particularly scarce. However, information shared during a Italian National Stakeholder Meeting highlighted the existence of such dismissals, which are often addressed through out-of-court settlements, shielding them from court scrutiny.

A notable exception is the crucial ruling of the Catanzaro Court of Appeal, 6 May 2014, no. 676. The Court of Appeal of Catanzaro held that the dismissal of a female employee of an accredited private clinic in Catanzaro was discriminatory on the basis of gender. The clinic had conducted a collective dismissal procedure for several workers, including nurses, cooks, and socio-sanitary auxiliaries, classifying them according to their level of education, length of service, and other criteria related to the clinic's needs. Despite her qualifications and service, the employee was classified as low and subsequently dismissed. The employee appealed the dismissal, claiming that she had been discriminated against. The Court upheld the worker's appeal, ruling that the criteria used by the clinic were discriminatory and annulled the dismissal. The Court also dismissed the clinic's appeal, upholding its decision.

19) Is there any specific provision for social protection that differentiates between men and women in each of these occupations? (The term social protection refers to benefits provided by the State such as unemployment benefits, social security, or social assistance, etc.).

The essential structure of the Italian social security system is outlined in Article 38 of the Constitution.

The first paragraph deals with social assistance and provides that "Every citizen unable to work and lacking the necessary means to live has the right to maintenance and social assistance".

As far as social assistance is concerned, the Italian system is characterised by the coexistence of a multiplicity of welfare benefits, of a temporary or struc-

tural nature. The protected subjects are first of all those who are in conditions of poverty or with limited income, with a total or partial inability to provide for their needs due to physical or psychic incapacity or who have difficulties in integrating into working or social life. Family and disability support measures are also provided. In relation to welfare benefits, there are no specific provisions for social protection that differentiates between men and women in the occupations covered by this study.

The second paragraph of Article 38 deals with social security and provides that “Workers shall have the right to have adequate means provided and insured for their subsistence needs in the event of accident, sickness, invalidity and old age, and involuntary unemployment”.

As regards compulsory protection against accidents at work and occupational diseases, it is designed to guarantee the good of health, protected by Article 32 of the Constitution, and to compensate for any damage suffered by workers who fall ill or are injured in the course of their work. In relation to protection against work accidents and occupational diseases, there are no specific provisions for social protection that differentiates between men and women in the occupations covered by this study.

As regards invalidity and incapacity protection, it is provided in the event of a long-term illness resulting in a permanent relative or absolute inability to produce income from work; moreover, this protection is intended for both workers and non-workers and for workers who do not meet the minimum insurance requirements, but it is different in nature in the two cases, resulting in a different structure and characteristics. In relation to protection for disability and incapacity, there are no specific provisions for social protection that differentiates between men and women in the occupations covered by this study.

As for old age protection, it comes into play when, due to age, work and income from work cease. Compulsory old-age protection is now available to all earners of earned income who meet two main requirements: seniority (the age of old age, determined by law) and contribution seniority (the length of time contributions have been paid in the time specified by law). Only protection for unpaid workers, i.e. voluntary work and family care work, remains voluntary. In relation to old age protection, there are no specific provisions for social protection that differentiates between men and women in the occupations covered by this study. However, there are some measures that differentiate between men and women for the generality of occupations, for example in relation to particular forms of early retirement (such as the *opzione donna*, which allows women access to early retirement if certain requirements are met).

It is noteworthy that Legislative Decree 21 April 2011, no. 67 delineates a framework for “heavy work” (*lavori usuranti*) classifications and the corresponding benefits extended to individuals engaged in physically demanding tasks, which often lead to a diminished quality of life or premature aging. Workers falling within these categories are afforded facilitated access to pension schemes. However, a significant concern highlighted by stakeholders involved in the CARE4CARE project pertains to the exclusion of certain care workers from

the benefits outlined in the decree, despite their engagement in unquestionably strenuous activities.¹⁰⁹

Another pertinent issue, particularly relevant to migrant care workers, revolves around the retention of social security rights accrued in Italy upon their return to their country of origin.¹¹⁰ Existing legislation precludes the reimbursement of contributions upon repatriation, potentially fostering indifference towards fulfilling social security obligations. One potential mitigation strategy lies in international social security conventions between Italy and select non-EU countries. These agreements introduce the concept of aggregation, enabling workers to amalgamate contributions made to both Italy's and their home country's social security systems. This mechanism prevents career fragmentation and ensures entitlement to pension benefits, with contributions distributed proportionally between the respective insurance institutions. However, it is imperative to note that this system's applicability is limited to workers from countries with which Italy has such agreements in place.

Regarding the calculation of social security contributions of domestic workers and home caregivers, the legislator has provided for four bands of conventional hourly wages on the basis of which social security contributions are calculated (Article 1 of Decree-Law no. 155 of 22 May 1993). However, the hourly contribution amount paid for domestic workers and home caregivers employed for more than 24 hours per week (hence full-time) is lower than that paid for domestic workers employed for less than 24 hours per week (hence part-time). Consequently, the pension treatment of domestic workers and home caregivers employed for more than 24 hours may be lower than that enjoyed by other domestic workers and home caregivers. This system, instead of incentivising the declaration of actual working hours, has the effect of incentivising undeclared work; however, the workers, if they are immigrants, can keep their permits. Another problem concerns the modest pension amount calculated according to the contributory method, which, however, affects all workers.

In relation to survivors' benefits, they operate in favour of the worker's (or pensioner's) relatives in the event of his death, in order to cope with the situation of need resulting from the death and concerning the family members for whose support the insured person was providing. In relation to survivor benefits, there are no specific provisions for social protection that differentiates between men and women in the occupations covered by this study.

As regards protection against involuntary unemployment, it intervenes—if certain requirements are met—to financially support the person who has lost his/her job, whether employed or self-employed, or who never had one. There are also protections in case of suspension or reduction of work activity and in

¹⁰⁹ CARE4CARE, "Minutes of the Italian National Stakeholders Meeting"; NOSOTRAS, "Responses to the Questionnaire".

¹¹⁰ William Chiaromonte e Madia D'Onghia, "Migranti, lavoro e pandemia: nuovi problemi, vecchie risposte?" *Rivista giuridica del lavoro e della previdenza sociale* 3 (2021): 521 ff.

case of income discontinuity. As regards protection against involuntary unemployment, there are no specific provisions for social protection that differentiates between men and women in the occupations covered by this study.

Domestic workers and home caregivers are penalised in relation to unemployment benefits. Article 5 of Legislative Decree no. 22 of 4 March 2015 conditions access to unemployment benefits to having worked for at least 30 days in the 12 months preceding the involuntary termination of employment. Given the impossibility of ascertaining actual presence at work on each day, 5 weeks of work (conventionally considered to be 6 days each) are required in the case of domestic work. For the coverage of a working week 24 hours are required, so in order to find the number of actual working weeks it is necessary to divide the total number of working hours in the quarter by 24. The calculation system is clearly disadvantageous for domestic workers: In the case of part-time work for less than 24 hours per week, domestic workers are charged with fewer days of actual work than other workers. Also, in this case, the amount of unemployment benefits is affected by the calculation based on the conventional wage. Domestic workers and home caregivers do not qualify for other income support measures (such as, for example, the wage guarantee fund).

As regards protection against employer insolvency (Law no. 297/1982), it intervenes—through a variety of special protections—if the employer does not fulfil the payment due to the employee. As far as protection against employer insolvency is concerned, there are no specific provisions for social protection that differentiates between men and women in the occupations covered by this study.

Finally, as regards protection of the worker's family, it consists of various benefits (aimed, for example, at protecting the worker's dependent children or parental workers). As far as the protection of the worker's family is concerned, there are no specific provisions for social protection that differentiates between men and women in the occupations covered by this study (for further references see the answer to question 12 and question 15 on gender).

20) Have there been any legal disputes in your country concerning the granting of social benefits to staff working in the care sector that have led to direct or indirect discrimination on grounds of sex? If so, please summarise or comment on the case(s).

There are no legal disputes concerning the granting of social benefits to staff working in the care sector that have led to direct or indirect discrimination on grounds of sex in the main repertoires of case law.

21) If there are Equality Bodies in your country, do you know if they have undertaken any action, report, monitoring, or judicial activity in relation to the rights of women workers in care occupations? If so, please summarise or comment.

In Italy, two equality bodies were established to implement European directives: the Equality Councillors (*Consigliere di Parità*) and the UNAR. While Equality Councillors deal with preventing and combating gender discrimination, the UNAR deals with discrimination based on race and ethnic origin. In general, these are bodies that have limited powers and mainly deal with alternative

dispute resolution. Equality Councillors are created at the provincial, regional and national levels. Both bodies issue reports on the status of discrimination that are public and available online.

Article 8 of Law no. 125 of 10 April 1991 established the position of Equality Councillors. The law requires Councillors to be present at the national, regional, and provincial levels and to advocate for women's employment rights. The matter was revised by Legislative Decree no. 198 of 2006. The intervention strategy to outlaw discrimination and promote good actions appears to place a significant emphasis on the function of the equality councillors. The Minister of Labour, in coordination with the Minister for Equal Opportunities, appoints the regional and provincial Equality Councillors based on the designation of the institutions that the regions and provinces have designated for this purpose. The Equality Councillors must meet particular competency standards and have extensive knowledge of anti-discrimination laws and the employment of women. The duties of the Equality Councillors are to promote any worthwhile efforts with the goal of upholding the non-discrimination principle and fostering equal opportunities for workers.¹¹¹

In the context of this research, a questionnaire was submitted to the Equality Councillors. The questions covered all aspects of gender discrimination at work and the effective contribution made by equality bodies. Out of a sample of 114 Equality Councillors, 19.38% (17 Councillors) responded. Only a small number of the answers received are relevant for this research.

