CHAPTER 4

Italian Report on Care Workers' Job Quality and Inclusive Working Conditions[1]

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1. Introduction

This report aims to analyse the job quality and working conditions of care workers in Italy. The report evaluates law and policy, labour market characteristics and industrial relations, and analyses the interaction between national law and EU/European and International law.

In Italy, labour law encompasses a comprehensive framework governing occupational activities. Historically, the focal point of labour law has been subordinate employment, rooted in the belief that employees merit protection as the more vulnerable party in contractual relationships.[2] Conversely, self-employed individuals have traditionally been perceived as capable of safeguarding themselves due to their professionalism, leading to their exemption from protective regulations. However, recent years have witnessed a paradigm shift, prompting the introduction of protections for self-employed individuals as well (Section 4.1).

[1] The contents of this report were finalized on December 31, 2023.

[2] Riccardo Del Punta, *Diritto del lavoro*, a cura di Roberto Romei, Maria Luisa Vallauri, e William Chiaromonte (Milano: Giuffrè, 2023), 379 ff.

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Referee List (DOI 10.36253/fup_referee_list)
FUP Best Practice in Scholarly Publishing (DOI 10.36253/fup_best_practice)

The primary focus of this study lies within the care sector and care work. The Italian legal landscape lacks a unified definition of the care sector and care workers. Instead, regulation stems from various sources, including health and social security legislation, labour law, collective agreements, and case law. Despite this diversity, professions within the care sector share a common functional trait of providing care or assistance to the disabled, elderly, sick, and children. Considering the purpose of this research, the report narrows its scope to care workers with low to medium qualifications, excluding childcare workers and doctors (Section 2).

This comprehensive report undertakes an examination of the quality of work and working conditions of care workers in Italy. It delves into multiple aspects, embracing the multifaceted realm of care and home care work, encompassing occupations, labour market characteristics, regulatory frameworks, and ongoing debates (Section 2), addresses fundamental trade union rights, social partners, collective bargaining, and industrial relations (Section 3), and engages in a discourse on employment status, flexible forms of employment and employment protection (Section 4). Section 5 focuses on wages and benefits, followed by Section 6 which examines working time, health and safety, the implications of the COVID-19 pandemic and training and skills development. Section 7 delves into social security coverage and benefits, while section 8 offers a concluding discussion encapsulating the main findings and implications arising from the report.

This introductory section is divided into two parts: a reflection on the methodology employed and the sources used in drafting the report (Subsection 1.1), and a preliminary explanation of the discipline of constitutional competencies in the socio-healthcare field, essential for understanding the healthcare sector in Italy (Subsection 1.2).

1.1 Methodological Remarks

The methodology employed in crafting this national report is rooted in socio-legal analysis. It encompasses an examination of legal sources, collective agreements, case law, and pertinent literature within the domain of labour law to delineate the Italian legal and contractual landscape. In addition to this foundational research, insights crucial to understanding the pivotal role of discrimination, particularly concerning women and migrants in the care sector, were gleaned from questionnaires administered to Equality Counsellors. The responses to these questionnaires have been predominantly employed in drafting the report on the discrimination map (work package No. 3 of the CARE4CARE project), although they also played a role in this report's section on discrimination. Furthermore, the completion of this report was made possible by the wealth of information gathered in preparation for and during the national meeting of Italian stakeholders held in Rome on 10 April 2024 and the European stakeholders meeting held in Brussels on 17 April 2024.[3]

[3] Consigliera Nazionale di Parità, "Responses to the questionnaire in preparation for the Italian National Stakeholders Meeting", 2024; CISL, "Responses to the questionnaire in

Primarily focusing on collective agreements within the public and private care and health sectors, the report scrutinises the unique National Collective Labour Agreements (CCNLs) established by the most representative trade unions in the public sector. Meanwhile, in the private sector, a meticulous analysis was conducted, sifting through the archives of the National Economic and Labour Council (CNEL) to identify a selection of fifty contracts. These contracts were chosen based on specific criteria encompassing the rate of application, representativeness of the stipulating social partners, and the scope of facilities covered.

For home caregivers, sixteen collective agreements were identified and analysed. While numerous social partners have been involved in negotiating these agreements, some unions may lack representativeness, potentially indicating the presence of employers' friendly or "yellow" union.[4] Unfortunately, data regarding coverage is not readily available, highlighting an area for further investigation.

The elaboration of data pertaining to the labour market of various healthcare professionals, social and care workers, basic care workers, and home caregivers was meticulously undertaken, drawing from a range of reputable sources including the National Institute for Statistics (ISTAT), the Statistical Office of the European Union (EUROSTAT), and trade union organisations within the sector, among others.

1.2 Brief Introduction to the Constitutional Allocation of Competences in the Healthcare Sector

In the domain of healthcare and social services organisation, the Constitutional reform of Title V, Part II, of the Constitution — Constitutional Law No. 3 of 18 October 2001 — affirmed and constitutionally endorsed the decision made in the 1990s to transition towards regionalising the national healthcare system (NHS). Central to this reform is the principle of subsidiarity and proximity, aiming to establish a decentralised system closely attuned to citizens' needs (see Section 7.4).[5]

preparation for the Italian National Stakeholders Meeting", 2024; CGIL, "Responses to the questionnaire in preparation for the Italian National Stakeholders Meeting", 2024; CUB Sanità, "Responses to the questionnaire in preparation for the Italian National Stakeholders Meeting", 2024; CISL FISASCAT, "Responses to the questionnaire in preparation for the Italian National Stakeholders Meeting", 2024; NOSOTRAS, "Responses to the questionnaire in preparation for the Italian National Stakeholders Meeting", 2024; UNEBA, "Responses to the questionnaire in preparation for the Italian National Stakeholders Meeting", 2024; CARE4CARE, "Minutes of the Italian National Stakeholders Meeting held in Rome on 10 April 2024", 2024.

4 The company or "yellow" union is regulated in Article 17 of the Statute of Workers, which prohibits employers or employers' associations from establishing or supporting trade union associations of workers.

5 Renato Balduzzi e Davide Servetti, "La garanzia costituzionale del diritto alla salute e la sua attuazione nel Servizio sanitario nazionale". In *Manuale di diritto sanitario*, a cura di Renato Balduzzi (Bologna: il Mulino 2013), 49 ff.; Alessandro Candido e Lorenzo Cuocolo,

The amendments introduced by Constitutional Law No. 3 of 18 October 2001, address both the horizontal and vertical coordination of legislative functions in the healthcare sector.[6]

Regarding horizontal legislative coordination, the reform broadened the scope of regional legislative competences, replacing the original reference to "health and hospital care" with the "protection of health", now classified among the subjects of concurrent legislation in Article 117(3) of the Constitution. The Constitutional Court emphasised that this is a significantly broader range of matters than the previous framework of competences. It includes organisational and management aspects of regional healthcare, allowing for potential differentiation while respecting the fundamental principles established by national legislation. In particular, it does not provide for a separate jurisdictional area devoted exclusively to the "health organisation" of residual regional competence. On the contrary, it encompasses various aspects such as the organisation of pharmaceutical services, the assessment of the appropriateness of therapeutic practices and the regulation of qualifications for health professionals, extending also to veterinary health.[7]

Concerning vertical legislative coordination, the constitutional reform has not reduced the role of the state legislature. Health protection remains a concurrent legislative matter, with the state responsible for defining the fundamental principles and the regions in charge of detailed regulation. Moreover, the State retains the exclusive competence to ensure "uniformity" in the determination of the essential levels of services pursuant to Article 117(2)(m). It retains the power to enforce effectiveness, using the power of substitution under Article 120(2). However, the state also retains a co-legislative role in various areas that intersect with health protection, complicating efforts to delineate state and regional competences.[8]

2. Care Work and Domestic Work: Occupations, Labour Market Characteristics, Overall Regulatory Framework, and Current Debates

This section of the report aims to describe the main characteristics of the care sector in Italy. The first subsection deals with care workers and care occupations, the second with health professionals, the third with social and care workers, the fourth with primary care workers, the fifth with home caregivers, and the sixth analyses care sector labour market data.

"L'incerta evoluzione del regionalismo sanitario in Italia," *Forum di Quaderni Costituzionali – Rassegna* 9 (2013): 1–39, <https://www.forumcostituzionale.it/wordpress/images/stories/pdf/documenti_forum/paper/0425_cuocolo_candido.pdf>.

6 Donatella Morana, "La tutela della salute fra competenze statali e regionali: indirizzi della giurisprudenza costituzionale e nuovi sviluppi normativi," *Osservatorio Costituzionale* 1 (2018).

7 Raffaele Bifulco e Alfonso Celotto, a cura di, *Le materie dell'art. 117 nella giurisprudenza costituzionale dopo il 2001: analisi sistematica della giurisprudenza costituzionale sul riparto di competenze fra stato e regioni 2001-2014* (Napoli: Editoriale scientifica, 2015), 283 ff.

8 Morana, "La tutela della salute fra competenze statali e regionali".

Methodologically, the sources on which the section is based are legal, doctrinal and statistical. Statistical data are analysed in subsection 2.6. These data are compiled on the basis of data from the National Institute of Statistics (ISTAT), statistical office of the European Union (EUROSTAT), Organisation for Economic Co-operation and Development (OECD) and National Federation of Orders of Nursing Professions (FNOPI) databases, as well as trade union publications and previous doctrinal studies. Given the complexity of retrieving the data on Social and health workers, recourse was mainly made to the data presented by the trade unions in the hearing at the Senate of the Republic on the bill no. 934 and no. 2347 of 2022.[9]

2.1 Care Worker and Care Occupations

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 personal and/or healthcare to people with disabilities, elderly, sick and children. Following the Consortium's choice on the target of the study, the report excludes consideration of the remaining 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.

[9] 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); Senato della Repubblica, "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)," *Legislatura 18a – 11a Commissione permanente 'Lavoro pubblico e privato, previdenza sociale' – Resoconto sommario n. 76 del 08/02/2022*, 2022, <https://www.senato.it/japp/bgt/showdoc/18/SommComm/0/1331859/index.html?part=doc_dc> (Accessed October 2, 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 December 13, 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 October 18, 2023); FNOPI, *Scheda sulla professione infermieristica*, Schede di analisi FNOPI, 2020. FNOPI, *Tutti i numeri degli infermieri. Chi sono, dove lavorano, privati, dipendenti e disoccupati: una professione allo specchio*. Schede di Analisi FNOPI, 2015; 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>; EUROSTAT, *Healthcare Personnel Statistics - Nursing and Caring Professionals*, Health in the European Union – facts and figures, 2023, <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Healthcare_personnel_statistics_-_nursing_and_caring_professionals> (Accessed October 19, 2023).

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 are a category that corresponds 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.[10] 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.[11] The required training is not standardised 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.[12]

4) Finally, home caregivers (*assistenti domiciliari,* or *badanti*) are a category that the law and collective agreements assimilate to domestic workers, albeit they specifically take care of elderly, sick or dependent persons without a specific qualification.

2.2 Health Professionals With at Most a Bachelor's Degree

Health professionals with at most a Bachelor's degree is a broad category encompassing nurses, midwives, healthcare, and rehabilitation technicians who obtained their professional qualification after a three-year degree.[13] The nurse and midwife profession has been fully reformed since the 1990s.[14] The profes-

[10] Edoardo Caruso, "Il rapporto pubblico e privato nel servizio sanitario: tra oscillazioni e fibrillazioni," in *Organizzazione e lavoro in sanità. Una ricerca interdisciplinare*, a cura di Stefania Buoso, e Angelina Passaro (Torino: Giappichelli, 2023), 9–54.

[11] Franca Borgogelli, "Il reclutamento nel lavoro pubblico e le specificità del settore sanitario: profili critici," in Buoso e Passaro, *Organizzazione e lavoro in sanità*, 161–96.

[12] CARE4CARE, "Minutes".

[13] Stefania Buoso, "Il nuovo ordinamento professionale del comparto sanità: propositi riformatori e tensioni di sistema," in Buoso e Passaro, *Organizzazione e lavoro in sanità*, 197–225.

[14] Legislation on nurses and midwives includes: Ministerial Decree No. 739 of 14/09/1994 on the professional profile of nurses; Law No. 42 of 26 February 1999 on healthcare pro-

sion of nurse and midwife requires a Bachelor's degree that qualifies the holder to exercise the profession after registration in the professional register.[15]

The activities carried out by nurses vary in nature: taking charge of patients, planning care services, providing care and health services, evaluating, and monitoring the impact of care activities, promoting and educating patients and the community on health and prevention, participating in patient management training and courses, and supporting medical staff.[16]

Nurses and midwives can work both in public sector institutions such as local health authorities, hospitals, elderly care facilities and public care facilities; and in private sector institutions such as private clinics, large companies, and private elderly care facilities. Furthermore, health professionals may be employed under a subordinate contract or be self-employed (see subsection 2.6).

In their work, health professionals are constantly in contact with illness and suffering and must offer emotional support while managing their own personal involvement. The health professional working in health care facilities has a fixed work schedule or works in shifts. Generally, the health professional works as part of a team coordinated by a qualified nursing coordinator. A health professional working in a public facility is hired after passing a public competition based on qualifications and examinations. The most common employment contract in public facilities is a permanent subordinate contract. Conversely, a health professional working in a private facility may be employed with a fixed-term or permanent employment contract with the only requirement of professional qualification (cf. subsection 2.6). In home care, the health professional is normally self-employed following the instructions of the general practitioner and working predominantly alone.[17]

In the exercise of their profession, health professionals are bound by the code of ethics drawn up by the FNOPI, which maintains the professional register.[18]

fessions; Law No. 251 of 10 August 2000 on nursing healthcare professions; Law No. 1 of 8 January 2002 on healthcare personnel; Law No. 43 of 1 February 2006 on nursing, midwifery, rehabilitation, technical healthcare and prevention healthcare professions and delegation to the government to establish the relevant professional orders.

15 Article 6.3, Legislative Decree No. 502 of 30 December 1992.

16 Antonio Boccia et al., *Elementi di diritto per le professioni sanitarie* (Milano: Società Editrice Esculapio, 2012).

17 Regarding working conditions in care sector, see among others: Luisa D'Agostino and Alessia Romito, "Invecchiare in sanità. Condizioni di lavoro e transizione digitale in una prospettiva di longevità (lavorativa) sostenibile" (Roma: INAPP, 2023); European Foundation for the Improvement of Living and Working Conditions, *Long-Term Care Workforce: Employment and Working Conditions* (Luxembourg: Publications Office of the European Union, 2020), <https://data.europa.eu/doi/10.2806/531180> (Accessed May 9, 2024).