The responses reveal a very limited role and power of this figure. Their activity is mainly limited by a lack of resources. In some cases (3 or 4 cases) these bodies have also provided effective assistance in the judicial phase in cases of gender discrimination in the field of care (1 case). Nearly all disputes and controversies did not reach trial.

Regarding the cases of discrimination observed and reported by the office of the National Equality Councillor, please refer to the answer to question 9, above.

22) Comment whether the care sector in your country complies with international and EU obligations regarding non-discrimination on the grounds of sex in the field of employment and social protection. Describe the main regulations in this field and refer to whether equal working conditions (e.g., pay) are expressly provided for specifically in the care sector.

To answer this issue, please take into account the UN Convention on the Elimination of All Forms of Discrimination against Women, adopted on 18 December 1979; ILO Conventions such as the Equal Remuneration Convention, no. 100; Non-discrimination in employment relations (Discrimination (Employment and Occupation) Convention, no. 111; the Workers with Family Re-

¹¹¹ Ministero del Lavoro e delle Politiche Sociali, "Consigliera Nazionale Parità" (*Pari Opportunità*, 2023) <[https://www.lavoro.gov.it/temi-e-priorita/parita-e-pari-opportunita/focus-on/consigliera-nazionale-parita/pagine/default#:~:text=La Consigliera Nazionale di Parità,198%2F2006 e successive modificazioni.](https://www.lavoro.gov.it/temi-e-priorita/parita-e-pari-opportunita/focus-on/consigliera-nazionale-parita/pagine/default#:~:text=La%20Consigliera%20Nazionale%20di%20Parit%C3%A0,198%2F2006%20e%20successive%20modificazioni.)> (Accessed September 26, 2023).

sponsibilities Convention, no. 156; the Maternity Protection Convention, no. 183; and the Domestic Workers Convention, no. 189.

At the European level, we refer mainly Directive 2006/54 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation; Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security; Directive 2010/41/EU on the application of the principle of equal treatment between men and women who are self-employed.

The care sector in Italy generally complies with international and EU obligations regarding non-discrimination on the basis of sex in employment and social protection. The biggest problems are found in the regulation of domestic workers.

Italy ratified by Law no. 132 of 14 March 1985 the UN Convention on the Elimination of All Forms of Discrimination against Women, adopted on 18 December 1979; by Law no. 186 of 27 July 1956 the ILO Equal Remuneration Convention, no. 100; by Law no. 93 of 06 April 1963 the ILO Non-discrimination in employment relations (Discrimination (Employment and Occupation) Convention, no. 111; by Law no. 113 of 23 September 2013 the ILO Maternity Protection Convention, no. 183; the ILO Domestic Workers Convention, no. 189 by Law no. 4 of 15 January 2021. Italy has not ratified the ILO Workers with Family Responsibilities Convention, no. 156; however, it has ratified the ILO Violence and Harassment Convention, no. 190 by Law no. 4 of 15 January 2021. Through the Equal Opportunities Code (Legislative Decree no. 198 of 11 April 2006 as amended by Legislative Decree no. 5 of 25 January 2010), Directive 2006/54, Council Directive 79/7/EEC of 19 December 1978 and Directive 2010/41/EU have been implemented.

In order to combat direct and indirect gender discrimination and to ensure legal equality in all spheres of society and the economy, the Equal Opportunities Code (Legislative Decree no. 198 of April 11, 2006, as amended and supplemented) establishes specific regulations with the goal of implementing the principles of European legislation and reforming national law. The first book of the Equal Opportunities Code establishes the prohibition of direct or indirect discrimination and introduces the general principle of equal treatment. The second book of the code concerns instruments aimed at achieving ethical and social equality between men and women. The third book aims to ensure gender equality in economic relations, while the fourth deals with measures to protect political relations.

The most significant provisions of the code, in addition to establishing a general principle of equality, are those that protect equal opportunities at work in the event of maternity or paternity (Article 25(2a) Legislative Decree no. 198 of April 11, 2006) and prohibit wage discrimination (Article 28(1) Legislative Decree no. 198 of April 11, 2006). The legislator puts special emphasis on combating harassment in the workplace by passing a number of restrictive regulations as well as a number of guidelines that support fair treatment.¹¹²

¹¹² Frosacchi, "La tutela contro le discriminazioni sul lavoro".

To improve gender equality at work, Law no. 162 of November 5, 2021, was passed. This statute enlarged the definition of direct discrimination by clarifying that it could even happen during the employee selection process. The law expands the list of companies required to create recurring reports on the state of their workforce in an effort to close the gender pay gap. The reform introduces the possibility for enterprises to make a gender equality certification. Enterprises that obtain the certification are rewarded with a waiver of the employer's total social security contributions, with the awarding of an additional score for obtaining funding on national and regional European funds and state aid to co-finance the investments incurred. Moreover, possession of parity certification may result in the award of a bonus score to award contracts for works or services.¹¹³

All economic sectors, including the care sector, are subject to the Equal Opportunities Code.

However, there are issues with the legislation governing domestic workers' and home caregivers' equal treatment. Although Italy has ratified the Domestic Workers Convention, no. 189, Italian legislation on domestic work has not been updated. Indeed, the law regulating the domestic sector (including home caregivers) is still Law no. 339 of 2 April 1958.¹¹⁴

Domestic workers in Italian law have fewer protections in terms of occupational safety and health (OSH), working hours, social security contributions, termination of employment contracts, night work and parental leave, and other work-life balance measures. According to Borelli, the denial of many rights to domestic workers is linked to the need to reduce the cost of care work, which is mostly borne by families and ultimately affects workers.¹¹⁵

2. Migrant Status

1) Provide a brief overview of your national legislation on anti-discrimination on the grounds of race or ethnic origin, religion, or belief, in the field of employment or occupation.

Modelled on EU law, Italian labour law provides specific anti-discrimination rules that apply to aspects without a general regulation.¹¹⁶

The principle of non-discrimination makes discriminatory acts illegal only when they are contrary to one of the grounds provided for by the legislation, i.e. gender (Legislative Decree no. 198/2006), political opinions and trade union activity (Article 15, Law no. 300 of 20 May 1970), race and ethnic origins (Legislative Decree no. 215 of 9 July 2003), language group and nationality (Article 2(3) and Article 43(2)(e), Consolidated Act on Immigration), religion, belief, disability, age and sexual orientation (Legislative Decree no. 216 of 9 July 2003).

¹¹³ Frosecchi, "La tutela contro le discriminazioni sul lavoro".

¹¹⁴ Borelli, *Who Care?*, 170.

¹¹⁵ Borelli, *Who Care?*, 170–71.

¹¹⁶ Barbera e Guariso, *La tutela antidiscriminatoria*.

Discrimination may be direct or indirect, individual, or collective. Discrimination for purposes permitted by law is considered legitimate (Article 3, para. 4, Legislative Decree no. 215 of 9 July 2003). Discrimination in which the work can only be performed by persons with the protected characteristic if it is proportionate and reasonable is considered legitimate (Article 3, para. 3, Legislative Decree no. 215 of 9 July 2003).

In case of discrimination, Article 28 of Legislative Decree no. 150 of 1 September 2011 provides for a partial reversal of the burden of proof in favour of the worker.

There is little case law on discrimination against migrants, not because of judicial reluctance, but because very few cases have reached courts. This little case law shows the difficulty of intercepting discrimination between individuals (including discrimination at work, for which the prohibition of discrimination has traditionally been born), where the contractual freedom of the individual competes with the principle of equality.

2) Also provide a brief overview of the legislation concerning the rights and duties of “foreigners”: third-country nationals in the EU. (by this we mean the legislation that establishes the framework of rights and duties of foreigners in the country; requirements for gaining entry to and working in the country; requirements for bringing family members into the country, etc.) In terms of national legislation on foreigners or migrants, please make a brief overview of whether it contains any sections on non-discrimination, as well as the rights of foreigners in employment.

Historically, Italy has been primarily a country of emigration; this is reflected in the Italian Constitution of 1948 (Articles 16(2) of the Constitution). At the same time, only few and generic provisions have been devoted to the right of asylum and the non-nationals’ legal status and rights.¹¹⁷ Conversely, the

¹¹⁷ Article 10 states that “(2) legal regulation of the status of foreigners conforms to international rules and treaties; [and] (3) foreigners who are, in their own country, denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution, are entitled to the right to asylum under those conditions provided by law.” Other pivotal constitutional provisions, nonetheless, contribute to enhancing the national standards of foreigners’ rights. In particular, Article 117, through which the EU legislation and international treaties signed by Italy acquire “constitutional relevance”; the “personalist principle” of Article 2, according to which “the Republic recognizes and guarantees the inviolable human rights, be it as an individual or in social groups expressing their personality, and it ensures the performance of the unalterable duty to political, economic, and social solidarity”, and the equality clause of Article 3 that forbids unfair discrimination and entrenches substantial equality. And indeed, international conventions and jurisprudence (especially the European Convention on Human Rights (ECHR) and the principle of non-discrimination proclaimed by Article 14 ECHR), equality and the personalist principle have been frequently invoked by the Italian Constitutional Court to secure and extend the fundamental rights of foreigners. In particular, in several decisions the Constitutional Court affirmed that limiting the access to social benefits aimed to satisfy human basic needs only to foreigners with an EC residence permit for long residents entail an “unreasonable discrimination” between Italian citizens and foreigners regularly residing in Italy. See decision of the Constitutional Court no. 187/2010, in which the Court also makes explicit reference to the decisions of the European Court of Human Rights *Gaygusuz v. Austria* 16/09/1996 and *Niedzwieck v. Germania* 25/10/2005.

Constitution has a number of provisions concerning labour rights, which have strongly influenced labour law and its developments. Social rights, recognized in the Constitution alongside civil and political rights, play a fundamental role in enforcing labour-related rights obliging the State to act in favour of workers. Most of these social provisions are limited to the citizens.