18 FNOPI, *Codice deontologico delle professioni infermieristiche* (Roma: Federazione Nazionale Ordini Professioni Infermieristiche, 2019), <https://www.fnopi.it/wp-content/uploads/2019/10/Codice-Deontologico-CN-12-13-aprile-2019.pdf> (Accessed March 2, 2024).

2.3 Social and Care Workers

Social and care workers are workers who have qualified through a publicly accredited course, which requires a high school diploma. In the Italian system this category corresponds to that of social and health workers (*operatore socio-sanitario* or OSS), to specialised social and health workers (*operatore socio sanitario specializzato* or OSSS) technical care operator (*operatore tecnico addetto all'assistenza* or OTA). These figures do not exist in all regional health regulations, some only regulate social and health workers.

An agreement between the Minister of Health, the Minister of Social Solidarity and the Regions and Autonomous Provinces of Trento and Bolzano, as well as Article 5 of Law No. 3 of 11 January 2018, constitute the fundamental regulations for these professions. The figure of the (specialised) social and health worker has progressively absorbed some previous figures that dealt with health care – such as basic and specialised assistants –[19] and social assistance – such as socio-sanitary assistants –[20] integrating the functions, tasks, and skills of the two areas into a single role.[21] The same process occurred for technical assistance workers who reabsorbed the former technical assistance figures.

Social and care workers can be hired as an employee or as a self-employed person both in public and private facilities. If working directly for a public body, he/she needs to pass a competition based on qualifications and examinations in order to be recruited. Law No. 3 of 11 January 2018 officially established the social and health professions under which social and care workers are covered. The legislation of the Regions and Autonomous Provinces may, in a supplementary manner, establish further provisions on the training paths and tasks of these workers.

The social and care workers carry out basic care activities, collaborating and assisting healthcare professionals. These workers carry out activities that help people meet their basic needs: feeding, personal hygiene, activities aimed at recovery and mobilisation, and stretcher transport. They monitor vital signs, carry out minor medication, assist in the administration of oral therapy, transport biological materials, and prepare materials for sterilisation.[22]

The Regions and Autonomous Provinces are responsible for training; the certificate of professional qualification is awarded at the end of a training course

[19] In italian, *operatore tecnico* and *assistente di base*.

[20] In italian, *ausiliario socio-sanitario*.

[21] "Accordo tra il Ministro della sanità, il Ministro per la solidarietà sociale e le Regioni e Province autonome di Trento e Bolzano, per la individuazione della figura e del relativo profilo professionale dell'operatore socio-sanitario e per la definizione dell'ordinamento didattico dei corsi di formazione," *Gazzetta Ufficiale* Serie Generale 91 (19 aprile 2001), <https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2001-04-19&atto.codiceRedazionale=001A4046> (Accessed February 12, 2024).

[22] Margherita Di Virgilio e Irven Mussi, *Manuale per OSS e ASA (Operatori Socio-Sanitari e Ausiliari Socio-Assistenziali)*(Milano: Franco Angeli, 2019).

lasting approximately 1,000 hours: 450 hours of theory, 100 hours of exercises and 450 hours of apprenticeship, including a final exam.[23]

2.4 Basic Care Workers

Basic care workers are professionals who perform varied and low-complexity care tasks and are responsible for personal care, domestic assistance, and hygiene services. This category includes social assistance worker (*operatore socio-assistenziale* or OSA), social assistance auxiliaries (*ausiliario socio assistenziale* or ASA). These figures do not exist in all regional health regulations, some only regulate social assistance workers.

Basic care workers are established by the same agreement between the Minister for Health, the Minister for Social Solidarity and the Regions and Autonomous Provinces of Trento and Bolzano that introduced social and care workers, and by Law No. 3 of 11 January 2018. This professional figure was created in the reorganisation of previous professional figures related to social and care work (e.g., technical assistants or social assistants)[24] and aims to promote the social and relational well-being of patients in their environment.[25] Therefore, support is aimed at the social sphere to maintain or recover a person's autonomy.[26]

Basic care workers can be hired as an employee or as a self-employed person in public and private facilities. In the case that he/she works for a public facility, he/she needs to pass a competition based on qualifications and examinations in order to be recruited. In most cases, basic care workers operate in the field of care of dependent persons, persons with disabilities and patients (e.g. in retirement homes, residential communities for children with disabilities and for drug addicts, daycare centres for the elderly, kindergartens, and nursery schools).[27]

[23] Among others: Regione Lombardia, "Operatore socio sanitario – OSS" (Formazione per il lavoro, 2023) <https://www.regione.lombardia.it/wps/portal/istituzionale/HP/DettaglioServizio/servizi-e-informazioni/Cittadini/Lavoro-e-formazione-professionale/Formazione-per-il-lavoro/oss-operatore-socio-sanitario/oss-operatore-socio-sanitario\> (Accessed March 25, 2024); Regione Emilia-Romagna, "Formazione per OSS" (Sistema regionale delle qualifiche (SRQ), 2023) <https://formazionelavoro.regione.emilia-romagna.it/qualifiche/approfondimenti/srq/oss/formazione\> (Accessed March 25, 2024); Regione Toscana, "Corsi per operatore socio sanitario" (Servizio sanitario Toscana, 2023) <https://www.regione.toscana.it/-/corsi-per-operatore-socio-sanitario\> (Accessed March 25, 2024); Regione Lazio, "Operatore socio sanitario" (Formazione (Cittadini), 2023) <https://www.regione.lazio.it/cittadini/formazione/offerta-formativa/9343\> (Accessed March 25, 2024).

[24] In italian, *assistente tecnico* and *ausiliario socio-assistenziale*.

[25] Commissione nazionale di studio per la definizione dei profili professionali e dei requisiti di formazione degli operatori sociali, "Gli operatori sociali: urgenza di una normativa. Rapporto della commissione nazionale di studio per la definizione dei profili professionali e dei requisiti di formazione degli operatori sociali" (Roma: Ministero degli affari interni, 1982).

[26] "Accordo tra il Ministro della sanità, il Ministro per la solidarietà sociale e le regioni e province autonome di Trento e Bolzano".

[27] Francesca Sassano e Claudio Giuseppe Quaglia, *L'operatore socio-assistenziale O.S.A.* (Napoli: Simone, 2014).

The figure has specific training and implements a direct intervention with the patient in order to promote the recovery of autonomy. Furthermore, the professional performs home care services for the elderly or people with disabilities. The training is regulated at the regional level and the professional qualification certificate is obtained at the end of a training course lasting between 700 and 900 hours with compulsory practical training and a final examination.[28]

2.5 Home Caregivers

The last category of care workers is that of home caregivers (*assistenti domiciliari,* or *badanti*),[29] consisting of workers, without any qualifications, who take care of elderly, sick, dependent persons and persons with disabilities.[30] The category of home caregivers under Italian law and collective agreements is that of domestic workers. However, the latter include not only home caregivers, but also housepersons, family assistants, baby-sitters, and housekeepers.[31] For the purposes of this analysis only home caregivers are studied. Home caregivers are regulated by collective agreements and by Law No. 339 of 2 April 1958, which applies on a residual basis and only in cases where there is no collective agreement (see subsections 2.6, 6.2.1, 6.3.1, and 7.2.1).[32]

[28] Regione Lombardia, "Ausiliario socio assistenziale – Asa" (*Formazione per il lavoro*, 2023) <https://www.regione.lombardia.it/wps/portal/istituzionale/HP/DettaglioServizio/servizi-e-informazioni/Cittadini/Lavoro-e-formazione-professionale/Formazione-per-il-lavoro/ausiliario-socio-assistenziale-asa/ausiliario-socio-assistenziale-asa> (Accessed March 25, 2024).

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

[30] For a detailed discussion on the notion of home caregiver see: 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* 169 (2021): 53–5.

[31] Among others, see Darcy du Toit, "La tutela dei diritti dei lavoratori domestici e di cura: verso un nuovo paradigma," in *Verso un mercato del lavoro di cura: questioni giuridiche e nodi istituzionali*, a cura di Lilli Casano, (Valenza: ADAPT University Press, 2022); Orlando De Gregorio, "Il pane e le rose: come favorire il lavoro dignitoso nel settore domestico" *Secondo Welfare* (14 October 2022): <https://www.secondowelfare.it/immigrazione-e-accoglienza/il-pane-e-le-rose-come-favorire-il-lavoro-dignitoso-nel-settore-domestico/> (Accessed May 9, 2024); Luciano Angelini e Paolo Pascucci, "La tutela della salute e sicurezza dei lavoratori domestici. nuovi spunti di riflessione dopo il d.lgs n. 81/2008," in *Lavoro domestico e di cura: quali diritti?*, a cura di Raffaella Sarti (Roma: Ediesse, 2010); Silvia Borelli, "Lavoro domestico e di cura," in *Il contratto di lavoro*, a cura di Roberto Romei, e Franco Scarpelli (Roma: Treccani, 2024).

[32] Among others, see Sabrina Marchetti, Daniela Cherubini, and Giulia Garofalo Geymonat, *Global domestic workers: intersectional inequalities and struggles for rights* (Bristol, UK: Bristol

The domestic and home-care sector is shaped by three interrelated features:
1) Strong and uneven territorial differentiation.
2) The role of households.
3) The prevalence of monetary treatments.

These three elements have a significant impact on the services and working conditions of care workers.

The strong and uneven territorial differentiation has its roots in Italian regionalism.[33] Indeed, according to Title V of the Constitution, regions and municipalities have the main responsibility in the administration of the welfare state.[34] The disjointed development is the result of the proliferation of regional regulations and the delay in the definition of the essential levels of services (i.e. the framework regulation) by the government. From 2008 onwards, territorial disparities have been steadily increasing due to the curtailment of national funds for social policies, which then fell on local authorities.[35] The latter has been subject to severe budgetary constraints that have had a negative impact on social benefits and working conditions. To overcome the territorial disparities, the Ministry of Labour and Social Policies has created several coordination instruments (e.g. Social Inclusion Protection Network, National Social Plan, Plan for Social Interventions and Services to Combat Poverty, Plan for Non-Self-sufficiency).[36]

A second characteristic that has a strong impact on care work is the role of households. The Italian welfare model is characterised by the heavy burden of care left to households that is first measure to cushion the effects of unemployment.[37] In spite of the centrality of households in care work, Italy lacks a policy to support and promote this work. State intervention is essentially reparative and focuses on emergency conditions, while the family is left with the burden of maintaining care services through forms of paid care work, i.e., domestic work and paid homecare work.[38] The economic burden on families is bound to increase as the number of elderly people rises. Italy is in fact the country with the high-

University Press, 2021); Vera Pavlou, *Migrant Domestic Workers in Europe. Law and the Construction of Vulnerability* (Oxford: Hart, 2021), https://doi.org/10.5040/9781509942404.

33 Maurizio Ambrosini, "Dentro il welfare invisibile : aiutanti domiciliari immigrate e assistenza agli anziani," *Studi Emigrazione* 42, 159 (2005): 561–95.

34 Ugo Ascoli, *Il welfare in Italia* (Bologna: il Mulino, 2011).

35 Silvia Borelli, *Who care? Il lavoro nell'ambito dei servizi di cura alla persona* (Napoli: Jovene, 2020), 13–4.

36 Borelli, *Who care?*, 13–4.

37 Madia D'Onghia, "Da l'assistenza sociale a un nuovo modello di politiche sociali, mutamenti e sfide del sistema italiano," *Variazioni su temi di diritto del lavoro* 349 (2019): 367; Commissione affari sociali, "Indagine conoscitiva sulle condizioni sociali delle famiglie in Italia" (Roma: Camera dei deputati, 2007).

38 Presidenza del Consiglio dei Ministri, "Piano nazionale per la famiglia" (Osservatorio nazionale sulla famiglia, 2022); Commissione affari sociali, "Indagine conoscitiva".

est number of elderly people in Europe.[39] Until now, pension benefits have been largely used to pay for private care. However, the limited amounts of pensions are one of the factors pushing families to turn to cheaper undeclared work, often performed by undocumented migrants. Moreover, as Borelli points out, the increase in the number of poor elderly people suffering from senility-related[40] diseases and living alone will have a negative impact in the medium to long term.

The third characteristic of Italian welfare is the prevalence of monetary treatments (i.e. do it yourself welfare).[41] The Italian welfare system provides monetary transfers aimed at supporting, at least in part, care services; this circumstance has favoured the privatisation of care work without necessarily guaranteeing the regularity of labour relations.[42] Regarding expenditure on financing care services, almost half of the public expenditure on long-term care concerns the accompanying allowance for dependent persons. This allowance is very modest in amount (527.16 euros per month in 2023) and is not subject to any constraints or controls on its use. Thus, this benefit is normally used to purchase paid home care services from dependent persons.[43] Low public funding in the care sector acts as an incentive for the non-regular employment of migrant women. The most politically praised and widespread model of care services is the cash-for-care scheme.[44] This model is fuelled by the prevalence of public monetary treatments and is politically well-regarded because it allows freedom of choice and public cost containment. However, this scheme displaces private individuals or rather families the cost of the care service feeding a vicious circle.

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 progres-

[39] EUROSTAT, *Population by Age Group* (2023) <https://ec.europa.eu/eurostat/web/products-datasets/-/tps00010> (Accessed June 25, 2023); Claudio Falasca, *Domiciliarità e Residenzialità per l'invecchiamento attivo* (Roma: Auser 2017), 13.

[40] Borelli, *Who cares?*

[41] Borelli, *Who care?*

[42] Ragioneria Generale dello Stato, "Le Tendenze di medio-lungo lungo periodo del sistema pensionistico e socio sanitario" (Roma: Ministero dell'Economia e delle Finanze, 2022); Matteo Jessoula et al., *ESPN Thematic Report on Financing Social Protection - Italy, European Social Policy Network (ESPN)* (Brussels: European Commission, 2019); Ugo Ascoli e Alessandro Sicora, "Servizio sociale e welfare in italia: la necessità di una nuova «grammatica» per le politiche pubbliche. Nota introduttiva," *La rivista delle politiche sociali* 9 (2017): 9.

[43] Borelli, *Who care?*, 18; Barbara Da Roit and Blanche Le Bihan, "Cash for long-term care: Policy debates, visions, and designs on the move," *Social Policy and Administration* 53, 4 (2019): 533, https://doi.org/10.1111/spol.12506; Blanche Le Bihan, Barbara Da Roit, and Alis Sopadzhiyan, "The turn to optional familialism through the market: Long-term care, cash-for-care, and caregiving policies in Europe," *Social Policy and Administration* 53, 4 (2019): 591, https://doi.org/10.1111/spol.12505.

[44] Valentina Zigante, *Informal care in Europe: Exploring Formalisation, Availability and Quality* (Brussels: European Commission, 2018), 24, <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8106&type=2&furtherPubs=no> (Accessed March 25, 2024).

sively 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.