Article 4 provides the legal basis for restrictions on the entry of foreign workers in order to protect Italy's national workforce. While confirming the possibility of implementing restrictions on the access of migrant workers (decisions nos. 144/1970 and 54/1979), the Constitutional Court ruled that by virtue of the principle of equality, there can be no restrictions when it comes to protecting fundamental rights (decision no. 249/2010) and "essential social benefits" (e.g., health and healthcare services, cf. decision no. 269/2010).

Interpreting Article 35 of the Constitution, the Constitutional Court granted full equality of treatment between national and non-national workers (decision no. 454/1998). With this same reasoning, labour migrants are also granted proportionate and sufficient remuneration (Article 36, Consolidation Act on Immigration), the right to rest and decent working hours, maternity and protections for women and children, social security, trade union rights and enterprise rights.

As far as immigration legislation is concerned, Legislative Decree no. 286 of 25 July 1998 (Consolidation Act on Immigration) is the pivotal piece of legislation in the system that has been constantly and progressively tightened.¹¹⁸

Since the 2002, Law no. 189 of 30 July 2002 (*Bossi-Fini*), any new law and regulation in the field of immigration has contributed to the narrowing of access to the country, and making non-nationals legal status increasingly precarious and fragile (see: Law no. 94 of 15 July 2009, Law no. 217 of 17 December 2010; Law no. 46 of 13 April 2017; Law no. 132 of 1 December 2018 and Law no. 77 of 8 August 2019, Decree-Law no. 20 of 10 March 2023 converted into Law no. 50 of 5 May 2023). This process badly impacted labour migration. Indeed, the entry of migrant workers is based on quotas determined annually by law.¹¹⁹ However, in recent years there has been a drastic decline in the number of work permits issued. Since 2021, a minor inversion of this declining trend occurred. The reduction is complemented with a similarly dramatic increase in

¹¹⁸ William Chiaromonte, *lavoro e diritti sociali degli stranieri. il governo delle migrazioni economiche in Italia e in Europa* (Torino: Giappichelli, 2013); Michele Colucci, *Storia dell'immigrazione straniera in Italia. Dal 1945 ai giorni nostri* (Roma: Carocci, 2018); William Chiaromonte, Maria Dolores Ferrara e Maura Ranieri, a cura di, *Migranti e lavoro* (Bologna: il Mulino, 2020).

¹¹⁹ Silvana Sciarra and William Chiaromonte, "Migration Status in Labour Law and Social Security Law," in *Migrants at Work. Immigration and Vulnerability in Labour Law*, edited by Cathryn Costello and Mark Freedland (Oxford: Oxford University Press, 2014); William Chiaromonte, "The Italian Regulation on Labour Migration and the Impact and Possible Impact of Three EU Directives on Labour Migration: Towards a Human Rights-Based Approach?" in *National Effects of the Implementation of EU Directives on Labour Migration from Third Countries*, edited by Roger Blanpain, Frank Hendrickx and Petra Herzfeld Olsson (Alphen aan den Rijn: Kluwer Law International, 2016).

international protection applications, which indicates a distorted use of international protection regimes.¹²⁰

The work permit should be issued in 60 days, provided it does not exceed the annual quota. The work permit being granted, the Consulate of the foreigner's residence or origin country issues an entry visa, and the worker has eight days from her or his arrival in Italy to sign the residence agreement for work reasons at the Sportello Unico. Only after this procedure is completed does the Police Headquarters issue the residence permit for work purposes. The duration of the "residence agreement" cannot exceed nine months for one or more seasonal jobs, one year for a fixed-term employment contract, and two years for a permanent employment contract.

In the event the worker loses his/her job for whatever reason, he/she can register as unemployed to the employment centre for a period that cannot exceed the duration of the residence permit (Article 22(11) Consolidated Act on Immigration). The Law does not provide for the possibility of obtaining a residence permit to actively look for a job; moreover, the complex and lengthy proceedings make it difficult for both job seekers and companies to meet their needs of finding a job on the one hand and ensuring stable workforce on the other.

Beneficiaries of international protection are recognised by unlimited access to the national labour market. On the contrary, asylum applicants are allowed to work only from the sixtieth day from the submission of the application for international protection if the application has not been processed yet and the delay is not due to the applicant. In any case, the residence permits thus granted cannot be converted into a residence permit for work reasons (Article 22, Legislative Decree no. 142 of 18 August 2015).

No specific incentives are provided to access the labour market for: asylum seekers, international protection applicants, refugees, and legal economic migrants (without a long-term residence permit). Furthermore, so far in Italy there has been a lack of specific investment into integration and inclusion programmes, while the relationship between the state and asylum seekers has mainly conformed to welfare assistance types of dynamics.¹²¹

3) *Make a brief social commentary on the presence of migrant populations (both EU and non-EU nationals), in employment in your country.*

Methodological premises:

a) Regarding the presence of employed migrants in Italy we refer to the latest available data, as collected by the Ministry of Labour and ISTAT.

¹²⁰ William Chiaromonte, Maria Dolores Ferrara and Francesca Malzani, "The Migration Governance through Labour Law: The Italian Case" *Rivista del Diritto della Sicurezza Sociale* (2019): 367.

¹²¹ Federico Martelloni, "L'accesso al lavoro dei richiedenti e dei titolari di protezione internazionale, tra diritto e prassi," in Chiaromonte, Ferrara e Ranieri, *Migranti e lavoro*.

- b) The research unit was unable to identify any report or database offering general information and/or statistics on care workers as understood in the project. The data published by public bodies on the presence of migrant workers in domestic work are aggregated (taking domestic helpers and home caregivers together). Therefore, such data are not useful for the purpose of the project. Conversely, the DOMINA Report¹²² is useful to us as it analyses domestic work by distinguishing between domestic helpers and home caregivers. Regarding nurses, we have used the European Union of Cooperatives Ucoop's analysis of OECD data as a point of reference.
- c) Regarding health and care workers and basic care workers the research unit did not find any data/statistics.
- d) Undocumented migrants are typically not included in official data. However, statistical analyses indicate that a sizeable portion of workers are undeclared or undocumented migrants. The incidence of undocumented work in Italy is estimated to be around 17.2%. For instance, it was determined that 494,899 home caregivers out of an *estimated* total of 946,270 workers are undeclared.¹²³

Overall, in 2022, foreign employment amounted to 10.3%. The largest component is represented by the Albanian, Chinese, and Moroccan communities.

In 2022, in personal and collective services, 31.6% of the employed are foreigners; in agriculture, 17.7% of the employed are foreigners; in catering and tourism and in construction the incidence of foreign employees is 17.3% and 15.6% respectively and 15.6%, respectively. In the sectors with the highest incidences of foreign employment, the majority of foreigners have non-EU citizenship: Non-EU employees account for more than 10% in the tourism and catering sector (13.4%) and agriculture (12.4%), while in collective and personal services the incidence rises to 22.6%.

Slightly more than 87% of the foreign employed (2 million), in 2022, have an employee contract; the remaining 12.9% (307,000) have a self-employment contract. Considering the nature of employment, between 2021 and 2022 dependent employment among non-EU foreigners grew both in the permanent component (+5.9%) and in the temporary component (+15.1%). Among EU nationals, over the same period, salaried employment decreased in the permanent component (-2.0%), while it increased slightly for temporary contracts (+0.3%).

The number of self-employed, on the other hand, increases among both EU foreigners (+10.6%) and non-EU citizens (+7.0%).

¹²² Osservatorio DOMINA sul Lavoro Domestico. 4° *Rapporto annuale sul lavoro domestico: analisi, statistiche, trend nazionali e locali*. (2022); Osservatorio DOMINA sul Lavoro Domestico, 5° *Rapporto annuale sul lavoro domestico: analisi, statistiche, trend nazionali e locali* (2023).

¹²³ INPS, "Statistiche in breve: lavoratori domestici," 68; Fondazione Leone Moressa, *XIII rapporto annuale sull'economia dell'immigrazione "Talenti e competenze nell'Europa del futuro"* (Fondazione Leone Moressa, 2023); Osservatorio DOMINA sul Lavoro Domestico, 5° *Rapporto annuale sul lavoro domestico: analisi, statistiche, trend nazionali e locali* (2023).

The share of employed 15–64-year-olds among non-EU nationals in 2022 is 59.2%, about 1 percentage point below that found among Italians in the same age group (60.1%). Non-EU employment is characterised, however, by much more pronounced gender differences: just under 75% of men with non-EU citizenship are employed; among women, just under 75% are employed; among women, the incidence plummets to 43.6% (-30.7 percentage points). Among employed Italians, the gender differences, although very significant, are less marked: the employment rate for Italian women is 51.5%, some 17 percentage points lower than that of men (68.6%).¹²⁴

Regarding the perception of being victims of discriminations, in 2021 in Italy 835,000 employed persons declare that they feel discriminated against in the workplace, of these 722,000 are Italians, 74,000 are EU foreigners and 40,000 are non-EU foreigners.

The highest percentage of those who feel discriminated against in the workplace is recorded for EU citizens at 5.4%, followed by non-EU citizens at 4.8% and finally by Italians at 3.6%. Gender is a more present reason for discrimination among Italians (33.9%) than among EU foreigners (3.3%) and non-EU foreigners (3.8%), while discrimination on the grounds of foreign origin-religious beliefs involves 91.2% of non-EU foreigners, 87% of those from the EU and 5.6% of Italians.¹²⁵

4) Finally, make a brief social commentary on the presence of migrant populations (both EU and non-EU nationals), in the care sector in your country.

On the grounds of the statistics available, we can immediately observe the consistent presence of migrant workers in the care sector, especially among homecare givers. However, while the everyday perception would suggest that in the care sector the presence of migrant women is particularly consistent, the databases we were able to access do not allow to scientifically confirm what we can empirically observe.¹²⁶

In 2020, Italy recorded an estimated 3 million undeclared workers, comprising both undocumented migrants and undeclared nationals.¹²⁷ This pervasive issue likely extends to the care sector, especially in domestic work. The near absence of administrative oversight in verifying the regularity of employment contracts,

¹²⁴ Direzione Generale dell'Immigrazione e delle Politiche di Integrazione, "XIII rapporto annuale: gli stranieri nel mercato del lavoro in Italia" (Ministero del Lavoro e delle Politiche Sociali, 2023) 33–4 <<https://www.lavoro.gov.it/temi-e-priorita-immigrazione/focus/sintesi-xiii-rapporto-mdl-stranieri-2023>>.

¹²⁵ Direzione Generale dell'Immigrazione e delle Politiche di Integrazione, *XIII Rapporto Annuale*, 44–5.

¹²⁶ CENSIS, *56° Rapporto sulla situazione sociale del Paese* (CENSIS, 2022); Claudio de Martino, "Chi bada alle badanti? la specialità del lavoro domestico alla prova del Covid-19," *Giornale di diritto del lavoro e di relazioni industriali* (2021): 53; Sergio Pasquinelli e Francesca Pozzoli, "Badanti dopo la pandemia, quaderno WP3 del Progetto "Time to Care"," (Università di Pavia, 2021); Maria Rosaria Marella e Sveva Stancati, "Donne e migrazioni: il nodo del lavoro di cura," *Genius* (2020): 1.

¹²⁷ ISTAT, "L'economia non osservata nei conti nazionali. Anni 2017-2020" (ISTAT, 2022).

compounded by the inherent challenges of monitoring the private-family sphere, suggests that undeclared work is significantly prevalent among home caregivers.

In the public sector, the presence of non-Eu citizens is not relevant, since only Italian and EU citizens can participate to public competitions. However, considering the recurrent use of outsourced labour, via temporary agencies and public procurements, both in hospitals and residencies for elderly, the citizenship requirement can be easily indirectly overcome. Therefore, it would be important to have a collection of data on the presence of immigrant nurses and health carers in the private sector, also as concerns those that are working, in practice, in a public structure.

Overall, the lack, or scarcity, of available data is symptomatic of a lack of attention over the phenomenon of immigrant workers in the care sector, which is even more true in the case of women migrants. Also, the fact that data of health professionals and health carers are collected separately from data on home care givers, while home care givers are included in the domestic work analysis, even if formally consistent with the applicable collective agreement (that is the domestic work collective agreement that provides for the norm that regulate all kind of domestic works), demonstrates a resistance in recognising the peculiar work of home care givers, which, in fact, is analogous to that of health carers in public or private structures, while it is very different from that of a domestic worker or a maid.

Finally, the lack of data that consider the care sector occupations jointly makes it difficult to compare the presence of migrant workers in the various occupations.

5) Have statistics or databases been published in your country on foreigners or immigrants who are part of the personnel providing services in each of these care sector occupations?

(This question includes both EU nationals and third-country nationals in the EU as the object of analysis).

Methodologically, the statistics cited are from multiple sources, and variate depending on the body that issued them, the years considered, and the sample used as a reference. This report favours the most recent statistics and reports available. Consequently, these data do not always refer to 2023.

The National Federation of Nursing Professions, the World Health Organisation (WHO), and the National Institute of Statistics (ISTAT) all have databases that contain information about health professionals. However, data are often aggregated (men and women, Italians, and migrants). The sources consider the years between 2019 and 2023.

In relation to health and care workers and basic care workers, data are not always available. Those that are available come from trade unions, the WHO or research by the National Institute for Public Policy Analysis (INAPP). Data are often aggregated (men and women, Italians, and migrants) and cover a period from 2020 to 2022.

Data on the presence of migrant workers in domestic work are often collected aggregated, i.e. taking all domestic workers together. Data that only consider the work of home caregivers are not always usable. The most important report in relation to the work of home caregivers is the DOMINA 2022 report whose data

are from 2021. This report considers home care workers by merging data both aggregated and disaggregated by occupation, gender and all home care workers.

No report considers health professionals, health and care workers, basic care workers, and home caregivers together. Therefore, the figures refer to the total number of jobs in the domestic sector and the total number of jobs in the health sector, respectively. This is due to the fact that in Italian research, care work is separated into domestic work (home caregivers and domestic workers) and health work (health professionals, health and care workers, and basic care workers).

The table below lists the key databases and links to websites containing reports or data relevant to the research.

Table 3 – Data sources by unit of analysis.

Unit of Analysis	Report and sources			
Health professionals	Elaboration by the European Cooperative Union (Uecoop) on OECD data			
Health and care workers	No data available			
Basic care workers	No data available			
Home caregivers	DOMINA	2023	<i>Rapporto annuale sul lavoro domestico</i>	https://www.osservatoriavorodomestico.it/rapporto-annuale
	Fondazione Leone Moressa	2023	<i>Rapporto FLM 2023</i>	http://www.fondazioneleonemoressa.org/2023/09/29/presentazione-rapporto-flm-2023/
	INPS	2023	<i>Osservatorio lavoratori domestici</i>	https://servizi2.inps.it/servizi/osservatoristatistici/1059/o/464

- *If yes, which care sector occupations are they most employed in?*

It is not possible to make a proper comparison, as the data are not homogeneous and are collected by different institutes, and they appear as follows:

- Health professionals: According to the Elaboration by the European Cooperative Union (Uecoop) on OECD data, by 2018, the number of foreign nurses in Italian hospitals had grown by +10.4% over the previous 10 years, reaching 22,232. The population of foreign health workers accounts for 5% of the total nursing workforce and is made up of more than half of immigrants from Eastern countries, such as Romanians (11,204), Poles (2,374), and Albanians (1,032), while the other most represented communities include Indians (1,399) and Peruvians (1,080). On the other hand, the “migrants in the ward” arriving from African countries number 433, less than 2% of the total number of employees arriving from abroad.¹²⁸

¹²⁸ Ivana Veronese, “Sanità, cresce il numero degli infermieri immigrati negli ospedali italiani,” *UIL* (Roma, 27 July 2018) <https://www.uil.it/UfficioStampa/comunicatistampa.asp?ID_NEWS_SX=9622> (Accessed September 26, 2023); *La Repubblica*, “Sanità, cresce il numero

- b) Health and care workers: No data available.
- c) Basic care workers: No data available.
- d) Home caregivers: According to INPS data, 429,426 home caregivers worked in Italy in the year 2022, broken down by origin as follows: Italy (117,309); Western Europe (1,790); Eastern Europe (124,666); North America (123); Central America (8,822); South America 35,550; Middle East Asia (5,574); Philippines (54,981); East Asia (44,212); North Africa (21,571); South Central Africa (12,235); Oceania (75).¹²⁹

- *If there are statistics or databases, do these establish the “nationality” or origin of foreign personnel providing services in these sectors? What nationalities are predominant?*

See the previous answer.

- *Do databases also distinguish by gender? If yes, please describe what the statistics show.*

There are no databases for any of the 4 units of analysis (i.e. health professionals, health and care workers, basic care workers, home caregivers), which distinguish data by gender. Only DOMINA Report presents some data on female workers; however, these data are not relevant as they consider all domestic workers and not only home caregivers.¹³⁰

- *Do databases exist for each of the occupations, with a distinction between labour migrants, refugees, and other categories of foreigners or migrants?*

There are no databases for any of the 4 units of analysis (i.e. health professionals, health and care workers, basic care workers, home caregivers), which distinguish between labour migrants, refugees, and other categories of foreigners.

The INPS distinguishes between national, EU and non-EU domestic workers.¹³¹

- *Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*

Normally, reports and databases present aggregated data on a national basis.

degli infermieri immigrati negli ospedali italiani,” *La Repubblica*, 23 July 2018, <https://www.repubblica.it/solidarieta/immigrazione/2018/07/23/news/sanita_-202469824/> (Accessed September 26, 2023).

¹²⁹ INPS, “Statistiche in Breve: Lavoratori Domestici”.

¹³⁰ INPS, “Cittadini stranieri per condizione prevalente” (*Osservatorio sugli stranieri*, 2023) <<https://servizi2.inps.it/servizi/osservatoristatistici/1059/o/464>> (Accessed September 26, 2023); INPS, “Lavoratori Domestici” (*Osservatorio sui lavoratori domestici*, 2023) <<https://servizi2.inps.it/servizi/osservatoristatistici/12>> (Accessed September 26, 2023); INPS, “Statistiche in breve: lavoratori domestici”; Fondazione Leone Moressa, *XIII rapporto annuale sull'economia dell'immigrazione*; Direzione Generale dell'Immigrazione e delle Politiche di Integrazione, *XIII Rapporto Annuale*; Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico: analisi, statistiche, trend nazionali e locali* (2023).

¹³¹ INPS, “Cittadini Stranieri per Condizione Prevalente”.

- *these databases public and freely accessible to everyone, or only to researchers?*
Databases and reports are public and freely available.
- *If published databases exist, please provide links and/or how to request them.*

Table 4 – Publicly available databases and reports (links).

Author	Year	Title	Link
DOMINA	2023	<i>Rapporto annuale sul lavoro domestico</i>	https://www.osservatoriolavorodomestico.it/rapporto-annuale
Fondazione Leone Moressa	2023	<i>Rapporto FLM 2023</i>	http://www.fondazioneleonemoressa.org/2023/09/29/presentazione-rapporto-flm-2023/
INPS	2023	<i>Cittadini stranieri per condizione prevalente - Osservatorio sugli stranieri</i>	https://servizi2.inps.it/servizi/osservatoristatistici/1059/o/464
INPS	2023	<i>Statistiche in breve: Lavoratori Domestici</i>	https://servizi2.inps.it/servizi/osservatoristatistici/api/getAllegato/?idAllegato=1013
INPS	2023	<i>Osservatorio lavoratori domestici</i>	https://servizi2.inps.it/servizi/osservatoristatistici/1059/o/464
ISTAT	2023	<i>Personale sanitario</i>	http://dati.istat.it/Index.aspx?QueryId=31546
ISTAT	2023	<i>Stranieri e naturalizzati nel mercato del lavoro italiano</i>	https://www.istat.it/it/files//2023/02/Focus_stranieri-e-naturalizzati-nel-mondo-del-lavoro.pdf

6) *Describe any statistics or databases you have encountered:*

- *Describe what these statistics show in relation to the nationality of the person working in the care sector and, if applicable, in relation to the gender by nationality of these staff.*

Please, refer to the answer to question 4 on migrants.