Employers availing of this benefit must have a current Equivalent Economic Situation Indicator (ISEE)[45] 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, 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 indicates 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),[46] 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.[47] 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.

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

[46] Ministero del Lavoro e delle Politiche Sociali, "Assegno di inclusione Nuove misure inclusione e accesso lavoro," s.d., <https://www.lavoro.gov.it/temi-e-priorita/decreto-lavoro/Pagine/assegno-di-inclusione> (Accessed April 21, 2024).

[47] ISTAT, *Le statistiche dell'ISTAT sulla povertà, anno 2022* (Roma: ISTAT, 2023); Donatella Grassi e ISTAT, a cura di, *La misura della povertà assoluta.* (Roma: ISTAT, 2009; Metodi e norme 39).

2.6 Labour Market Characteristics of Care Workers and Key Current Debates

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.[48]

During the Italian National Stakeholders Meeting, FNOPI, alongside labour unions and employers' organisations, emphasised the issue of labour shortages.[49] 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*) [50]

The main cause of these labour shortages has been the numerous turnover blocks introduced by legislation in order to contain public spending on healthcare.[51] 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.[52] There is no evidence that this is a permanent change of policy.

Remuneration is a problematic area, because it is perceived by the workers as inadequate in relation to the growth and increased responsibilities and spe-

[48] FNOPI, *Scheda sulla professione infermieristica*.

[49] Donald e Charles Sull, "The Real Issues Driving the Nursing Crisis," *MIT Sloan Management Review* 65, 2 (2023): <https://sloanreview.mit.edu/article/how-solve-nursing-crisis/> (Accessed April 29, 2024).

[50] CARE4CARE, "Minutes".

[51] FNOPI, *Scheda sulla professione infermieristica*.

[52] ISTAT, *Le statistiche dell'ISTAT*; 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 October 18, 2023).

cialisations of the nursing profession.[53] The collective agreements do not provide for management roles for health professionals.[54] However, as evidenced by FNOPI, nursing staff are often entrusted with co-ordination roles. The OECD data show that in Italy the average salary of nursing staff is lower than that of the main European partners.[55]

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.[56]

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.[57]

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.[58]

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 peak of female health professionals is recorded in Trentino-Alto Adige/Süd Tirol 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%.[59] Concerning the pay gap, female health professionals earn about 12.8% less than men considering all con-

[53] FNOPI, *Scheda sulla professione infermieristica*.

[54] FNOPI, *Scheda sulla professione infermieristica*.

[55] OECD, *Healthcare Resources: Remuneration of health professionals* (OECD.Stat, 2023), <https://stats.oecd.org/index.aspx?queryid=30025> (Accessed January 26, 2024).

[56] FNOPI, *Scheda sulla professione infermieristica*; *Tutti i numeri degli infermieri*.

[57] FNOPI, *Scheda sulla professione infermieristica*; *Tutti i numeri degli infermieri*.

[58] ISTAT, *Le statistiche dell'ISTAT*; FNOPI, *Scheda sulla professione infermieristica*.

[59] 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 October 18, 2023).

tracts (full time and part time); however, the gap drops to 2.6% if only full time contracts are considered.[60]

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.[61]

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.[62] Trade unions indicate an average age of around 45 years.[63] 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.[64] 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.[65] 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.

A cross-cutting issue for all healthcare professions (health professionals, social and care workers, primary care workers) working in residential facilities for the elderly, hospices, and long-stay wards, is that of standard costs imposed on the public budget.[66] 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

60 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 October 18, 2023).

61 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 October 18, 2023); 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--480d5b-be-a810-463e-b64b-fe6074b6ca69.html> (Accessed April 29, 2024).

62 CARE4CARE, "Minutes".

63 CARE4CARE, "Minutes".

64 Federazione Nazionale Migep, "Modifiche al decreto legislativo 21 aprile 2011 n. 67".

65 Federazione Nazionale Migep, "Modifiche al decreto legislativo 21 aprile 2011 n. 67".

66 Camera dei deputati, "Patto per la salute 2019-2021" (2019), <https://www.camera.it/temiap/2020/01/09/OCD177-4262.pdf> (Accessed April 29, 2024).

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.[67] NURSIND points out that the excessive emphasis on the standardisation and compression of working time has a negative impact on the quality of healthcare.[68]

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).[69] 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 regularization 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 regularization of workers, both EU and non-EU citizens, occurred.[70]

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 regularization. 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.[71]

[67] 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 February 25, 2024).

[68] CARE4CARE, "Minutes".

[69] INPS, *Statistiche in breve: lavoratori domestici* (INPS, 2023), <https://servizi2.inps.it/servizi/osservatoristatistici/api/getAllegato/?idAllegato=1013> (Accessed February 25, 2024).

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

[71] Osservatorio DOMINA, *5° Rapporto annuale sul lavoro domestico*, 97–102.

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.[72]

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.[73]

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.[74]

The level of undeclared work in the domestic sector remains a significant concern.[75] 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.[76]

The irregularities detected in the sector include, in addition to undeclared work, under-declared work (i.e. declared for fewer hours than those actually worked or according to a lower professional classification).[77] In both cases, the worker receives all or part of the wages irregularly. The effect of these forms paying 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.[78]

[72] Osservatorio DOMINA, *5° Rapporto annuale sul lavoro domestico*, 105.

[73] Osservatorio DOMINA, *5° Rapporto annuale sul lavoro domestico*, 107.

[74] Osservatorio DOMINA, *5° Rapporto annuale sul lavoro domestico*, 110–17.

[75] Maurizio Ambrosini, *Immigrazione irregolare e welfare invisibile. Il lavoro di cura attraverso le frontiere* (Bologna: il Mulino, 2013), https://doi.org/10.978.8815/316585; Ambrosini, "Dentro il welfare invisibile".

[76] Osservatorio DOMINA, *5° Rapporto Annuale Sul Lavoro Domestico*, 118–23.

[77] Regarding migrant care workers exploitation see: Alessandra Sciurba, *La cura servile, la cura che serve* (Pisa: Pacini, 2015).

[78] Borelli, *Who care?*, 202.

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.[79]

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.[80]

To promote the regularisation of domestic work, it has been suggested to increase the tax and social security benefits associated with this activity.[81] 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).[82]

2.6.1 The Interplay Between Migration and Labour Law in the Care Sector

A particularly important profile in the context of the care sector, which transversally concerns all care workers, but especially the domestic sector, is that of the interplay between migration and labour law. As highlighted in section 2.6, female migrant workers hold a substantial presence in the Italian labour market, often assuming roles in caregiving.

Historically, Italy has been primarily a country of emigration;[83] this is reflected in the Italian Constitution of 1948 (Articles 16(2) of the Constitution). At the same time, only a few generic provisions have been devoted to the right of asylum and the non-nationals legal status and rights.[84] Conversely, the Constitu-

[79] Borelli, *Who care?*, 202.

[80] Borelli, *Who care?*, 203.

[81] CARE4CARE, "Minutes".

[82] Borelli, *Who care?*

[83] Bernard Ryan and Rebecca Zahn, edited by, *Migrant Labour and the Reshaping of Employment Law* (Oxford: Hart, 2023); Cathryn Costello e Mark Freedland, edited by, *Migrants at Work: Immigration and Vulnerability in Labour Law* (Oxford: Oxford University Press, 2014), https://doi.org/10.1093/acprof:oso/9780198714101.001.0001.

[84] 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 provi-

tion has a number of provisions concerning labour rights, which have strongly influenced labour law and its developments.[85] Social rights, recognised 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 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.[86] Since 2002, Law No. 189 of 30 July 2002 (*Bossi-Fini*), any new law and regulation in the

sions, 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. 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 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 the 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. Germany 25/10/2005.

85 Marco Esposito, Lorenzo Gaeta, e Antonello Zoppoli, *Istituzioni di diritto del lavoro e sindacale* (Torino: Giappichelli, 2014).

86 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) 140 ff.; William Chiaromonte, Maria Dolores Ferrara, e Maura Ranieri, a cura di, *Migranti e lavoro* (Bologna: il Mulino, 2020).

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).[87] This process badly impacted labour migration. Indeed, the entry of migrant workers is based on quotas determined annually by law.[88] 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 by a similarly dramatic increase in international protection applications, which indicates a distorted use of international protection regimes.[89]

Employers are obliged to submit an application, specifying the worker individually or generically, for the desired employment. However, individual workers cannot apply independently for a residence permit. The issuance of the residence permit, theoretically within 60 days, is conditional on compliance with the annual quota. Once the permit has been obtained, the consulate of the worker's country of residence or origin issues an entry visa. Subsequently, within 8 days of arriving in Italy, the worker must finalise the residence contract for employment reasons at the Sportello Unico. Only at the end of this procedure does the Police Headquarter (*Questura*) issue a "residence permit for employees" (*permesso di soggiorno per lavoro subordinato*). The duration of the residence permit depends on the nature of the employment: up to nine months for seasonal positions, one year for fixed-term contracts and two years for permanent positions.

If the worker loses the job for any reason, he/she is eligible to register as unemployed at the employment centre for a duration not exceeding that of their residence permit (Article 22(11) Consolidated Act). However, the law does not allow for obtaining a residence permit specifically for job-seeking purposes. Furthermore, the intricate and time-consuming procedures pose challenges for both job seekers and employers, hindering their ability to match job vacancies with a stable workforce effectively.

Individuals granted international protection enjoy unrestricted access to the national labour market. Conversely, asylum seekers are permitted to com-

[87] 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): 431.

[88] 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 an den Rijn: Kluwer Law International, 2016); Silvana Sciarra and William Chiaromonte, "Migration Status in Labour Law and Social Security Law," in Costello and Freedland, *Migrants at Work*.

[89] William Chiaromonte, Maria Dolores Ferrara and Francesca Malzani, "The Migration Governance through Labour Law: The Italian Case," *Rivista del diritto della sicurezza sociale* 2 (2019): 367.

mence employment only after the sixtieth day following the submission of their international protection application, provided that any delays in processing are not attributable to the applicant. Importantly, residence permits issued under these circumstances cannot be converted into permits for employment purposes, as stipulated by Article 22 of 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.[90]

The Italian National Stakeholder Meeting (held in Rome on 10 April 2024) highlighted that home care in Italy presents a complex landscape characterised by significant demographic and migration patterns. With nearly 1.5 million individuals employed in this sector, of which the majority are women, and a substantial proportion are foreigners, including those in irregular immigration status, the dynamics of care provision are closely intertwined with migration trends.[91] This phenomenon, often referred to as global care chains, sees women replacing others in domestic care roles, contributing to the sector's heavy reliance on foreign labour. There are many challenges including difficulties in the recognition of educational qualifications and language barriers, which are further exacerbated by the ageing workforce in the sector.[92] The strain on the National Health Service due to a shortage of professionals underscores the urgency of addressing these issues, prompting initiatives such as recruitment agreements with countries like Cuba and efforts to attract healthcare personnel from South America, reflecting the pressing need to mitigate workforce shortages in essential sectors.[93]

3. Fundamental Trade Union Rights, Social Partners, Collective Bargaining, and Industrial Relations

Section 3 of the report aims to present and discuss the regulation of fundamental trade union rights, the right to strike, and relations between the social partners in the care sector. Furthermore, it analyses the system of collective bargaining and industrial relations regarding the public and private sector. Finally, a subsection deals with the national discipline on whistleblowing.

[90] Federico Martelloni, "L'accesso al lavoro dei richiedenti e dei titolari di protezione internazionale, tra diritto e prassi," in *Migranti e lavoro*, a cura di William Chiaromonte, Maria Dolores Ferrara, e Maura Ranieri (Bologna: il Mulino, 2020).

[91] Fondazione Giuseppe di Vittorio, "Gli stranieri maturi e anziani. demografia, lavoro e bisogni sociali nel cambiamento delle migrazioni in Italia," *Working paper della Fondazione di Vittorio* 1 (2023).

[92] CARE4CARE, "Minutes".

[93] CGIL, "Responses"; CISL, "Responses"; FISASCAT, "Responses".

Before delving into the analysis, it should be noted that freedom of trade union organisation and the right to strike apply to all workers; however, trade union rights specifically concern trade unions operating more than 15 employees per production unit or 60 in total. Consequently, home caregivers do not enjoy certain trade union protections (see section 3.1).

3.1 Trade Unions Rights

Trade union freedom is sanctioned by the first part of Article 39 of the Constitution, which guarantees immunity against the sanctioning power of the state and the employer.[94] This article is a specification of the more general freedom of association guaranteed in Article 18 of the Constitution. The Constitution guarantees both freedom from interference in trade union activity and the freedom to act collectively. Trade union freedom is an individual right to collective exercise. The protection offered by the Constitution alone is not sufficient to guarantee the right to conduct a specific trade union activity that entails the immediate sacrifice of the employer's reasons and requires ad hoc legislation to be exercised. This legislation is contained in Title II and Title III of Law No. 300 of 20 May 1970 (Statute of Workers).[95]

Title II of the Statute of Workers (Articles 14–18) regulates freedom of association and unionisation.

- Article 14 (Right of association and trade union activity) contains a series of provisions aimed at strengthening the effectiveness of the principle of trade union freedom within the workplace, prohibiting the employer from hindering, even indirectly, the exercise of this freedom.
- Article 15 (Discriminatory acts) establishes the nullity of any pact or act aimed at making a worker's employment conditional on membership or non-membership of a trade union association, or on ceasing to belong to one. Furthermore, this article prohibits any pact or act aimed at dismissing a worker, discriminating against a worker in the assignment of tasks or responsibilities, in transfers, in disciplinary measures, or otherwise prejudicing the worker because of affiliation or trade union activity or participation in a strike.
- Article 16 (Discriminatory collective economic treatment) prohibits trade union discrimination, which may occur, on the part of the employer, not only by depriving the employee of particular benefits or otherwise causing prejudice to him/her, but, much more subtly, by attributing favourable treatment to employees who behave in a particular way, thus conditioning them in the exercise of trade union freedom.
- Article 17 (company union or yellow union) prohibits employers' associations from forming or supporting workers' trade union associations by any means.[96]

[94] Del Punta, *Diritto del lavoro*, chap. 215 ff.

[95] Del Punta, *Diritto del lavoro*, 195 ff.; Gino Giugni, *Diritto sindacale*, a cura di Lauralba Bellardi, Pietro Curzio e Mario Giovanni Garofalo (Bari: Cacucci Editore, 2014).

[96] Giugni, *Diritto sindacale*.