- *If you have found statistics or databases, please describe whether these show a distinction between general migrants, refugees, or other categories of migrants?*

The research unit did not find any relevant databases or reports.

7) *Have statistics or databases been published on people working in the care sector, whether nationals of your country, EU, or non-EU nationals, differentiating them by race or ethnic origin, religion, or language?*

(This question concerns both nationals of the country, EU nationals and third-country nationals in the EU.)

- *Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*
- *Are these databases public and freely accessible to everyone, or only to researchers?*
- *If published databases exist, please provide links and/or how to request them.*

The research unit was unable to find any databases or reports that contained information on care workers that was broken down by language, religion, or ethnicity. The research unit points out that such a division could conflict with equal treatment legislation.

8) *Describe what statistics or databases you have found, i.e., summarise and comment on the data found on participation in the care sector by workers on the basis of race or ethnicity, religion, and language.*

The research unit was unable to find any databases or reports that contained information on care workers that was broken down by language, religion, or ethnicity. The research unit points out that such a division could conflict with equal treatment legislation.

9) *Have there been any legal disputes or conflicts publicised by the media about the race or ethnicity, religion or language of staff providing services in the care sector? If so, please describe the situation and the solutions provided.*

The research unit was unable to locate any legal dispute involving racial, religious, or linguistic discrimination.

However, cases of discrimination without a court's ruling were publicised in the media.¹³²

10) *Have statistics or databases been published in your country on the percentages of formal or informal employment that may affect the care sector?*

(This question refers to third country nationals of the EU).

- *Do databases exist for each of the occupations, distinguishing between formal and informal employment and/or between foreigner and immigrant?*
- *Do you know whether these statistics or databases distinguish between work migrants, refugees, or other categories of foreigners or migrants?*
- *Do these databases also distinguish by gender?*
- *Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*
- *Are these databases public and freely accessible to everyone, or only to researchers?*

¹³² *La Repubblica*, "Agenzia cerca badante "non di colore". La Protesta Dell'Anpi," *La Repubblica* 6 July, 2020, <https://www.repubblica.it/cronaca/2020/07/06/news/agenzia_cerca_badante_non_di_colore_protesta_l_anpi-261098954/> (Accessed September 26, 2023); Luca Petermaier, "badanti, c'è ancora razzismo. e il caporalato rimane realtà," *Il Trentino*, 18 October, 2019.

- *If published databases exist, please provide links and/or how to request them.*

The DOMINA Report only provides general data regarding undeclared labour in the home care sector (See response to question 3 on migrant, letter d).

11) Describe or comment on any statistics or databases you have found regarding the participation of migrant workers in the care sector in either the formal or informal economy. Where statistics show data by gender and by category of migrants within the formal and informal economy, please comment on them or include a description of them.

Please refer to the answer to question 3 letter d on migration for a comment on this subject.

12) Have any statistics or databases been published in your country on the possible presence of “undocumented” or “irregular” immigrants (without authorisation to reside or work in your country) who may be providing services in care occupations?

(This question refers to third country nationals of the EU)

- *Do these databases also distinguish by gender?*
- *Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*
- *Are these databases public and freely accessible to everyone, or only to researchers?*
- *If published databases exist, please provide links and/or how to request them.*
- *Comment on any statistics or databases you have found regarding the participation of irregular or regular migrants in the care sector. Where statistics have been found which differentiate by gender, please comment on the data.*

The research unit was unable to identify data or statistics on the presence of undocumented migrants working as health professionals, health and care workers, basic care workers.

The DOMINA Report¹³³ only provides general data regarding undeclared labour in the home care sector (please refer to the answer to question 3 letter d on migration for a comment on this subject).

13) Have measures been taken in your country to facilitate access to work specifically in the care sector for migrants? If yes, please describe them. Also indicate if this sector is understaffed (Are there staff shortages in the sector?).

(This question refers to third country nationals of the EU).

In Italy, at least three types of measures have been taken in recent years to facilitate access to work of migrants in the care sector.

Article 27, paragraph 1, letter *r-bis* of the Consolidated Act on Immigration provides that “professional nurses employed in public and private healthcare

¹³³ Osservatorio DOMINA sul Lavoro Domestico, 5° Rapporto annuale sul lavoro domestico: analisi, statistiche, trend nazionali e locali (2023).

facilities” can enter Italy without having to fall within the quotas set annually by the State (in this context, this is referred to as “out-of-quota” and therefore facilitated, entries into the labour market). Workers who entered Italy “outside the quotas”, unlike those who instead followed the procedure set forth in Article 22 of the Consolidated Act on Immigration, remain bound, in the performance of their work, to the qualification by virtue of which they were initially allowed entry.¹³⁴

Secondly, in 2020, following the outbreak of the COVID-19 pandemic, the Italian legislator launched a complex regularisation procedure to encourage the emergence of irregular employment relationships with migrants (Article 103 of Decree-Law no. 34/2020, converted into Law no. 77/2020).¹³⁵ This regularisation procedure was limited to only three economic and production sectors: agriculture, personal care for oneself or for family members, even if not cohabiting, suffering from pathologies or handicaps that limit their self-sufficiency, and finally, domestic work to support family needs. Again, the aim was not so much to encourage new entries of migrants into the labour market, but rather to regularise the situation of those who were already working illegally in this sector.

Third, the decree of the President of the Council of Ministers on the “Planning of flows of legal entry into Italy of foreign workers for the three-year period 2023–2025” increased the quotas of workers who will be able to enter Italy regularly for work reasons and extended the professional categories and production sectors involved.¹³⁶ In particular, a total of 452,000 new entries are expected over the three-year period (136,000 for 2023, 151,000 for 2024 and 165,000 for 2025), compared to an identified need of 833,000 (274,800 for 2023, 277,600 for 2024 and 280,600 for 2025). In addition to this, new professional categories are added to the sectors addressed by the decree establishing the number of workers admitted to work in Italy in 2022:¹³⁷ it will be possible, in fact, to apply for entry into Italy, among others, for the family and sociomedical assistance sector.¹³⁸ In relation to the latter sector, the number of planned entries, equal to 9,500 units for each of the three years covered by the programme, seems largely insufficient to meet the care needs of Italian families, given that, according to a recent study, the sector would require between 57,000 and 68,000 migrant workers in the three-year period 2023–2025.¹³⁹

¹³⁴ William Chiaromonte, “Sub Artt. 5-7, 21-27 Sexies d.Lgs. 25 Luglio 1998, n. 286 (Testo Unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero),” in *Codice commentato del lavoro*, edited by Riccardo Del Punta et al. (Alphen aan den Rijn: Wolters Kluwer, 2020).

¹³⁵ Chiaromonte e D’Onghia, “Migranti, lavoro e pandemia”.

¹³⁶ Decree of the President of the Council of Ministers of 27 September 2023.

¹³⁷ Decree of the President of the Council of Ministers of 29 December 2022.

¹³⁸ William Chiaromonte, “Una lettura giuslavoristica del d.l. 20/2023: le inadeguate politiche migratorie del governo Meloni,” *Giornale di diritto del lavoro e di relazioni industriali* (2023).

¹³⁹ Fabio Massimo Rottino e Luca Di Sciullo, “Il bisogno aggiuntivo di manodopera straniera nel comparto domestico. stima e prospettive” (Centro Studi e Ricerche Idos, 2023).

Despite the adoption of these measures, there is still a shortage of staff in the care work sector.

14) Describe whether migrants with residence and work authorisation have the same labour rights as other “national” workers in the care sector.

(This question refers to third-country nationals in the EU.)

Take into account the provisions of European law, according to which third-country national workers enjoy equal treatment with workers who are nationals of the Member State in working conditions or Social Security (Article 12 of Directive 2011/98/EU, of 13 December 2011, on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State). Also, if your country has ratified them, ILO Conventions no. 97 (Revised) on migrant workers, 1949; and Convention no. 143 on migrant workers, 197.

Upon entry into the national territory and authorisation to work in Italy, migrants are entitled to the protection of labour rights, encompassing “all its forms and applications” (Article 35(1) of the Constitution), alongside other constitutional guarantees delineated in Articles 35–40 and legislative provisions favouring workers irrespective of nationality. The principle of equal treatment in labour matters mandates that migrant workers, possessing residence permits and work authorization, receive parity with Italian and European counterparts. This principle is echoed in Article 2(3) of the Consolidated Act on Immigration, extending to the realm of care work.

However, it is essential to clarify the complex application of this principle with regard to migrant workers’ access to social security. These considerations apply to all migrant workers, including those working in the care sector.

Despite the long and rich catalogue of national and supranational regulations enforcing the principle of equal treatment between Italian and EU citizens and extra-EU nationals concerning access to social security benefits, the most recent legislation has introduced the condition of residence. This means that welfare benefits may be reserved for those who can prove they have resided for a certain period in each region or in the country. This kind of condition, while not directly discriminatory, can generate indirect prejudice to foreigners’ interests.¹⁴⁰

Similar criteria govern anti-poverty measures, such as the basic income outlined in Law no. 26 of 2019, repealed in 2023. This initiative is aimed at impoverished Italians, EU citizens and third-country nationals with a long-term residence permit, conditional on at least ten years of residence, the last two of which have been continuous in Italy.

¹⁴⁰ William Chiaromonte e Alberto Guariso, “Discriminazioni e Welfare,” in Barbera e Guariso, *La tutela antidiscriminatoria*; Alessandro Garilli, “la sicurezza sociale degli immigrati: alla ricerca della solidarietà perduta,” *Rivista del diritto della sicurezza sociale* (2020): 247; Maura Ranieri, “La tutela assistenziale dei migranti,” in Chiaromonte, Ferrara e Ranieri, *Migranti e lavoro*; Erik Longo, “L’eguaglianza alla prova delle migrazioni: la giurisprudenza costituzionale sulle prestazioni sociali a favore degli stranieri residenti,” *Diritto immigrazione e cittadinanza* (2022): 205.

The Constitutional Court's stance on this matter lacks unanimity. The Court distinguishes between services addressing fundamental rights and basic needs, which should remain unaffected by long-term residency requirements, and non-essential services subject to reasonable restrictions. The Court has frequently invalidated laws imposing residency conditions exclusively on foreigners to access services, deeming them unconstitutional (e.g., cases no. 61/2011, 2/2013, 4/2013, 133/2013, 172/2013, 106/2018, 107/2018, 166/2018, and more recently, case 54/2022, which references Article 34 of the Charter of Fundamental Rights of the European Union, as cited in Article 12 of Directive 2011/98).

When services exceed the notion of essential needs, the Court takes into exam, case by case, the existence of a reasonable correlation between the service and the residence requirement. Usually, the Court has considered in breach of the Constitution the requirement of qualified residence when it concerns foreigners exclusively, who are requested by the law to prove the regularity of their permanence in the country to benefit from a given service (*inter alia*, judgments no. 61/2011, 2/2013, 4/2013, 133/2013, 172/2013, 106/2018, 107/2018, 166/2018; more recently, see the important Judgement 54/2022, which also recalls Article 34 of the Charter of Fundamental Rights of the European Union, as referred to in Article 12 of Directive 2011/98).¹⁴¹

When the residence requirement concerns both nationals and foreigners, in some cases the Courts has qualified the condition as indirect discrimination, especially if it has an unequal impact on foreigners (judgments no. 168/2014, 172/2013, 107/2018). In other cases, the residence condition has been judged as in line with the constitutional principles (*inter alia*, judgments no. 222/2013, 141/2014, 50/2019).

15) Do the “labour” legislation (i.e., on working conditions) or, if applicable, collective agreements in your country, make any reference to the migrant or foreigner status of the person working in each of these care sector occupations?

(This question refers to third country nationals of the EU).

According to Article 2 of the Consolidated Act on Immigration (Legislative Decree no. 286 of 25 July 1998), the principle of equal treatment prohibits any distinction in treatment between Italian and foreign workers.

However, some measures have been taken in recent years to facilitate access to work of migrants in the care sector.

Article 27(1)(r-bis) of the Consolidated Act on Immigration provides that “professional nurses employed in public and private healthcare facilities” are exempt from the State’s annual quota requirements and are therefore eligible to enter Italy (in this context, we refer to “out-of-quota” and “thereby facilitated” entries into the labour market).

¹⁴¹ William Chiaromonte, “L’estensione agli stranieri degli assegni di natalità e maternità: la consulta chiude il cerchio del dialogo fra corti massimizzando le tutele,” *Argomenti di diritto del lavoro* (2022): 733.

Workers who entered Italy “outside the quotas”, unlike those who instead followed the procedure set forth in art. 22 of the Consolidated Act on Immigration, remain bound, in the performance of their work, to the qualification by virtue of which they were initially allowed entry.¹⁴²

To address irregular employment relationships involving migrants, the Italian legislator established a difficult regularisation procedure in 2020 as a result of the pandemic emergency (Article 103 of Decree-Law no. 34/2020, converted into Law no. 77/2020).

16) Have there been any court rulings on this matter? If so, please summarise or comment on them.

Despite referring to the Association for Legal Studies on Immigration (*Associazione per gli studi giuridici sull’immigrazione* or ASGI) database, which compiles all immigration case law, the research unit was unable to locate any pertinent legal cases.¹⁴³

17) Does the legislation on foreigners or immigration in your country (e.g., on residence or work permits, family reunification, permit renewal, etc.) specifically mention people working in one of these care sector occupations? Have there been any court rulings on this matter? If so, please summarise or comment on them.

(This question refers to third-country nationals in the EU).

In Italy a first example of legislation on foreigners or immigration that specifically mentions people working in a care sector occupation refers to the entry of “out-of-quota” foreigners. As we have seen (see retro, answers to the question 15), the entry of migrant workers is based on quotas determined annually by law.¹⁴⁴ In certain hypotheses peremptorily provided for by the Consolidated Act on Immigration, however, it is possible for foreigners to enter Italy for work purposes regardless of these quotas. The categories exempted from the quotas are peremptorily listed in Article 27, which in paragraph 1, letter r-bis, refers to the category of “professional nurses employed in public and private healthcare facilities”.

A second example refers to the regularisation procedure of irregular migrant workers initiated in 2020.¹⁴⁵ This procedure expressly refers to “workers” working in the two sectors that are relevant for the purposes of this study - personal care for oneself or for family members, even if not cohabiting, suffering from pathologies or handicaps that limit their self-sufficiency, and domestic work to support family needs - allowing them access to regularisation measures.

A third example refers to the express provision of the possibility of requesting entry into Italy - within the framework of the planning of legal entry flows

¹⁴² Chiaromonte, “Sub Artt. 5-7, 21-27 Sexies d.Lgs. 25 Luglio 1998, n. 286”.

¹⁴³ ASGI. “Giurisprudenza” (Banca dati, 2023), <<https://www.asgi.it/banca-dati/>> (Accessed 16 October 2023).

¹⁴⁴ William Chiaromonte, “Sub Artt. 5-7, 21-27 Sexies d.Lgs. 25 Luglio 1998, n. 286”.

¹⁴⁵ Chiaromonte e D’Onghia, “Migranti, lavoro e pandemia”.

of foreign workers into Italy for the three-year period 2023–2025 –¹⁴⁶ also to work in the family and sociomedical assistance sector.¹⁴⁷

18) *Do migrants with the corresponding residency permit and authorisation to work in the care sector (in each of these occupations) have access to the same rights as other workers in other production sectors?*

(This question refers to third-country nationals in the EU).

Any difference in treatment between Italian and foreign workers is excluded in accordance with the principle of equal treatment laid down in Article 2 of the Consolidated Act on Immigration (Legislative Decree no. 286 of 25 July 1998), so migrants with the corresponding residency permit and authorisation to work in the care sector have access to the same rights as other workers.

19) *Have there been any court rulings on this matter? If so, please summarise or comment on them.*

Despite referring to the Association for Legal Studies on Immigration (*Associazione per gli studi giuridici sull'immigrazione* or ASGI) database, which compiles all immigration case law, the research unit was unable to locate any pertinent legal cases.¹⁴⁸

20) *Have there been any collective bargaining provisions to favour the integration of migrant workers in the care sector on the basis of their language, religion, particular difficulties in visiting their families in their countries of origin, ethnic origin, etc.?*

(This question refers to third-country nationals in the EU).

In a small number of collective agreements there are provisions to facilitate visits of migrant workers to their country of origin.

Some contracts—as National collective agreement (CCNL) for non-medical staff employed by IRCCSs and hospital health facilities registered with Aiop and Aris (CCNL *per il personale non medico dipendente degli IRCCS e delle strutture sanitarie ospedaliere iscritte ad Aiop e Aris*) signed by AIOP, ARIS, CGIL, CISL and UIL (T011)—may provide that the migrant worker can request a continuous period of holidays to return temporarily to his/her home country, but in many cases the employer is entitled to refuse.

For the same reason, other collective contracts - as CCNL for employees of nursing homes, analysis centres, outpatient clinics (CCNL *per i dipendenti di case di cura, centri analisi, poliambulatori*) signed by ANPIT, CIDECE, PMI Italia, CISAL and others (T09E) provide that migrant workers can use more days of holidays than what they have accrued (negative balance holidays).

¹⁴⁶ Decree of the President of the Council of Ministers of 29 December 2022.

¹⁴⁷ Chiaromonte, “Una lettura giuslavoristica del d.l. 20/2023,” 431.

¹⁴⁸ ASGI. “Giurisprudenza” (Banca dati, 2023), <<https://www.asgi.it/banca-dati/>> (Accessed 16 October 2023).

Furthermore, some collective agreements - as the already mentioned contract T011 - provide that migrant workers can apply for 1 day of leave specifically in order to carry out the procedures for the renewal of the residence permit.

21) *Do you know if there have been any conflicts publicised by media between migrant workers of the care sector and the people they care for in terms of non-discrimination on the basis of ethnicity, religion, or nationality? If so, please explain.*

(This question refers to third-country nationals in the EU).

In relation to discrimination on the basis of ethnicity, religion or nationality, the research unit did not find any specific cases. However, there are numerous articles in the media in which discrimination against care workers emerges.¹⁴⁹

As the research unit did not find any case law in the legal databases on ethnic, national and religious discrimination of migrant care workers, it submitted a questionnaire to the Italian equality bodies (i.e. the Equality Councillors) to investigate whether they collected complaints of discrimination by care workers that had not made it to court.

Out of a sample of 114 Equality Councillors, 19.38% (17 Councillors) responded. Among the responses received, only 1 councillor stated that she had assisted female workers who were discriminated against at the intersectional level at work on ethnic and gender grounds. However, in compliance with privacy legislation, the Councillor has not disclosed any data relating to this dispute.