Title III (Articles 19 to 27) provides for support legislation that aims to promote trade union activity in the workplace and enable trade unions to effectively protect workers. Promotion and support are used by the legislator in a "selective" manner, and therefore this legislation is limited in two directions:

- In an objective sense, as it does not apply in all workplaces, but only in companies with more than 15 employees per production unit or 60 in total.
- In a subjective sense, as support is limited only to trade unions that have participated in negotiations or have concluded collective agreements applied in the production unit (Article 19 Statute of Workers).

The limitations are designed to avoid imposing excessive burdens on small companies and to favour trade unions with a strong tradition, in order to avoid excessive fragmentation of representation.[97]

The rights provided for in Title III are exercised by the Workplace Union Structure (*Rappresentanza Sindacale Aziendale* or RSA) in every production unit with more than 15 employees within the framework of trade union associations that have participated in negotiations or have concluded collective agreements applied in the production unit (Article 19 Statute of the Workers).[98]

According to the 1993 inter-union agreement Ciampi Protocol (*Protocollo Ciampi*), the parties added to the RSA a model of Unitary Workplace Union Structure (*Rappresentanza Sindacale Unitaria* or RSU) elected by the workers. This model was strengthened by the 2014 Inter-union agreement Single Text on Trade Union Representation (*Testo unico sulla rappresentanza sindacale*), which provided for thresholds and mechanisms for quantifying and certifying representation.[99]

Title III grants Workplace Union Structures' and Unitary Workplace Union Structures' right to call assemblies, the right to call referendums, the right to post notices on notice boards, the right to company premises for holding trade union meetings, and the right to paid and unpaid leave.[100] In order to repress anti-union behaviour, in addition to the ordinary civil process, the Statute of the Workers provides for a simplified and rapid procedure that can only be activated by the local bodies of the national associations concerned (Article 28).

3.1.1 The Right to Strike and the Right to Strike in Essential Public Services

The right to strike is provided by Article 40 of the Constitution. According to the prevailing doctrinal interpretation, the right to strike as an individual right to be exercised collectively. Over the years, the Constitutional Court has progressively abolished all criminal regulations of Fascist origin settled in the

[97] Del Punta, *Diritto del lavoro*, 317 ff.

[98] *Constitutional Court*, 3 July 2013, 231.

[99] Del Punta, *Diritto del lavoro*, 227–36.

[100] Statute of the Workers, Law No. 300, 20 May 1970.

Penal Code with the result that strikes for economic, solidarity and political reasons are permitted. Only political strikes aimed at subverting the constitutional order remain prohibited.[101]

Strikes in essential services to the public carried out by both private individuals and government agencies are regulated by Law No. 146, 12 June 1990 (Legislation on the exercise of the right to strike in essential public services and the protection of personal rights).[102] This law identifies a series of rights that have to be balanced with and limit the right to strike:

- Life and health, freedom, security, justice, environment and historical heritage.
- Freedom of movement.
- Social security and safety; payment of wages.
- Education.
- Communication.

In these areas, collective agreements determine the modalities and procedures for the provision of services and measures to ensure the functioning of essential services.[103] In particular, collective agreements must:

a) Provide for procedures for the cooling-off and conciliation of disputes, which must be carried out compulsorily before a strike is called. In any case, the law provides for an administrative conciliation procedure to be followed when the contractual procedure is not applicable.
b) Identify the minimum notice, which in any case may not be less than 10 days to the employer and 5 days to the users, the modalities of implementation and the reasons for collective abstention.
c) Identify the indispensable services that must, in any case, be guaranteed during a strike in essential public services, as well as the modalities and procedures for their provision.

Originally, the regulation of the right to strike in essential public services was supposed to apply only to employees working in essential public services. However, Law No. 83 of 11 April 2000 extended the scope of the regulation to self-employed workers, professionals, and small entrepreneurs. [104]

The Commission of Guarantee, an independent administrative authority with sanctioning powers, monitors the implementation of strike legislation and procedures. The public authority may prohibit a strike when there is a well-founded danger of serious and imminent harm to fundamental rights (Article 8 Law 146 of 1990).[105]

[101] Del Punta, *Diritto del lavoro*, 279–311; Giugni, *Diritto sindacale*; Luisa Galantino e Massimo Lanotte, *Diritto del lavoro pubblico* (Torino: Giappichelli, 2013), 45–59.

[102] Del Punta, *Diritto del lavoro*, 305 f.

[103] Del Punta, *Diritto del lavoro*, 307 f.; Galantino e Lanotte, *Diritto del lavoro pubblico*, 45–59.

[104] Galantino e Lanotte, *Diritto del lavoro pubblico*, 45–59.

[105] Del Punta, *Diritto del lavoro*, 312 ff.; Galantino e Lanotte, *Diritto del lavoro pubblico*, 51–5.

3.1.4 The Italian Industrial Relation System: Public Sector

The first part of Article 39 of the Italian Constitution stipulates the freedom of association and the right to collective bargaining.

The second part of Article 39 regulates the procedures of collective bargaining by providing that collective agreements assume universal validity (erga omnes effects) when they are concluded by registered trade unions represented as a unit in proportion to the number of their members. This second part of Article 39 remained unimplemented for three main reasons:

a) trade unions feared that registration could result in state control,
b) trade unions with representative capacity, but uncertain of their numerical consistency, feared that by counting themselves they would fall into a condition of inferiority,
c) the implementation of Article 39 would also have entailed the implementation of Article 40, which enshrines the right to strike and allows for legislative limitations.[106]

The non-implementation of Article 39 of the Constitution negatively impacted the Italian industrial relations system by leading to its lack of institutionalisation.[107] The lack of institutionalisation did not prevent the development of collective bargaining but caused a serious problem of personal scope and enforcement of collective agreements.[108] To solve these problems scholarship and case law resorted to private law; particularly to the rules on representation set forth in Article 1387 of the Civil Code. According to the Civil Code, the power of representation is conferred either by a unilateral power of attorney or by a mandate contract and has as its object an individual interest of the principal. Two *fictio* operate to utilise this institution:

- Workers give the mandate to represent their interests when they join a trade union.
- By joining the union, the worker "mandates" the union to pursue not his/her own individual interest, but a collective interest, understood as a synthesis of the individual interests of all members.

The Italian collective agreements are governed by private law, and they are not applicable to all workers in the category but cover only employers and workers who are members of the signatory associations. However, private law could not solve the problem of separate or multiple collective agreements and trade union fragmentation. Indeed, in these two situations, the collective agreements produce effects only

[106] Gian Primo Cella e Tiziano Treu, *Relazioni industriali e contrattazione collettiva* (Bologna: il Mulino 2009), 34–5.

[107] Cella e Treu, *Relazioni industriali*, 34.

[108] 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): 255–57.

between the employers' associations and the trade unions that signed them, even if the case law has elaborated methods to extend the scope of application of collective agreements. Multiple agreements mean different levels of workers' protection.

The collective agreement has two levels: first or industry-wide level and second or company/local level.[109] The most important level is the industry-wide one and it is concluded by the leadership of the industry trade unions. The second level applies to matters delegated by the first level and generally cannot derogate from industry-wide agreements in a pejorative sense. However, Article 8 of Decree-Law No. 138 of 2011 stipulated that second-level agreements may derogate from the provisions of first-level agreements, even in a pejorative sense, when they are aimed at increasing employment, promoting worker participation, emersion of irregular work, increasing competitiveness and wages, managing company and employment crises, investments, and start-ups, within the limits of the European cost and normative.

Since Article 39 is not in force, trade unions are unregistered private associations. The principal Italian trade unions are the CGIL, CISL and UIL. The principal employers' organisations are Confindustria (employers in the industrial sector), Confartigianato (employers in the craft sector), and Confcommercio (employers in the service sector). Alongside these organisations, there are numerous others representing employers' interests in all sectors. Therefore, there is a high degree of fragmentation of representation, which is an expression of trade union pluralism that is at times quite extreme. This fragmentation has resulted in a proliferation of collective agreements at all levels, which results in a reduction in workers' rights and wages.

Form an organisation viewpoint, workers' and employers' unions are divided into four levels:[110]

- Company (consisting of Workplace Union Structure within companies made up of workers' delegates).
- Provincial (consisting of vertical structures—i.e. provincial trade unions—and confederal horizontal structures linking the various trade unions).
- Regional (consisting of vertical structures—i.e. the regional trade unions—and confederal horizontal structures linking the various trade unions).
- Industry-wide (consisting of the head structures of the sectoral unions and the confederation).

The division between sectoral unions and confederations is due to the division of competencies. Confederations have trade union policy functions, while federations have representation and negotiation functions. This same articulation exists in the employers' organisations.[111]

[109] First level or industry-wide agreements are referred to in Italian as *contratti collettivi nazionali di lavoro* or by the acronym CCNL, while second level agreements are referred to in Italian as *contatti collettivi aziendali* or *territoriali*. In Italian collective agreements are also referred to by the generic phrase *contratti collettivi di lavoro* or by the acronym CCL.

[110] Del Punta, *Diritto del lavoro*, 244 ff.

[111] Giugni, *Diritto sindacale*.

3.1.3 Collective Agreements in the Private Care Sector

The report considered collective agreements in the public and private care sectors and those of domestic workers. In this Subsection the contracts of the private health sector and those of domestic workers are highlighted, while the next one deals with the public health contract.

Methodologically, for the private health sector a preliminary analysis was conducted in the CNEL archives which led to the identification of about fifty contracts. A selection of them was necessary, based on the following criteria:

a) Rate of application of the collective agreement.
b) Degree of representativeness of the stipulating social partners.
c) Type of facilities covered by the collective agreement.

The following table shows the collective agreements for health professionals, social and health workers, and social assistance workers, selected on the basis of the criteria just mentioned and illustrated in Subsection 1.1.

Table 1 – Selected National Collective Labour Agreements (CCNLs) in the private care/health sector and their coverage (2022).

National Collective Labour Agreements (CCNLs) – First level collective agreements	Signatory business organisations	Signatory trade unions	Coverage (2022)
CCNL for non-medical staff employed by the Scientific Hospitalization and Treatment Institutes 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*)	ARIS; AIOP	CGIL FP; CISL FP; UIL FPL	146.397
CCNL for the staff of nursing homes and other residential and social welfare facilities (*CCNL per il personale delle RSA e delle altre strutture residenziali e socio-assistenziali*)	AIOP	UGL SANITÀ; FISMIC CONFSAL; SI-CEL; FIALS; CONFSAL; FSE	11.594
CCNL for workers employed by the associative structures belonging to the network National Association of Families and People with intellectual disabilities and neurodevelopmental disorders Onlus (*CCNL per le lavoratrici ed i lavoratori dipendenti dalle strutture associative aderenti alla rete ANFFAS Onlus*)	ANFFAS ONLUS	FP CGIL; CISL FP; UIL FPL	5.569
CCNL for staff employed by the Italian Blood Volunteers Association (*CCNL per il personale dipendente dall'AVIS*)	AVIS	FP CISL; UIL FPL	1.211
CCNL for staff employed by nursing homes and rehabilitation centres (*CCNL per il personale dipendente da residenze sanitarie assistenziali e centri di riabilitazione*)	ARIS	CISL FP; UIL FPL; UGL SANITÀ	15.178

National Collective Labour Agreements (CCNLs) – First level collective agreements	Signatory business organisations	Signatory trade unions	Coverage (2022)
CCNL for staff employed by the Association of Managers of Institutions Dependent on Ecclesiastical Authority (*CCNL Socio-Assistenziale AGIDAE*)	AGIDAE	FP CGIL; FISASCAT CISL; UILTUCS UIL	16.136
CCNL for staff employed in the socio-assistance, socio-health and educational sectors UNEBA (*CCNL per il personale dipendente dai settori socio assistenziale, socio sanitario ed educativo UNEBA*)	UNEBA	FP CGIL; FISASCAT CISL; FP CISL; UILTUCS UIL; UIL FPL	134.985
CCNL for workers of cooperatives in the socio-healthcare-educational and work integration sectors (*CCNL per le lavoratrici e i lavoratori delle cooperative del settore socio-sanitario assistenziale-educativo e di inserimento lavorativo*)	AGCI SOLIDARIETÀ; CONFCOOPERATIVE FEDERSOLIDARIETÀ; LEGACOOPSOCIALI	FP CGIL; FPS CISL; FISASCAT CISL; UIL FPL; UILTUCS	370.134
CCNL for employees of member associations of the Italian Spastics Assistance Association (*CCNL per i dipendenti dalle associazioni aderenti all'Associazione Italiana Assistenza Spastici – AIAS*)	AIAS	CISL FP; UIL FPL; UGL Salute; FIALS CONFSAL; CONFSAL; ISA	4.264
CCNL for staff employed by the National Association of Public Assistance (*CCNL per il personale dipendente ANPAS*)	ANPAS	CGIL FP; CISL FP; UIL FPL	7.797
CCNL for staff employed by the social-healthcare-assistance-educational sector organisations (*CCNL per il personale dipendente dalle realtà del settore socio-sanitario-assistenziale-educativo*)	ANASTE	CIU; SNALV; CONFSAL; CSE; CSE Sanità; CSE Fulscam; CONFELP	10.962
CCNL for non-medical staff employed by private health institutions (CCNL per il personale non medico dipendente dagli istituti sanitari privati)	UNILAVORO PMI	CONFSAL FISALS	12
CCNL for private health and social-sanitary sector employees (*CCNL comparto privato sanitario e sociosanitario*)	CONFIMPRESE ITALIA	FESICA CONFSAL; CONFSAL	206
CCNL for non-medical staff employed by private health, social health and welfare facilities and cooperatives (*CCNL personale dipendente non medico da strutture sanitarie, socio-sanitarie e cooperative socio sanitarie ed assistenziali private*)	FEDERTERZIARIO; CONFIMEA; CFC	UGL SANITÀ	887
CCNL Care Homes and Social and Health Care Services (*CCNL Case di Cura e Servizi Assistenziali e Socio Sanitari*)	ANPIT; CIDEC; CONFIMPRENDITORI; PMI ITALIA; UAI TCS; UNICA	CISAL Terziario; CISAL	2.210

National Collective Labour Agreements (CCNLs) – First level collective agreements	Signatory business organisations	Signatory trade unions	Coverage (2022)
CCNL Social cooperatives in social and welfare services (*CCNL Cooperative sociali nei servizi socio-assistenziali*)	UNCI; ANCOS	CISAL; CISAL Terziario	2.046
CCNL Clinical analysis laboratories and polyclinic centres (*CCNL Laboratori di analisi cliniche e centri poliambulatoriali*)	CIFA ITALIA; FEDERLAB ITALIA	CONFSAL; FIALS	2.562
CCNL Cooperatives, consortia and consortium companies in the personal services sector (*CCNL cooperative, consorzi e società consortili del settore servizi alla persona*)	SISTEMACOOP; SISTEMA COMMERCIO E IMPRESA	FESICA CONFSAL; CONFSAL FISALS; CONFSAL	356

Regarding home caregivers, a preliminary analysis was conducted in the archives of the CNEL resulting in the identification of sixteen collective agreements. Given the small number of these contracts, the research analysed all of them. As shown in the table, there is a plurality of agreements and social partners, however, a closer look reveals that some of these unions are poorly representative and probably yellow. The coverage is not available since there is no official measurement.

Table 2 – Selected National Collective Labour Agreements (CCNLs) for domestic work: signatory organisations and trade unions.

National Collective Labour Agreements (CCNLs) – First level collective agreements	Signatory business organisations	Signatory trade unions	Coverage (2022)
CCNL for domestic work (*CCNL del lavoro domestico*)	FIDALDO; DOMINA	FILCAMS CGIL; FISASCAT CISL; UILTUCS UIL; FEDERCOLF	Not available
CCNL for employees in the domestic sector (*CCNL per il personale dipendente del settore domestico*)	CONAPI	CNAL; Federazione Commercianti Artigiani PMI (in CONFASI)	Not available
CCNL for employees in the domestic sector (*CCNL per il personale dipendente del settore domestico*)	CONAPI	UNSIL	Not available
CCNL on the regulation of the domestic employment relationship (*CCNL sulla disciplina del rapporto di lavoro domestico*)	CONFIMITALIA	SNALP (in CONFSAL); CONFAEL	Not available
CCNL on the regulation of the domestic employment relationship (*CCNL sulla disciplina del rapporto di lavoro domestico*)	ESAARCO; CIU; CEPA-A; ESAARCO SANITÀ; ESAARCO FEDERCOOP; SAI; UNICOLF-ESAARCO; SIA CONFSAL	UGL; FISNALCTA; SI CEL; CLI CIU; FINAOPS CLI CIU; ASSOCOLF – CLI CIU; ONAPS	Not available

National Collective Labour Agreements (CCNLs) – First level collective agreements	Signatory business organisations	Signatory trade unions	Coverage (2022)
CCNL for employees in the domestic sector (*CCNL per il personale dipendente del settore domestico*)	FMPI; ARCO e PMI	CONFASI	Not available
CCNL for employees in the domestic sector (*CCNL per il personale dipendente del settore domestico*)	FMPI	CONFINTESA; CONFINTESA SMART	Not available
CCNL for cohabiting and non-cohabiting domestic workers – domestic helpers and home caregivers (*CCNL domestici – colf e badanti – conviventi e non conviventi*)	SIDA	Sindacato SLI	Not available
CCNL for domestic work (*CCNL del lavoro domestico)*	ANIAC; ADICOLF	SINALP; SLI	Not available
CCNL for domestic work (*CCNL del lavoro domestico*)	CONFIMPRESEITALIA; CONFAE	CSE; CSE FNLEI; CSE FILAI; CONFENAL	Not available
CCNL for employees in the domestic work sector (*CCNL per i dipendenti del settore lavoro domestico*)	FIDAP IMPRESE	FISAL ITALIA	Not available
CCNL for employees in the domestic sector (*CCNL per il personale dipendente del settore domestico*)	ITALPMI	UNSIL	Not available
CCNL on the discipline of the domestic labour (*CCNL sulla disciplina del rapporto di lavoro domestico*)	UIDD	CIU; SEAL; SALP; SEPI	Not available
CCNL on the discipline of the domestic employment (*CCNL sulla disciplina del rapporto di lavoro domestico*)	UNILAVORO PMI; ASSOCIAZIONE FAMILYCARE; FISDAT	CONFSAL FISALS	Not available
CCNL for the domestic work sector (*CCNL settore lavoro domestico*)	UNIONE; FDP ITALIA	CONFLAP	Not available
CCNL domestic labour (*CCNL lavoro domestico*)	UNSIC; UNSICOLF; ASNALI	CONFSAL; CISA; CONFIAL; SNALV-CONFSAL	Not available

3.1.4 The Italian Industrial Relation System: Public Sector

Following the reform initiated by Legislative Decree No. 29 of 3 February 1993, subsequently transposed into the current Legislative Decree No. 165 of 30 March 2001, the collective agreement has assumed a paramount significance in shaping labour regulations within the public sector. Serving as a pivotal source of labour regulation alongside statutory laws, the collective agreement holds comparable weight and universal applicability across the sector. Nonetheless,

its distinct features and jurisdictional prerogatives are meticulously delineated by statutory provisions, striking a delicate equilibrium between autonomy and legislative oversight. This statutory framework ensures that the collective agreement operates within defined parameters, maintaining coherence and consistency in its application throughout the public sector.[112]

Collective bargaining in the public sector can only take place on matters specified by law. Consequently, some matters are reserved to the exclusive competence of the law itself. The core of collective bargaining is the CCNL (first level collective agreement) concluded at national level by the trade unions of the sector. This collective agreement defines the economic and regulatory treatment of workers in four sectors of the administration (central functions, local government, health, education and research). Autonomous bargaining is provided for senior managers.[113]

The scenario is much simpler than in private employment, since for each sector there is only one collective agreement, which has general effectiveness (*erga omnes*) vis-à-vis all workers belonging to the sector.

The parties to collective bargaining at the national level are the Agency for the Negotiating Representation of Public Administrations (in Italian Agenzia per la Rappresentanza Negoziale delle Pubbliche Amministrazioni or ARAN), which represents the State, and trade unions that have a representativeness of at least 5% in the sector or area. The bargaining procedure is established by law. In particular, the funds available for negotiation are established by law. ARAN conducts the bargaining on the basis of guidelines formulated by the Sector Committees, which are composed of the administrations of the relevant sector. The bargaining process ends with the signing of a draft agreement, which ARAN transmits to the Sector Committee concerned for its binding opinion, and to the Government for its observations. Afterwards, the draft agreement is transmitted to the Court of Auditors for certification of its compatibility with the budget. If the draft agreement is approved, ARAN signs the definitive agreement with the trade unions and publishes it in the Official Journal.[114]

Various administrations may negotiate secondary level agreements within the confines of legal regulations, sector-specific collective bargaining agreements (CCNL), and allocated budgetary provisions.[115] The secondary level collective agreement shall be executed by the legal representative of the administration and the RSU of labour organizations already party to the national-level collec-

[112] Del Punta, *Diritto del lavoro*, 271 ff.; Giugni, *Diritto sindacale*; Riccardo Salomone, "Rappresentatività sindacale, ambiti negoziali e procedure nella contrattazione collettiva del pubblico impiego," *Diritti lavori mercati* 2 (2014): 495; Tiziano Treu, "La contrattazione collettiva nel pubblico impiego: ambiti e struttura," *Giornale di diritto del lavoro e di relazioni industriali* (1994).

[113] Del Punta, *Diritto del lavoro*, 271 ff.; Galantino e Lanotte, *Diritto del lavoro pubblico*, 27–43.

[114] Del Punta, *Diritto del lavoro*, 271 ff.; Galantino e Lanotte, *Diritto del lavoro pubblico*, 31–3.

[115] In italian, *Rappresentanza Sindacale Unitaria*. This Unitary Workplace Union Structures are elected by workers employed in the administration.

tive agreement. Unlike in the private sector, public-sector collective agreements cannot provide conditions more favourable than the statutory minimum, because they must comply with legally binding spending ceilings.

The most recent national collective agreement for the health sector (non-managerial staff, i.e. health professionals, social and care workers, and basic care workers) covers the three-year period 2019/2021 and was concluded on 2 November 2022, applying retroactively to all personnel.

3.2 Whistleblowing Legislation

Whistleblowing in Italy is regulated by Law No. 179 of 30 November 2017 that sets out protective measures for workers in both the private and public sector. In the private sector, protective measures for workers are applicable only when the employer has adopted the company's compliance program (Model 231).[116] In particular, Law No. 179 of 30 November 2017 requires companies that have implemented or intend to implement such Model 231 to set up a reporting system and ensure the whistleblowers' protection. Further, there is specific legislation concerning whistleblowers in Banking, Finance or Insurances.[117]

Law No. 179 of 30 November 2017 provides that public employees can report any "unlawful conduct that they become aware of by reason of their employment." The National Anti-Corruption Authority (ANAC) has clarified that "unlawful conduct" includes crimes against the public administration, situations of abuse of administrative power to obtain private benefits, and cases of malfunctioning of the administration due to the use of public functions for private purposes (waste, nepotism, failure to comply with procedural deadlines, non-transparent recruitment, accounting irregularities, false declarations, violation of OSH regulations).[118]

In the private sector, whistleblower protection measures apply when a worker reports unlawful conduct that could lead to the company's liability for one of the criminal offences covered by Legislative Decree no. 231 of 8 June 2001 on corporate liability for criminal offences. Therefore, whistleblowing concerns crimes such as corruption, forgery, money laundering, crimes against industry and trade, fraud against the state, cybercrimes; and/or violations of the company's Model 231. The whistleblower becomes aware of such offences as a result of his/her work. According to Article 6.2-*bis*(a) Legislative Decree no. 231 of 8 June 2001, reports must be based on "precise and concordant elements of fact."

[116] In Italian *Modello 231*.

[117] Angela Paola Annamaria Della Bella and Silva Zorzetto, edited by, *Whistleblowing e prevenzione dell'illegalità. Atti del I convegno annuale del dipartimento di scienze giuridiche "Cesare Beccaria"* (Milano: Giuffrè 2020).

[118] ANAC, "Delibera n. 469 Del 9 giugno 2021, Linee guida in materia di tutela degli autori di segnalazioni di reati o irregolarità di cui siano venuti a conoscenza in ragione di un rapporto di lavoro, ai sensi dell'art. 54-bis, del d.Lgs. 165/2001 (c.d. Whistleblowing (2021)"; ANAC, "Determinazione n. 6 del 28 Aprile 2015, Linee guida in materia di tutela del dipendente pubblico che segnala illeciti" (2015).

Concerning the personal scope, Law No. 179 of 30 November 2017 provides that whistleblowers' protection covers public employees/managers as well as employees of state-owned companies and workers/collaborators of private companies providing goods or services and carrying out activities for the public administration. In the private sector, Article 6.2-*bis*(a) Legislative Decree no. 231 of 8 June 2001 refers to senior managers and their subordinates. However, according to National Anti-Corruption Authority guidelines, whistleblowing procedures should also be addressed to third parties including collaborators, consultants with any type of contract or assignment, persons acting on behalf of the organisation as intermediaries and agents, and suppliers of products or services.[119]

In the public and private sectors, Law No. 179 of 30 November 2017 states that the protection of whistleblowers applies when the report does not constitute an offence of calumny or defamation or is in good faith. The protection does not apply in cases where the report contains false information made with malice or negligence.

Law No. 179 of 30 November 2017 does not provide guidance on the possibility of making anonymous reports. However, in the public sector, the ANAC guidelines explain that the protection can only cover public employees who identify themselves and is limited only to retaliation that may occur within the employment relationship. In the private sector, the question remains open. In any case, in both the private and public sectors, entities must guarantee the confidentiality of the whistleblower's identity.

Italian legislation provides for two reporting channels: internal and external. In the public sector, the law requires that measures be taken to provide an effective internal reporting system. In the private sector, companies may voluntarily adopt an internal reporting system that complies with whistleblower protection rules. With respect to external reporting, the law only indicates the authorities competent to receive public employees' whistleblowing, which are the ANAC, the judicial authority and the accounting authority.

The protections guaranteed by the legislation are the same as those provided by Directive 2019/1937 on whistleblowers. Thus, whistleblowers are protected against dismissal, demotion, and other forms of discrimination.[120]

4. Employment Status, Flexible Forms of Employment, and Employment Protection

Section 4 describes the regulation of both employment and self-employed relationships. Furthermore, the section deals with fixed-term employment, tem-

[119] Diana-Urania Galetta e Paolo Provenzano, "La disciplina italiana del whistleblowing come strumento di prevenzione della corruzione e dell'illegalità nella pubblica amministrazione: luci e (soprattutto) ombre," *federalismi.it* (2020); Anna Francesca Masiero, "La disciplina del whistleblowing alla luce della direttiva 2019/1937/UE. Tra prevenzione dei fenomeni corruttivi e tutela del denunciante," *Archivio penale* (2020) 1.

[120] Antonio Riccio, "La tutela del whistleblower in Italia," *Giornale di diritto del lavoro e di relazioni industriali* 153 (2017): 139.

porary agency work and other forms of flexible and/or precarious employment. The report then deals with employee protection against summary dismissal, dismissal for personal reasons and reasons of redundancy.

4.1 The Status of Workers: Subordinate Employee and Self-Employed Person in Italy

In Italy, labour law intricately governs the conduct of occupational activities, historically placing considerable emphasis on subordinate employment as the cornerstone of protective regulations. This traditional doctrinal perspective stems from the premise that employees represent the vulnerable party within contractual relationships and thus warrant significant legal safeguards. Conversely, self-employed persons have traditionally operated outside such regulatory frameworks, with their presumed autonomy and professional expertise seen as sufficient protection. However, the shifting economic landscape has necessitated legal adaptations to ensure equitable protections for all workers.

Central to Italian labour law is the legal distinction between subordinate employee and self-employed person. Article 2094 of the Civil Code delineates subordinate employee as the person engaged in intellectual or manual labour under the direction of an entrepreneur, receiving compensation for their services. This relationship is characterised by the "hetero-direction" of the employers, whereby the employer exercises managerial control, authority to monitor, and disciplinary power.[121]

Identifying subordination is not always simple. To qualify the relationship, the case law applies the following cumulative criteria: permanent inclusion of the worker in the company's organisation; use of working equipment owned by the company; working time; regular payment of a salary based on working time; no economic risk for the worker; exclusivity of working activity.[122] When a worker is identified as a subordinate employee, legislation provides for the application of protective apparatus (see Section 4.2). The type of contract is unavailable to the parties and is determined,[123] in the event of a dispute, by the court having regard to the substantive manner in which it is carried out.

In contrast, self-employed individuals, as outlined in Article 2222 of the Civil Code, undertake work or services for compensation without subordination to a specific client. Unlike subordinate workers, self-employed individuals primarily rely on personal labour and autonomy in executing their tasks. In the Italian legal system, self-employed persons are those who perform a work or service in favour of an employer, for remuneration and without subordination

[121] Del Punta, *Diritto del lavoro*, 384 ff.

[122] Del Punta, *Diritto del lavoro*, 390–97.

[123] The principle of unavailability of the contractual type applies to employment contracts. This notion signifies that the constitutional requirement of alignment between the actual conduct of the relationship and the application of all protective aspects ascribed to the subordinate employment contract safeguards only those employment relationships characterized by subordination.