The responses from the National Equality Councillor in preparation to the Italian National Stakeholder Meeting shed light on instances of intersectional discrimination faced by female social and care workers in Tuscany, where factors such as gender, skin colour, or religion intersect to exacerbate inequality. These issues were confirmed by trade unions and civil society organisations during the Italian National Stakeholder Meeting.¹⁵⁰

22) *Have any statistics or databases been published in your country on migrant workers' salaries in the care sector?*

(This question refers to third-country nationals in the EU).

In Italy, there are some reports on the wage level of care workers. The 3 key reports on migrant workers' conditions are:

¹⁴⁹ ASGI. "Giurisprudenza" (Banca dati, 2023), <<https://www.asgi.it/banca-dati/>> (Accessed 16 October 2023); Michele Vari, "Insulti razzisti a una badante sul lungomare di Chiavari, denunciata turista," *Il Secolo XIX* (Genova, 2018) <<https://www.ilsecoloxix.it/levante/2018/08/29/news/insulti-razzisti-a-una-badante-sul-lungomare-di-chiavari-denunciata-turista-1.30535008>> (Accessed September 26, 2023); ACLI Colf, "Colf e discriminazione razziale: cosa accade a Treviso?" *ACLI Treviso* (Treviso, 2018) <<https://www.aclitreviso.it/notizie/item/826-colf-e-discriminazione-razziale-cosa-accade-a-treviso.html>> (Accessed 16 January 2024); *La Repubblica*, "Badanti, Il Rischio è Lo Sfruttamento" *La Repubblica, Metropoli* (2008) <<https://temi.repubblica.it/metropoli-online/badanti-il-rischio-lo-sfruttamento/>> (Accessed September 26, 2023).

¹⁵⁰ Consigliera Nazionale di Parità, "Responses to the Questionnaire"; CARE4CARE, "Minutes of the Italian National Stakeholders Meeting".

- *XIII Rapporto annuale: Gli stranieri nel mercato del lavoro italiano* (Annual report on foreigners in the Italian labour market).¹⁵¹
- *XIII Rapporto annuale sull'economia dell'immigrazione "Talenti e competenze nell'Europa del futuro"* (Annual report on the economics of immigration).¹⁵²
- *5° Rapporto annuale DOMINA sul lavoro domestico: Analisi, statistiche, tendenze nazionali e locali* (DOMINA Report).¹⁵³

The first report provides comprehensive coverage of the four analytical units (health professionals, health and care workers, basic care workers, and home carers). This report presents aggregated data at national level and is accessible to everyone. The Report presents data regarding the generality of immigrant workers.

Only home caregivers and domestic workers are covered by the DOMINA Report.

The Ministry of Labour and Social Policies publishes useful information and data on migrant employment on the page *Integrazionemigranti.gov.it - Vivere e lavorare in Italia*. However, this information is often elaborations of ISTAT or INPS data or taken from the Annual Report on Foreigners in the Italian Labour Market.

- *Have any statistics or databases been published in your country on the occupational classification of migrant workers in the care sector?*

The only database on occupational classification is the one published by INPS. However, this database only concerns domestic workers and workers who fall under the legal categories provided for in Article 2095 of the Civil Code (manual workers, clerical workers, middle managers and directors), which are not relevant for care workers.

- *Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*

The INPS database presents aggregated data at national level.

- *Are these databases public and freely accessible to everyone, or only to researchers?*

The INPS database is freely accessible to everyone.

- *If published databases exist, please provide links and/or how to request them.*

Author	Year	Title	Link
INPS	2023	<i>Cittadini stranieri per condizione prevalente</i>	< https://servizi2.inps.it/servizi/os-servatoristatistici/1059/o/464 >

¹⁵¹ Direzione Generale dell'Immigrazione e delle Politiche di Integrazione, *XIII Rapporto Annuale*.

¹⁵² Fondazione Leone Moressa, *XIII rapporto annuale sull'economia dell'immigrazione*.

¹⁵³ Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico*, 71 ff.

23) *If you have found statistics or databases, please describe what they show in relation to the job classification and wages of migrant workers in the care sector.*

According to the XIII Annual Report on Foreigners in the Italian Labour Market, the average annual wage for non-EU workers in 2022 is 31% lower than the average wage for all workers, amounting to 15,707 euros for the former and 23,688 euros for the latter. While this report provides aggregated national-level data and is accessible to the public, there are no specific statistics available on the salaries of migrant workers in the healthcare sector.¹⁵⁴

However, the same report offers insights into the wages of migrant domestic workers. In 2022, their average annual salary was 11.7 per cent higher than that of most workers, totalling 7,945 euros for domestic workers compared to 7,110 euros for others. The report notes that this disparity could be attributed to the higher number of hours worked per week by domestic workers.

Overall, the wages of Italian and immigrant domestic workers are relatively equal but remain quite low.

24) *Are migrants in an undocumented situation (without authorisation to reside or work) entitled to employment rights when working in the care sector in your country? Please outline your views on this issue.*

(This question refers to third-country nationals in the EU).

In Italy undocumented migrant workers enjoy certain labour rights. Article 2126 of the Civil Code stipulates that the effects of work performed in violation of the law by an undocumented worker, including those employed in care work, are preserved.

As a result, the employer is required to pay the wage, contributions, and taxes that he would have had to pay in the case of regular employment, presuming the connection lasted at least three months.

25) *Have there been any court rulings on this matter? If so, please summarise or comment on them.*

Regarding the rights of irregular non-EU workers, the Supreme Court of Cassation issued decision no. 7380 of 26 March 2010 establishing that the employer is always obliged to pay social security contributions, even if already subject to a criminal sanction.

Indeed, on the matter of work performed by a non-EU worker without a residence permit, the Supreme Court ruled that the application of the relevant criminal sanction does not exonerate the employer from the obligation to pay contributions to INPS in relation to the wages due.

By virtue of the joint reading of Article 2126 of the Civil Code together with Article 22 of Legislative Decree no. 286 of 25 July 1998, the obligation to pay contributions is an automatic consequence of the obligation to pay wages that subsists even when the migrant workers is undocumented.

¹⁵⁴ Direzione Generale dell'Immigrazione e delle Politiche di Integrazione, *XIII Rapporto Annuale*.

26) *With the onset of the COVID-19 pandemic, Were any (structural or extraordinary) measures adopted by the State to allow “undocumented” foreign personnel to obtain residence or work permit, both structural and extraordinary?*

(This question refers to third-country nationals in the EU).

There is a high prevalence of irregular migrant workers in the productive sectors that continued to operate throughout all phases of the pandemic. According to the Directorate-General for Immigration and Integration Policies' 10th Report, in the domestic and personal care sector in 2019, 48.3% of the workforce was non-national (primarily non-European),¹⁵⁵ and the irregularity rate was 58.8%, which amounted to roughly 900,000 workers without a contract.¹⁵⁶ Regular employment links in the domestic and care industries have significantly decreased. In particular, the National Association of Domestic Employers (Assindatcolf) calculated that from March to June 2020, there were almost 13,000 fewer employment contracts.¹⁵⁷

The Italian Government has introduced the measure of regularisation of irregular workers on the territory within a “double amnesty”, contained in the broader Decree-Law of 19 May 2020 (*Decreto Rilancio*), which provides for extraordinary measures to deal with the COVID-19 epidemiological emergency.

Article 103, Decree-Law no. 34/2020 established a dual regularisation method for the emergence of atypical employment relationships and the regularisation of workers who are atypically present on the national territory. The procedure was limited to a period of time ranging from 1 June 2020 to 15 July 2020, extended until 15 August 2020 and concerned, among others, precisely personal care activities and domestic work (Article 103, para. 3).

Three different types of regularisations were accessible through the two mechanisms outlined in Article 103 of Law Decree no. 34/2020:

- 1) signing a new employment contract with foreign nationals already residing in the country, regardless of the regularity or irregularity of their presence.
- 2) regularising existing employment relationships to the benefit of both foreign nationals and Italian citizens; and
- 3) obtaining a six-month residence permit for foreign nationals. A total of 207,870 applications for the regularisation of labour relations and 12,986 applications for temporary residence permits were reported in the Ministry of the Interior's updated data as of May 20, 2021.¹⁵⁸

¹⁵⁵ Direzione Generale dell'Immigrazione e delle Politiche di Integrazione, *X Rapporto Annuale: gli stranieri nel mercato del lavoro in Italia* (Ministero del Lavoro e delle Politiche Sociali, 2020), 96.

¹⁵⁶ *Il Sole 24 ORE*, “Il lavoro irregolare in agricoltura e domestico, elaborata sulla base dei dati ISTAT e IDOS relativi al lavoro irregolare per regione” (2010).

¹⁵⁷ IDOS, “Dossier Statistico Immigrazione 2020” (2020), 9.

¹⁵⁸ Ministero dell'Interno, “Emersione dei rapporti di lavoro: presentate più di 207mila domande” (2020) <<https://www.interno.gov.it/it/notizie/emersione-dei-rapporti-lavoro-presentate-piu-207mila-domande>> (Accessed September 26, 2023).

Many employers chose not to declare undeclared employment relationships, citing interpretive difficulties and the vagueness of the legal framework. In light of the significant uncertainty surrounding regularisation, they frequently deemed the associated costs and obligations disproportionate. Less than one-fifth (207,870) of the estimated 1 million irregular workers in the two industries covered by the amnesty appear to have applied, which seems to support what has been said.

According to the Ministry of the Interior, the domestic and care sector accounted for 85% of applications (almost 177,000).¹⁵⁹ The reason for this can be attributed to the fact that employment relationships are marked by a higher fiduciary relationship between the employer and the employee and that contracts often have a longer life, allowing the expense of the procedure to be amortised.¹⁶⁰

27) *From the onset of the COVID-19 pandemic to the present day, have measures been taken by the State to allow “undocumented” foreign personnel providing services “in the care sector” to obtain residence or work permits?*

The regularisation procedure provided for by Article 103(2) of Law no. 34 of 10 February 2021 concerns the issuance of residency or work permits to undocumented migrant workers. In this case, the procedure was simplified because the applicant could submit the application in person to the Immigration Office of the territorially competent Central Police Headquarters, which is the only body in charge of both the preliminary investigation phase and the issuance of the residency permit.