(e.g. artisans, professionals, consultants, agents, and sales representatives). The current regulation is contained both in the Civil Code and in Law No. 81 of 22 May 2017, which intervened by outlining a defined framework of protections and rights relating to self-employment relationships under Title III of the Civil Code (Articles 2222–2238), with the express exclusion of entrepreneurs and small businessmen (Article 2083 Civil Code).[124]

Law No. 81 of 22 May 2017 provides for the written form of the contract and regulates abusive conduct of the principal that renders certain clauses ineffective (Article 3). In particular, the following are considered unfair clauses and, therefore, ineffective:[125]

- Those that give the principal the power to unilaterally amend the terms of the contract.
- Those that allow the principal to terminate the contract without reasonable notice in the case of a contract having as its object a continuous service.
- Those by which the parties agree on terms of payment exceeding 60 days from the date of receipt by the principal of the invoice or request for payment.

Similarly, a refusal by the principal to enter into the contract in writing is deemed abusive. In the event of the occurrence of such conduct or in the presence of unfair clauses, the self-employed worker is entitled to compensation for damages, also by promoting an attempt at conciliation through the authorised bodies. Moreover, the Law grants to self-employment relationships the principle of the prohibition of abuse of economic dependence (Article 9, Law No. 192 of 18 June 1998) on the part of the principal, in order to counteract an imbalance of rights and obligations between the parties to the relationship.[126]

With a view to fostering work-life balance processes, self-employed parents, including adoptive or foster parents, are entitled to parental leave of three months each within the first 12 years of the child's life. In addition, within the same period, parents are entitled, alternatively, to a further 3 months of leave. The financial payments for parental leave may not exceed the overall limit of 9 months between both parents (Article 8, paragraph 4, Law No. 81 of 22 May 2017, as amended by Legislative Decree No. 105 of 30 June 2022).

Law No. 81 of 22 May 2017 granted a monthly unemployment benefit to self-employed workers carrying out coordinated and continuous collaboration activities, research fellows and doctoral students. The Budget Law 2021 (Article 1, paragraphs 386–401) established on an experimental basis, for the three-year period 2021–2023, the extraordinary income and business continuity allowance (Indennità Straordinaria di Continuità Reddituale e Operativa or ISCRO), paid by INPS, in favour of persons enrolled in the Separate Account who habitually

[124] Oronzo Mazzotta, *Diritto del lavoro* (Milano: Giuffrè, 2022): 86.

[125] Del Punta, *Diritto del lavoro*, 403–6.

[126] Del Punta, *Diritto del lavoro*, 403–6.

carry out self-employment activities. The budget law of 2024, Law 213 of 30 December 2023 confirmed the measure with minor modifications.

Lastly, Decree-Law No. 146 of 21 October 2021 (Article 13), converted with amendments into Law No. 215 of 17 December 2021, introduced the mandatory communication of occasional self-employment relationships.

In addressing self-employment, lawmakers acknowledged that certain contracts, such as coordinated and continuous collaborations (co.co.co.), warranted protections akin to those afforded to employees.[127]

The concept of co.co.co. represents a significant aspect of this evolution. Recognised as a form of self-employment, co.co.co. contracts exhibit characteristics resembling subordination due to the significant coordination exerted by users or clients over the service providers. Consequently, regulatory measures have been introduced to mitigate potential abuses and ensure adequate protections for individuals engaged in co.co.co. arrangements. Legislative interventions, such as Legislative Decree No. 276 of 10 September 2003, aimed to address widespread abuses by transforming co.co.co. into project-based collaborations (co.co.pro.) and imposing additional constraints.[128]

However, persistent challenges led to further legislative amendments, including Legislative Decree No. 81/2015, which abolished co.co.pro. and reinstated co.co.co., subjecting such arrangements to rules akin to subordinate employment. Article 2 of this decree stipulates that the rules of subordinate employment apply to self-employed workers engaged in hetero-organised but not hetero-directed work activities.[129]

The emergence of platform workers further complicates the landscape of labour relations. These workers, who operate within digital platforms, may take on the status of self-employed workers or employees (although most of them are self-employed), raising questions about their qualification and protection under existing labour laws. Legislative measures, such as Article 47-bis of Legislative Decree No. 81 of 15 June 2015, seek to establish minimum levels of protection for self-employed platform workers, encompassing various aspects such as access to information, remuneration, data protection, non-discrimination, and insurance coverage against occupational hazards.[130]

Furthermore, the employment status of care workers, whether in the public or private sectors, adds another layer of complexity to the legal framework. Their classification may vary, with some falling under subordinate employment arrangements while others operate as self-employed individuals. This nuanced approach underscores the importance of ensuring adequate protections for all

[127] Del Punta, *Diritto del lavoro*, 403–24.

[128] Del Punta, *Diritto del lavoro*, 410–14.

[129] Del Punta, *Diritto del lavoro*, 410–14.

[130] Del Punta, *Diritto del lavoro*, 409 f.; Marco Novella e Patrizia Tullini, a cura di, *Lavoro digitale* (Torino: Giappichelli, 2022); Matteo Borzaga e Michele Mazzetti, "Discriminazioni algoritmiche e tutela dei lavoratori: riflessioni a partire dall'ordinanza del tribunale di Bologna del 31 dicembre 2020," *BioLaw Journal* 1 (2022): 225.

workers, irrespective of their employment status, within the evolving landscape of labour relations in Italy.

4.2 The Employment Relationship and Protection

The subordinate employment relationship is protected by a set of mandatory rules. Defining the difference between subordinate employment and self-employment is particularly relevant because it determines the application of the rights, powers and obligations of the parties established in laws and collective agreements. In the public and private sectors, the employment relationship is based on a contract founded on the exchange between work and remuneration.[131]

The employee works for the employer by performing a task identified in the contract whose content is determined during the relationship through the exercise of managerial control by the employer.[132]

During the course of the labour relationship, the main employees' obligations are: diligence, obedience, loyalty and non-competition. The obligation of diligence entails that the worker executes the service with the diligence corresponding to the professionalism possessed and the task performed (Article 2104 of the Civil Code). The obligation of obedience entails that the worker has to comply with the employer instructions in performing the working activities (Article 2104 of the Civil Code). The obligation of loyalty and non-competition implies that the worker shall not: a) conduct business on his/her own account or on behalf of third parties in the same sector of the company for which he/she works; b) disclose confidential information relating to the organisation and production methods of the company or use it in such a way as to prejudice the company (Article 2105 of the Civil Code). Furthermore, the employee must respect the general principle of good faith and fair conduct in the fulfilment of the employment relationship (Article 1375 of the Civil Code).[133]

In the employment relationship, the employer's powers are managerial control, authority to monitor, and disciplinary power. These powers are functional to the organisation of the productive activity and when exercised, they make it possible to discern a subordinate worker from a self-employed one.

The employer exercises managerial control by orienting the worker's activities towards the achievement of the company's aims and concretely determining the content of the work obligation. The managerial control includes the power to modify the tasks contractually assigned to the worker within the limits of the provisions of Article 2103 of the Civil Code. Indeed, the Civil Code provides that the employer has the possibility of assigning the employee to tasks belonging to a lower level than that of employment. This possibility is contemplated only in the event of organisational needs, without prejudice to the origi-

[131] Mazzotta, *Diritto del lavoro*, 323–405.

[132] Mazzotta, *Diritto del lavoro*, 509–22.

[133] Mazzotta, *Diritto del lavoro*, 515.

nal contractual classification and corresponding remuneration, which may not be diminished. However, demotion agreements with a simultaneous reduction in level and salary are permitted if agreed before a public authority that certifies the consent of the parties.[134]

The employer exercises the authority to monitor to protect company assets and ensure workplace health and safety. The law limits indirect control by the employer in order to protect the privacy of workers. These limits concern control entrusted to persons outside the business organisation or carried out by means of technological instruments that allow remote control (in time and space).[135]

The employer exercises disciplinary power in the event of a breach by the worker of his/her obligations. In fact, the employer may impose conservative disciplinary sanctions (verbal warning, written warning, fine and suspension) and expulsive sanctions (disciplinary dismissal) to sanction the worker's behaviour contrary to the contractual rules. The law (Article 2106 of the Civil Code and Article 7 of the Statute of Workers) limits the disciplinary power in a substantive (gravity of the sanction) and procedural (manner of infliction) way.[136]

The Civil Code states that the sanction must be proportionate to the offence (substantive limit). Collective agreements establish the correspondence between infringements and sanctions, but it is ultimately up to the judge to assess proportionality. Moreover, the law dictates a precise procedure that must be followed to impose the sanction, under penalty of its nullity (Article 7 of the Statute of Workers).

The employee has numerous rights protecting his/her physical and psychological integrity. The rights are provided for by law, in accordance with the EU law, and by collective agreements, which tend to introduce only more favourable treatment.[137] The worker has the right to proportionate (Section 5) and sufficient pay and to work in healthy and safe conditions (Section 6).[138] In addition, the employee has the right not to be subjected to discriminatory treatment on the grounds of personal characteristics (gender, race…), both at the recruitment and at the termination stage (Subsection 4.7). Both direct and indirect discrimination is prohibited. Harassment and sexual harassment also fall under the same protection regulation, in line with the EU Directives.[139]

Over the last twenty years, the legislator has allowed collective agreements to introduce even worsening derogations in the event of specific needs, mostly corresponding to company crises and temporary difficulty in maintaining the bargained-for wages.

[134] Mazzotta, *Diritto del lavoro*, 523–55.
[135] Mazzotta, *Diritto del lavoro*, 532.
[136] Mazzotta, *Diritto del lavoro*, 542.
[137] Mazzotta, *Diritto del lavoro*, 559–74.
[138] Mazzotta, *Diritto del lavoro*, 580–85.
[139] Del Punta, *Diritto del lavoro*, 637–49.

4.2.1 Resignation and Dismissal

Historically, under the Civil Code, termination of employment was permitted at will by either party, with the requirement of providing notice to the other party. However, this notice was not necessary if there was a just cause for termination, such as serious misconduct by one party that undermined the employment relationship.

Resignation, as outlined in Article 2118(1) of the Civil Code, allows an employee to resign at their discretion, provided they give notice. Failure to provide notice incurs an indemnity obligation to the employer, unless there is a just cause as defined in Article 2119, in which case resignation without notice is acceptable.[140]

Dismissal is regulated by Articles 2118 and 2119 of the Civil Code. While in the past, employers could dismiss employees with notice at their discretion, current regulations demand justification. Acceptable grounds include just cause, subjective reasons based on contractual breaches, and objective reasons related to job duties. However, before resorting to objective dismissal, employers must prove that reassigning the employee isn't feasible.[141]

Just cause is a significant breach of the worker's obligations that irreparably undermines the employer's trust and does not permit the continuation, even provisional, of the employment relationship (Article 2119 of the Civil Code). In this hypothesis, no notice is due. A justified subjective reason is determined when there is a significant breach of contractual obligations by the worker. Collective agreements in the private and public sectors contain examples of the main conduct constituting subjective justified reason and just cause. The judge is not bound by the examples of collective agreements but must take them into account when assessing the grounds for dismissal. The justified objective reason occurs when the dismissal is intimated for facts inherent to the productive activity, the organisation of work and the regular operation of that production activity. The legislator used a very broad formulation in order to guarantee the freedom of enterprise provided for by the Constitution. However, case law has established that before issuing an objective dismissal, the employer must verify the impossibility of using the employee within the company in similar tasks.[142]

The termination process must adhere to formal requirements. Written notice of termination is mandatory, with oral dismissal only permissible for domestic workers. Failure to provide written notice of termination and the ground for dismissal renders the measure ineffective. In cases of disciplinary dismissal (based on justified subjective reasons), employers are obligated to adhere to the rules outlined in the disciplinary procedure. Consequently, disciplinary dismissal is deemed legitimate if the violation is outlined in the company's disciplinary

[140] Del Punta, *Diritto del lavoro*, 682–85; Mazzotta, *Diritto del lavoro*, 649–67.

[141] Mazzotta, *Diritto del lavoro*, 671 ff.

[142] Del Punta, *Diritto del lavoro*, 693–703; Mazzotta, *Diritto del lavoro*, 684–700.

code, the accusation is formally contested by the employee, and the employee is afforded the opportunity to defend themselves in writing or orally, and to be represented by a trade unionist.

For terminations based on justified objective reasons, in companies with more than 15 employees per production unit or 60 in total, employers must notify the labour inspectorate, specifying the reasons and outplacement assistance measures. The labour inspectorate then forwards the notice to the provincial conciliation commission, which endeavours to reach a conciliation between the parties, aided by trade union organizations or legal representation. If conciliation efforts fail, the employer may proceed with dismissal; however, if conciliation results in dismissal, the worker is entitled to unemployment benefits. This procedure is applicable to all workers hired on an indefinite-term basis until 6 March 2015, after which it was repealed by Legislative Decree No. 23 of March 4, 2015, for workers hired from 7 March 2015, onwards. [143]

The worker has 60 days from receipt of the notice to challenge the dismissal. A worker who has challenged the dismissal within 60 days acquires a delay of 180 days to bring legal action. In Italy, there are many different sanction regimes related to the dimensions of the enterprise and the date of the hiring (before and after 7 March 2015).[144]

For workers hired before 7 March 2015 in enterprises with more than 15/60 employees, Law No. 92 of 28 June 2012 stipulates:[145]

- In cases of discriminatory dismissal, termination during marriage or maternity leave, the court mandates reinstatement and compensation. Alternatively, the employee can opt for an indemnity equal to 15 months of the last global *de facto* salary, in addition to damages (full reintegration protection).
- In instances of dismissal for subjective reasons or just cause, where contested facts are proven non-existent or could have been handled differently, the court orders reinstatement and an indemnity ranging from 5 to 12 months of the last global *de facto* salary. As an alternative to reinstatement, the employee can request a 15-month indemnity (attenuated reintegration protection).
- For other unlawful dismissals based on subjective or objective grounds, or just cause, the court mandates compensation ranging from 12 to 24 months of the last global *de facto* salary (economic protection).
- In remaining unjustified dismissal cases, the court orders compensation between 6 and 12 months of the last global *de facto* salary (reduced economic protection).
- For workers hired before 7 March 2015, in companies with less than 15/60 employees, Article 8 of Law 604 of 15 July, 1966, amended by Law 108 of May 11, 1990, and further amended by Law No. 92 of June 28, 2012, specifies.

[143] Del Punta, *Diritto del lavoro*, 691 ff.

[144] Mazzotta, *Diritto del lavoro*, 705–60.

[145] Del Punta, *Diritto del lavoro*, 706–19.

That thecourt can order reinstatement within three days or compensation ranging from 2.5 to 6 months' salary of the last global *de facto* remuneration.

For workers hired after 7 March 2015 in enterprises with more than 15/60 employees, Legislative Decree No. 23 of 4 March 2015 states:[146]

- In cases of discriminatory, null and void, oral, or unmotivated dismissal, particularly involving individuals with disabilities, the court mandates reinstatement and compensation. As an alternative to reinstatement, the employee can request a 15-month indemnity of the last remuneration for the calculation of severance pay (full reinstatement protection).
- In instances where contested facts in disciplinary dismissals are proven nonexistent, the court orders reinstatement and a compensation cap of 12 months' salary of the last remuneration for the calculation of severance pay. As an alternative to reinstatement, the employee can opt for a 15-month indemnity of the last remuneration for the calculation of severance pay (mitigated reinstatement protection).
- In all cases of unjustified dismissal, whether objective or subjective, or due to just cause, the court mandates compensation ranging from 6 to 36 months' salary of the last remuneration for the calculation of severance pay (economic protection).
- For dismissals affected by formal or procedural irregularities, the court orders compensation ranging from 2 to 12 months' salary of the last remuneration for the calculation of severance pay (reduced economic protection).

For workers hired after 7 March 2015 in enterprises with less than 15/60 employees, Legislative Decree No. 23/2015 specifies:

- In cases of discriminatory or null and void dismissals or those unlawful due to physical or mental disability, the court mandates reinstatement and compensation of no less than 5 months' salary of the last remuneration for the calculation of severance pay, reduced by earnings during the dismissal period.
- In all other unlawful dismissal scenarios, the court orders compensation based on years of service, ranging from 1 to 6 months' salary of the last remuneration for the calculation of severance pay.
- In cases of dismissal breaching the sanctions procedure outlined in Article 7 of the Statute of Workers, the court mandates compensation based on years of service, with a minimum of 1 month's salary and a maximum of 6 months' salary of the last remuneration for the calculation of severance pay.

In the public sector, Article 63 of Legislative Decree No. 165 of March 30, 2001, stipulates that upon determining the unlawful nature of dismissal, the court orders reinstatement and compensation not exceeding 24 months of the last remuneration, reduced by earnings from other employment during the dis-

[146] Del Punta, *Diritto del lavoro*, 719–24.

missal period. Additionally, the employer must cover social security and assistance during this period.[147]

4.2.2 Collective Redundancies

Collective redundancies can be realised following the procedures laid down in Law 223 of 23 July 1991. Article 24 of this law states that it is collective redundancies when an undertaking with at least 15 employees intends to make at least five redundancies within a period of 120 days in the same or several production units. The employer's intention to terminate contracts is determined by the reduction or transformation of activity or work or the termination of the activity.[148]

The procedure provides that the entrepreneur notifies the trade union representatives of the intention to proceed with collective redundancies, specifying:[149]

a) The reasons that determine the redundancy situation.
b) The technical, organisational or production reasons for which it is deemed impossible to adopt appropriate measures to prevent redundancies.
c) The number and the job profiles to be eliminated.
d) The timing of the implementation of the workforce reduction programme.
e) The measures to reduce the social consequences of redundancies.
f) The method of calculating the severance payment.

Following the communication, a negotiation phase starts in order to examine the causes that contributed to the redundancy situation and the possibility of a different use of such personnel. If no agreement is reached the local directorate of the National Labour Inspectorate convenes the parties for further negotiations. Once an agreement is reached or the negotiation procedure is completed, the undertaking is entitled to dismiss the surplus workers.

The identification of the workers to be dismissed must follow the selection criteria laid down in the collective agreement. In the absence of an agreement, the law provides for three criteria to be applied concurrently:[150]

- family loads,
- seniority, and
- technical, productive, and organisational requirements.

The employee may challenge the legitimacy of the collective dismissal on the grounds of violation in the written form, violation of the procedure and violation of the selection criteria. For all those who were hired before 7 March 2015:[151]

[147] Del Punta, *Diritto del lavoro*, 728 ff.; Mazzotta, *Diritto del lavoro*, 759 ff.
[148] Del Punta, *Diritto del lavoro*, 751; Mazzotta, *Diritto del lavoro*, 780.
[149] Mazzotta, *Diritto del lavoro*, 791–99.
[150] Mazzotta, *Diritto del lavoro*, 799.
[151] Del Punta, *Diritto del lavoro*, 753.

- If the dismissal is issued without observing the written form, full reinstatement protection applies.
- If the dismissal is issued in violation of legal procedures, economic protection applies.
- If the dismissal is issued in breach of the selection criteria, mitigated reinstatement protection applies.

For all those hired after 7 March 2015:[152]

- If the dismissal is issued without observing the written form, full reinstatement protection applies.
- If dismissal is issued in violation of legal procedures or selection criteria, economic protection applies.

4.3 Temporary Agency Work

Historically, Law No. 1369 of 23 October 1960 (now repealed) prohibited a worker from being employed by a company other than the one where the worker was working. The first significant derogation came with Law No. 196 of 24 June 1997, which introduced temporary agency work only on a fixed-term basis and in the presence of circumscribed hypotheses established by collective agreements.[153]

Legislative Decree No. 276 of 10 September 2003 has completely reformed the matter by providing that a user company may turn to an authorised staff agency to obtain a certain supply of labour based on an agency work contract. The agency work contract regulates the relationship between the user and the agency and may be either permanent (so-called "staff leasing") or fixed-term. The employee, employed under this contract, works for the user, under its direction and control, but maintains an employment relationship only with the agency, which is responsible for exercising disciplinary power. Moreover, the law lists in a defined manner the cases in which it is prohibited to use an agency work contract and, in the case of irregular or fraudulent administration, provides specific safeguards to protect the worker.[154]

The employment contract shall be written. The principle of equal treatment applies to remuneration and trade union rights and protections. Moreover, the temporary worker, like any other worker, must be employed for the tasks specified in the contract. If, on the other hand, he/she is employed for different tasks, specific protective actions can be proposed.

Agency work has undergone a rather troubled legislative evolution: following the amendments introduced to the original regulation by the so-called Poletti Decree, the discipline was subject to a comprehensive revision as part of the reforms introduced by the so-called Jobs Act, being then partly reformed

[152] Del Punta, *Diritto del lavoro*, 759.

[153] Mazzotta, *Diritto del lavoro*, 834–69.

[154] Mazzotta, *Diritto del lavoro*, 276.

also by Decree-Law No. 87 of 12 July 2018, converted by Law No. 96 of 9 August 2018. In particular, Legislative Decree No. 81 of 25 June 2015, provided for the elimination of the peremptory list of grounds for legitimising temporary agency work and, on the other hand, the confirmation of the choice not to subordinate the possibility of signing a fixed-term agency contract to the necessary indication of specific productive, technical, organisational or replacement reasons.

Decree-Law No. 87 of 12 July 2018 amended the discipline of temporary agency contracts, seeking to make it consistent with the new regulations for fixed-term contracts. Moreover, the reform amended the regulation of the relationship between the agency and the worker, providing that almost the entire discipline of the fixed-term contract (including the regime of the grounds for the contract) also applies to the relationship between the agency and the worker. Some further minor changes were introduced by Decree-Law No. 48 of 4 May 2023, converted into Law No. 85 of 3 July 2023.

Finally, fraudulent agency work has been reinserted.[155]

4.3.1 The Temporary Agency Work of Home Caregivers

Temporary agency work of home caregivers responds to a genuine need for families not to be burdened with managing the employment relationship and for workers to find jobs. However, it presents problems related to the cost squeeze obtained by worsening working conditions, the need to pay a commission by the families and sometimes (even if forbidden) by the worker, and the possibility of giving rise to serious forms of exploitation and violation of human rights.[156]

In Italy, temporary agency work of home caregivers is also practised with sometimes irregular methods. There are four main ways in which temporary agency work is applied:

a) Temporary agency work of home caregivers employed as coordinated and continuous collaborators.
b) Temporary agency work of home caregivers employed by the agency.
c) Temporary agency work of home caregivers employed by families.
d) Transnational temporary agency work of home caregivers.

These modes of temporary agency work are used interchangeably by providers. The choice to change the mode of supply depends both on economic convenience and on circumventing controls.

Temporary agency work of home caregivers employed as coordinated and continuous collaborators is practised by cooperatives or associations that stipulate contracts of coordinated and continuous collaboration with workers who

[155] Mazzotta, *Diritto del lavoro*, 294.

[156] Borelli, *Who care? Il lavoro nell'ambito dei servizi di cura alla persona*, 190–201.

are then sent to the homes of elderly persons to provide their services. Since they are not employment agencies, these entities do not require any authorisation from the Ministry of Labour.[157]

Some employment agencies have opted to directly employ domestic workers, applying the sector's CCNL to them. In essence, a discipline intended for employers who use work at home for personal needs is applied by employment agencies to lower the cost of the service provided. As pointed out by Borelli, the CCNL for domestic work of UNSIC, UNSICOLF, and ASNALI expressly regulates this case.[158]

The third modality of temporary agency work is that of illicit labour mediation, in which the agency arranges for the domestic worker to be engaged by the family but, in fact, manages the employment relationship entirely, charging the family a commission. In this case, in addition to the additional cost passed on to the families (who have to pay for the service provided by the agency), there is an exposure of the worker to the employer's power by the agency, without having the necessary protections.[159]

The fourth type of temporary agency work is the transnational temporary agency work of home caregivers. If the agency work takes place between two or more Member States, it is governed by EU legislation on the posting of workers. According to these regulations, the conditions under which the agency may operate are set by the sending state, which may also decide not to provide for any authorisation, registration, or supervision of the agency. The domestic worker posted in Italy is subject to the discipline provided for administered labour by Article 35 Legislative Decree No. 81 of 15 June 2015 (Article 4 co. 3 Legislative Decree No. 136 of 17 July 2016). However, social security contributions continue to be paid in the State of origin (Article 12 Reg. 883/2004). A comparative advantage linked to lower labour costs for the transnational service provider may therefore remain. Moreover, in the hypothesis of transnational agency work, Article 13 of Reg. 883/2004 could apply, which, for the exercise of the activity in two or more States, provides, among the criteria for determining the applicable law, that of the place where the undertaking has its head office; in this hypothesis, the undertaking may choose the social security legislation applicable to the employment relationship. Moreover, checks on transnational agency work are much more complex as they require cooperation between several national authorities. It is therefore no coincidence that this case sometimes gives rise to serious offences, such as serious labour exploitation or human trafficking.[160]

[157] Borelli, *Who care?*, 191.

[158] Borelli, *Who care?*, 197.

[159] Borelli, *Who care?*, 198. The National Labour Inspectorate clarified in its Note of 21 June 2017, protocol no. 5617, that in the case of domestic work, the sanction of direct employment by the user does not apply in cases of illicit temporary agency work.

[160] Borelli, *Who care?*, 199.

4.4 Fixed-Term Employment

The fixed-term contract is a subordinate employment contract in which a predetermined duration is provided in advance. Fixed-term contracts are governed by Legislative Decree No. 81 of 15 June 2015 (Articles 19–29) recently revised by Decree-Law No. 48 of 4 May 2023 converted into Law No. 85 of 3 July 2023. The ordinary form of the subordinate employment relationship remains the permanent contract, therefore, the setting of a term – although permitted – is subject to compliance with certain conditions.[161]

Decree-Law No. 87 of 12 July 2018 provides that a term may be added to a subordinate employment contract provided that it is agreed in writing and subject to a duration limit of 12 months. However, a term may be added to the contract for a duration of more than 12 months, but not more than 24 months, as long as there are three legal grounds:[162]

a) Temporary and objective needs, unrelated to the ordinary activity, or needs to replace other workers.
b) Needs related to significant and unforeseeable temporary increases in ordinary activities.
c) Specific needs provided for by collective agreements.

These grounds were repealed by Decree-Law No. 48 of 4 May 2023 converted into Law No. 85 of 3 July 2023, which essentially referred to the determination of the grounds justifying the imposition of a term to national or company collective agreements. Furthermore, the provisions on causal grounds do not apply to contracts concluded by public administrations, as well as fixed-term employment contracts concluded by private universities, including branches of foreign universities, research institutes. Therefore, fixed-term contracts may not last longer than 24 months, including extensions or renewals, unless otherwise provided for in national, territorial or company collective agreements. Periods of temporary agency work are also taken into account for the purposes of calculating the 24 months.[163]

The term of the fixed-term contract may be extended, with the worker's consent, only when the initial duration of the contract is less than 24 months and, in any case, for a maximum of 4 times within 24 months, regardless of the number of contracts. If the number of extensions is higher, the contract is converted into a permanent contract from the date of commencement of the fifth extension (Article 21). Extensions may be made freely during the first 12 months and, thereafter, only in the presence of the so-called causal reasons legitimising the signing of a fixed-term contract (under Article 19(1)). However,

[161] Del Punta, *Diritto del lavoro*, 783–88; Mazzotta, *Diritto del lavoro*, 352.
[162] Del Punta, *Diritto del lavoro*, 788–95.
[163] Del Punta, *Diritto del lavoro*, 788–95.

for renewal purposes, a time gap must be observed between the signing of the two fixed-term contracts:[164]

- 10 days for contracts up to 6 months.
- 20 days for contracts of more than 6 months.

If the provisions on these time gaps are breached, the second contract is converted into a permanent contract.

The current legislation also regulates the hypotheses of continuation of the relationship beyond the expiry of the term, providing that in such cases the employer is obliged to pay the employee an increase in salary for each day of continuation of the relationship equal to 20% up to the tenth day and 40% for each additional day (Article 22). Moreover, provision is made for the transformation of the fixed-term contract into an open-ended contract if the employment relationship continues:

- Beyond the 30th day, in the case of contracts lasting less than six months.
- Beyond the 50th day, in other cases.

Employers may hire fixed-term workers to an extent not exceeding 20% of the number of permanent workers in force on 1 January of the year of hiring, unless otherwise provided by collective agreements (Article 23).

Public administrations, as a general rule, hire exclusively with permanent employment contracts. However, the public administration may also use flexible forms of employment provided for by law, albeit only subject to certain limits and modalities (Article 36). Indeed, in the public sector, it is possible to use these types of contracts only for proven needs of an exclusively temporary or exceptional nature.[165]

4.5 Job on-Call

Legislative Decree No. 81 of 15 June 2015 regulates the job-on-call. The job-on-call contract is concluded in writing and may be for a fixed-term or permanent period; this contract stipulates that the worker works in a discontinuous or intermittent manner according to the needs identified by collective agreements or, in the absence thereof, by decree of the Minister of Labour.