However, access to the procedure was restricted to non-nationals “with a residence permit that expired on 31 October 2019, which has not been renewed or converted into another residence permit.” In essence, only foreign nationals who met the following criteria were eligible to apply for regularisation: a) those who were legally residing on State territory as of October 31, 2019, but whose visa had expired or had not been renewed; b) those who had been present continuously in Italy as of March 8, 2020; and c) those who worked in the fields of agriculture, domestic work and care work.

The number of regularisation applications submitted was far lower than the estimated number of irregular migrant working in the sectors; out of approximately 480,000 workers potentially involved, only 12,986 applications were submitted. The low number of applications might be attributed to the procedure’s stringent eligibility conditions. Above all, the National Labour Inspectorate’s documentation of prior labour experiences in caregiving, domestic work, and agriculture. For individuals who work in the informal economy, this proof was impossible. As a result, the measure’s intended beneficiaries — informal, undocumented migrant workers — were not eligible to seek for a residence permit.

¹⁵⁹ Ministero dell’Interno, “Emersione dei rapporti di lavoro”.

¹⁶⁰ Elisa Gonnelli, “La regolarizzazione dei lavoratori migranti come intervento straordinario per far fronte all’emergenza sanitaria da Covid-19,” *Labour & Law Issues* 7 (2021): 32.

28) *If there are Equality Bodies or Organisations fighting racial, ethnic, or religious discrimination in your country, have they undertaken any action or produced any report in relation to the rights of migrant workers in the care sector? If yes, please describe this report.*

(This question refers to third-country nationals in the EU).

The Italian government has entrusted UNAR with the responsibility for upholding everyone's right to equal treatment, regardless of their age, gender, race, religion, sexual orientation, or identity, or disability status. The Office was established in 2003 (Legislative Decree no. 215 of 9 July 2003) following an EU directive (no. 2000/43/EC), which requires each Member State to activate a body specifically dedicated to combating forms of discrimination. In particular, UNAR is responsible for monitoring causes and phenomena related to all types of discrimination, studying possible solutions, promoting a culture of respect for human rights and equal opportunities and providing concrete assistance to victims.¹⁶¹

UNAR has not taken any actions or produced any reports in relation to the rights of migrant workers in the care sector.

29) *If there are Equality Bodies or Organisations fighting racial, ethnic, or religious discrimination in your country, have they undertaken any action or produced any report in relation to the rights of people, whatever their nationality, working in the care sector? If yes, please describe this report.*

(This question concerns both nationals of the country, EU nationals and third-country nationals in the EU).

UNAR has not taken any action or produced any reports concerning the rights of people, regardless of their nationality, working in the care sector.

Regarding other activities undertaken to monitor racial, ethnic or religious discrimination, the 2023 report by the Association for Legal Studies on Immigration (*Associazione per gli studi giuridici sull'immigrazione* or ASGI) on institutional forms of discrimination is worth noting.¹⁶² The report offers a comprehensive examination of institutional discrimination, delving into its historical roots and contemporary implications related to welfare accessibility. It explores both the legal and socio-economic dimensions, examining inequalities in access to welfare benefits and services, such as citizenship income, universal child benefit, access to housing and various other forms of inequity. The aim is to explore the causes and repercussions of these discriminatory practices, highlighting cases of anti-discriminatory promotion and the consequent implications of such initiatives.

¹⁶¹ UNAR, "Che cos'è l'Ufficio Nazionale Antidiscriminazioni Razziali" (2023), <<https://www.unar.it/portale/che-cos-e-unar>> (Accessed September 26, 2023).

¹⁶² L.A.W. - Leverage the Access to Welfare, "Quando discriminano le istituzioni: uguaglianza, diritti sociali, immigrazione" (ASGI, 2023).

30) *Comment whether your State has adequate legislation on harassment (including gender-based harassment and sexual harassment) of women workers in the domestic sector, especially if they are migrant workers. Comment whether the worker's employer (including migrant workers) can be held responsible for such situations.*

(This question concerns both nationals of the country, EU nationals and third-country nationals in the EU).

Regarding the subject of sexual harassment, harassment, and discrimination against migrant women at work, please refer to answer 15 on gender.

It is noteworthy that Italian law fails to include any specific provisions for multiple or intersectional discrimination.

31) *Comment on whether there are mechanisms in the legislation against cases of exploitation in the workplace with regard to undocumented or irregular migrant workers (without residence authorisation). Comment on whether in these cases migrants in an irregular situation can denounce or have access to the courts in cases of exploitation and labour exploitation. Also, whether there are cases in the legislation in which they can obtain a residence authorisation.*

(This question refers to third-country nationals in the EU).

To answer this issue, please take into account the Directive 2009/52/EU of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

Article 22, para. 12 of the Consolidated Law on Immigration imposes criminal sanctions on the employer “who employs foreign workers without a residence permit [...], or whose permit has expired and whose renewal, has not been requested by law, or has been revoked or cancelled”. Legislative Decree no. 109/2012 provides for the extension of criminal liability to legal persons who are responsible for facilitation of illegal immigration (Article 12, Consolidated Law on Immigration).

Moreover, Article 22, para. 5 *bis* of the Consolidated Law on Immigration authorises the *Sportello Unico* for immigration to refuse the authorization to work to any employer who in the last five years has been convicted for facilitating illegal immigration or emigration, or for crimes related to the recruitment of persons for the purpose of (the exploitation of) prostitution or of minors.

The employer must pay the irregular foreign worker the full wages and social contributions provided for lawful employment for a minimum period of three months, unless the employer or the employee prove otherwise (Article 3, Legislative Decree no. 109/2012). However, due to the undesirable consequences, it is very unlikely for the worker to receive what is due before his/her removal, since the emergence of the unlawful presence of the undocumented worker entails her/his voluntary or forced removal, in accordance with the provisions of the Returns Directive (2008/115/EC).

Yet, in the event of severe labour exploitation, charging files against the employer and collaborating with the prosecuting authority grants the undocumented worker a six-month residence permit, renewable for one year or till

completion of the criminal proceedings (Article 22, para. 12 *quater* and *quinquies*). The provision of a residence permit to the foreigner who is victim of labour exploitation is certainly an important novelty in the Italian legal system, especially in light of her/his subsequent integration into the (regular) labour market. However, Legislative Decree no. 109/2012 has narrowed the typology of “serious labour exploitation”.

With regard to the additional administrative and financial sanctions provided by Directive 2009/52/EC against employers who have employed an irregular labour force, no implementation measures are found in the Legislative Decree no. 109/2012. However, precisely these sanctions could potentially play a fundamental deterrent role, since the consequences for employers would be very serious and particularly from an economic point of view. Moreover, Legislative Decree no. 109/2012 does not provide any specific measure against subcontracting, a common phenomenon of the exploitation of undocumented labour.

Concerning the phenomenon of illegally recruiting labour through exploiting the worker’s condition of need, a phenomenon particularly rooted in the agricultural sector and, more generally, in the agri-food production chain, known as *caporalato*, Law no. 199/2016, amending Article 603 *bis* of the Penal Code, introduced new provisions aimed to contrast its diffusion.¹⁶³

The *caporalato*, which “succeeds” in keeping foreign labour in Italy that would otherwise be expelled, and intercepts the incoming flows attracting new labour force, often involves undocumented migrants, who are further particularly vulnerable. Since reporting to public authorities would lead to those workers’ expulsion—except for the already mentioned very few cases for which the law provides for the possibility of issuing a residence permit—they tend not to criticize their situation of exploitation, confirming the well-known difficulties of access to justice for foreigners (especially the undocumented) also with reference to the most serious cases of labour exploitation (the number of complaints is strongly conditioned by their undocumented status, sanctioned by criminal law, of the worker victim of serious exploitation). Therefore, they accept working and living in situations of particular degradation, as well as precarious health conditions, often with limited access to drinking water, basic medical care and decent housing.

The most relevant innovation of the Law no. 199/2016 consists in the identification (Article 603 *bis*, para. 1) of two distinct criminal conducts: (1) the *caporale*, who recruits workers (often, but not necessarily, undocumented migrants) for third parties in conditions of exploitation, and taking advantage of their state of need (in this case the crime is that of illegal intermediation and exploitation of labour); and (2) the employer, who hires or employs workers, even without

¹⁶³ See, among others, the contributions published in “Riflessioni giuslavoristiche sullo sfruttamento del lavoro” (2021) *Lavoro e diritto*; Marco Omizzolo, *Sotto padrone. Uomini, migranti e caporali nell’agromafia italiana* (Milano: Feltrinelli, 2019); Marco Omizzolo, a cura di, *Articolo 1. L’Italia è una Repubblica fondata sul lavoro sfruttato* (Formigine: Infinito Edizioni, 2022).

the intermediation of the *caporale*, subjecting them to conditions of exploitation and taking advantage of their state of need (in this case the illegal intermediation can only potentially occur).

Two elements characterize the criminal conduct of both the *caporale* and the employer: on the one hand, the exploitation of labour: para. 2 of Article 603 *bis* identifies the “legal indices of exploitation”, most of which refer to the conduct of the employer only, which are grouped into four categories (remuneration, working hours, safety and hygiene at work, and the general working conditions), which means a systematic violation of the “hard core” labour law conditions. On the other hand, is the exploitation of the state of need of the workers. At stake here is the breach of the fundamental value of the human dignity of the worker. Unless the fact constitutes a more serious crime, the *caporale* or employer is punished with imprisonment from one to six years, and with a fine from 500 to 1,000 euros for each employed worker. Moreover, imprisonment from five to eight years and a fine from 1,000 to 2,000 euros for each employed worker is given when the acts are committed with violence or threat.

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