Even beyond the hypotheses provided for in the above-mentioned Ministerial Decree, the job on-call contract can be concluded:[166]

a) With persons under 24 years of age, provided that the work is carried out by the age of 25.
b) With persons over 55 years of age.

[164] Del Punta, *Diritto del lavoro*, 788–95.
[165] Mazzotta, *Diritto del lavoro*, 799.
[166] Del Punta, *Diritto del lavoro*, 776–80.

Except for the sectors of tourism, public establishments and entertainment, the job on call is admitted for each worker with the same employer for a total period not exceeding 400 days of actual work within three years. If this period is exceeded, the employment relationship is transformed into a full-time, permanent employment contract.[167]

During the periods in which the on-call worker is not employed, he/she does not earn any salary, unless he/she has contractually guaranteed his/her availability to answer calls to the employer. In the latter case, the worker is entitled to the on-call allowance determined by collective agreements or by decree of the Minister of Labour. An unjustified refusal to answer the call may constitute grounds for dismissal and lead to the reimbursement of the on-call allowance for the period following the refusal. [168]

Job on call is forbidden:[169]

c) To replace workers on strike.
d) In establishments where collective redundancies have taken place within the previous 6 months.
e) To employers who have not carried out a risk assessment in application of the OSH legislation.

4.6 Peculiarities of Care Workers: Home Caregivers

The employer may be an individual, a family or a non-profit community. Domestic work is regulated by the rules on employment, provided that the work must be: a) performed within the family; b) continuous and not sporadic (there must be an employment relationship with fixed and repeated hours at fixed intervals); c) "prevalent", i.e. it must take at least four hours, even if separate from each other, within each day. Fixed-term employment is permitted in compliance with the provisions of Legislative Decree No. 81 of 15 June 2015 (Articles 19–29).

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. In addition, domestic workers are entitled to maternity and paternity leave (but not parental leave), rest leave, sick leave and holidays. 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.

[167] Mazzotta, *Diritto del lavoro*, 501–5.
[168] Del Punta, *Diritto del lavoro*, 776–80.
[169] Mazzotta, *Diritto del lavoro*, 501–5.

The domestic employment relationship may be terminated for one of the following reasons: a) interruption of the probationary period; b) termination of employment at will with notice (Section 4.2.1); c) termination for just cause; d) resignation; e) death of the employee.

4.7 Elements of Italian Anti-Discrimination Law and Discriminations in the Care Sector

Italian anti-discrimination laws are constitutionally grounded in Article 3. 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. Paragraph 2 of Article 3 indicates the principle of substantive equality, which requires the Republic to remove economic and social obstacles that effectively limit the equality of citizens.

One of the first legislative provisions to implement these principles within the framework of labour law is Article 15 of the Statute of Workers. This provision renders null any agreement or action aiming to condition a worker's employment on union membership, dismissal for union activity, or discriminatory treatment based on affiliation, participation in strikes, or other factors. Moreover, Article 15, paragraph 2, extends the nullification to agreements or actions rooted in political, religious, racial, linguistic, or gender discrimination.

In alignment with EU directives, Italian legislation has evolved by integrating specific anti-discrimination provisions addressing various facets. However, a comprehensive regulatory framework is yet to be established.[170] The principle of non-discrimination renders discriminatory acts unlawful only if they contravene the grounds specified by legislation, including gender (Legislative Decree no. 198 of 11 April 2006), political opinions and trade union activity (Article 15 of the Statute of Workers), 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).[171]

Discrimination may manifest in direct or indirect forms, either individually or collectively. Legitimate discrimination is recognised when it aligns with lawful purposes (Article 3(4) Legislative Decree No. 215 of 9 July 2003). Furthermore, discrimination that necessitates a protected characteristic for performing certain work is considered legitimate if it is proportionate and rea-

[170] Marzia Barbera e Silvia Borelli, "Principio di eguaglianza e divieti di discriminazione," *WP CSDLE "Massimo D'Antona".IT* – 451/2022.

[171] Silvia Borelli, Alberto Guariso e Lara Lazzeroni, "Le discriminazioni nel rapporto di lavoro," in *La tutela antidiscriminatoria. Fonti, strumenti, interpreti*, a cura di Alberto Guariso e Marzia Barbera (Torino: Giappichelli, 2020).

sonable (Article 3(3) Legislative Decree No. 215 of 9 July 2003). In cases 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.[172]

To bolster gender equality in the workplace, Italy enacted Law No. 162 of 5 November 2021. This legislation expands the scope of direct discrimination to include the personnel selection stage. Moreover, it mandates companies to produce periodic reports on personnel to combat gender disparity. Enterprises that attain gender equality certification receive incentives such as exemption from total social security contributions and priority access to funding opportunities. Additionally, the introduction of Equality Counsellors (*Consigliere di Parità*) aims to address gender discrimination and promote equal opportunities through collaboration with relevant bodies responsible for labour policies, training, and mediation.

However, 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.[173]

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 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.[174]

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

[172] 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).

[173] CARE4CARE, "Minutes"; Consigliera Nazionale di Parità, "Responses".

[174] CARE4CARE, "Minutes".

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 Councillors highlighted forms of intersectional discrimination, particularly concerning gender, religion, and ethnicity. Individuals of colour, especially Moroccan women wearing the Hijab, experienced significant difficulties in the workplace, often encountering discrimination and prejudice.[175]

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.[176]

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.[177]

5. Wages and Benefits

The primary obligation of the employer is to correspond to the worker a remuneration, which according to Article 36 of the Italian Constitution must be proportionate to the quantity and quality of the work performed (retributive function), and sufficient to guarantee the worker and his family a free and decent existence (social function). In the Italian system, wage levels are set by collective bargaining. A legislative proposal to set the legal minimum wage at 9.00 euros gross had been introduced in 2023 but was rejected by Parliament after obtaining the opinion of the National Economic and Labour Council (CNEL) (see *infra*, Section 5.2).

Section 5 deals with collective agreement regulation of wages, benefits including overtime pay, inconvenience pay, and bonuses. Space is given to the minimum contractual wage provided for in collective agreements.

5.1 Remuneration and Minimum Wage

Remuneration is the compensation for the work carried out by the employee, entitling them to a remuneration commensurate with the quantity and qual-

[175] Consigliera Nazionale di Parità, "Responses".
[176] Consigliera Nazionale di Parità, "Responses".
[177] CARE4CARE, "Minutes".

ity of their work. This remuneration should, in any case, be adequate to ensure both the employee and their family a dignified standard of living, as enshrined in Article 36 of the Constitution.[178]

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 if implemented would have provided for universal effect of collective agreements, 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.[179]

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 Decembre 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 by the parties.

The most common forms of remuneration include time-based wages, piecework 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.[180]

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:[181]

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).

[178] Mazzotta, *Diritto del lavoro*, 585.
[179] Del Punta, *Diritto del lavoro*, 585–92.
[180] Del Punta, *Diritto del lavoro*, 595–600.
[181] Mazzotta, *Diritto del lavoro*, 594–613.

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

The Italian system provides for compensation paid on a multi-monthly basis, which may be compulsory or voluntary. The remunerations that fall into this category are 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.[182]

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.[183] 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

[182] Mazzotta, *Diritto del lavoro*, 594–613.

[183] Jelle Visser, *I sindacati in transizione. Documento OIL/ACTRAV* (Ginevra: ILO, 2020); Jelle Visser, "The Rise and Fall of Industrial Unionism," *Transfer: European Review of Labour and Research* 18, 2 (2012): 129; Jelle Visser, "L'iscrizione al Sindacato in 24 Paesi," *Economia & lavoro* 42, 3 (2008): 17.

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.

The adoption of Directive 2022/2041 on adequate minimum wages in the EU, as is well known, 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. This coverage will have to reach 80% also, if 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.[184]

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.[185] 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,[186] 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.

[184] Orlandini and Meardi, "Round Table," 255–57.

[185] Camera dei Deputati, *Proposta di legge concernente disposizioni per l'istituzione del salario minimo* (A.C. 1275 e abb., 2023).

[186] CNEL, *Osservazioni e proposte sul salario minimo in Italia*. Documento n. 3/2023, approvato dall'Assemblea il 12 ottobre 2023.

5.2 Collective Agreements in the Private Sector

The table compares the wage levels of health professionals, social and health workers and basic care workers.[187] In the table, social and health workers and basic care workers are reported together, because the relevant collective agreements treat them as a single category. The remuneration shown in the table is gross annual remuneration. The economic amounts shown in the table are those provided for in the collective agreements analysed, at the time they were concluded. The table uses as its main reference the salary levels established by the CCNL concluded by the most representative social partners (CCNL for non-medical staff employed by the Scientific Hospitalization and Treatment Institutes and hospital health facilities registered with AIOP and ARIS). Furthermore, the salary range established by other collective agreements has been indicated.

Table 3 – Gross annual remuneration under key private-sector National Collective Labour Agreements (CCNLs)for health professionals, social and health workers and basic care workers.

Professional profile	Salary scale (most applied CCNL – private hospitals) T011	Salary scale (most applied CCNL – residences for the elderly) T141	Salary scale (most applied CCNL – cooperatives) T151	Salary scale (min-max variation) in euros
Health professionals	25,400.25	21,126.98	23,147.04	16,016.00 to 29,495.05
Social and health workers and basic care workers	21,701.69	18,677.68 to 19,290.04	21,245.29	13,551.98 to 24,308.96

In the following table,[188] two job profiles were selected: cohabiting (live-in) home caregivers, whose pay is determined monthly by the CCNL, and non-cohabiting (non-live-in) home caregivers, whose pay is determined on an hourly basis by the CCNL. Each job profile has three possible salary levels, depending on the applicable contractual classification. The table shows the pay levels established by the most representative social partners (CCNL DOMINA FIDALDO) and the pay range established by other collective agreements. The lowest figure corresponds to the lowest remuneration set for the B SUPER level, while the highest figure represents the highest remuneration set for the D SUPER level. Note that in every collective agreement only Level D SUPER enjoys an indemnity. Also, the other collective agreements provide for "night assistance", which is nearly always close to the "night assistance" set by the CCNL DOMINA FIDALDO.

[187] Remuneration tables effective 1 January 2024.

[188] Remuneration tables effective 1 January 2024.

Table 4 – Classification and remuneration of home caregivers: CCNL DOMINA–FIDALDO vs other CCNLs (as of 16-01-2023).

Professional profile	Classification in CCNL DOMINA – FIDALDO and MOST REPRESENTATIVE TRADE UNIONS (16-01-2023)	Remuneration in CCNL DOMINA – FIDALDO and MOST REPRESENTATIVE TRADE UNIONS (16-01-2023)		Remuneration in other CCNLs (min – max) (only daily assistance)
Cohabiting (live-in) home caregivers (monthly remuneration)	Level B SUPER (assistance to self-sufficient people)	994.44	Night assistance: 1,143.60	852.48–1384.50 (plus indemnity between 160.00 and 190.00)
	Level C SUPER (not-trained assistance to dependent persons)	1,127.04	Night assistance: 1,296.09	
	Level D SUPER (trained assistance to dependent persons)	1,392.21 (plus indemnity of 194.98)	Night assistance: 1,601.09	
Non-cohabiting (non-live-in) home caregivers (hourly remuneration)	Level B SUPER (assistance to self-sufficient people)	7.03		5.97–9.36
	Level C SUPER (not-trained assistance to dependent persons)	7.83		
	Level D SUPER (trained assistance to dependent persons)	9.41		

5.3 Collective Agreements in the Public Sector

The table illustrates the gross annual remuneration outlined in the collective agreement for the public health sector, encompassing health professionals, social and health workers, and basic care workers. The collective agreement is unique for the whole sector.

Table 5 – Gross annual remuneration in the public health sector CCNL (comparto sanità) by professional profile.

Professional profile	Remuneration in CCNL public health sector (CCNL comparto sanità)
Health professionals	23,298.93
Social and health workers and basic care workers	20,105.34

It is noteworthy that in 2022, the collective agreement for the public health sector underwent revisions in classification levels and remuneration, placing greater emphasis on supplementary elements of remuneration. Consequently,

the actual salary of each worker comprises not only the basic salary delineated in the table but also various specific allowances.

This emphasis on supplementary elements also extends to the private health sector. However, following the renewal of the national collective agreement for the public health sector in 2022, the significance of these auxiliary components in relation to the basic salary is more pronounced within the public sector.

6. Working Time, Health and Safety, Implications of the COVID-19 Pandemic, and Training and Competence Development

Section 6 of this report discusses Italian regulations on working time, leave arrangements, occupational safety and health, the impact of the pandemic on care workers and the training of care workers.

6.1 Working Time, Rest Periods, Holiday Leave and Night Work

The regulation of working time has been amended several times in recent years. Initially, the legislator intervened with Law No. 196 of 24 June 1997 (the so-called "Treu Law"). Subsequently, Legislative Decree No. 66 of 8 April 2003, implementing EU Directives 93/104/EC and 2000/34/EC, introduced a framework regulation on working time and other important related issues.[189]

Based on the new legislation, working time can be defined as the period during which the worker is at work and at the disposal of the employer, with the obligation to perform his activity or duties. Conversely, any period that is not part of working time is defined as rest time. The law distinguishes between normal working time and overtime. The former is set at 40 hours per week, although the law introduces a number of exceptions to this general rule:[190]

- Collective agreements may provide for a shorter duration.
- Collective agreements may refer the duration of the normal weekly working time to the average over a multi-week period. This means that in a given week the worker may be called upon to work more than 40 hours; however, work in excess of 40 hours will not be considered overtime if, in the multi-week period taken as a reference, the average number of hours worked is still 40. In this regard, the law specifies that, in any event, over the course of the week the working time must not exceed an average of 48 hours (including overtime) in 4 months, which may be increased by collective agreements up to 12 for objective reasons specified in the agreement. Appropriately, the law specifies that periods of holidays or sick leave are not to be taken into account when calculating the average.

Numerous categories of workers are excluded from the regulation of normal working hours and, in particular, from the legislative limit of 40 hours,

[189] Mazzotta, *Diritto del lavoro*, 454.

[190] Del Punta, *Diritto del lavoro*, 541–47.

without prejudice; however, to more favourable conditions established by collective agreements.

A distinction is made between normal working hours and overtime, i.e. work in excess of normal working hours and which must in any case be contained, as well as separately remunerated and compensated with increases laid down by collective agreement. The latter may allow workers to benefit from compensatory rest time as an alternative or in addition to pay increases.[191]

Collective agreements indicate the manner in which overtime work is to be performed, subject to the aforementioned limit of an average of 48 hours of work per week over four months. In the absence of such agreements, the law provides that recourse to overtime work is permissible only by agreement with the employee and for a period not exceeding 250 hours per year. However, the law also provides for other cases in which overtime is nevertheless permitted, i.e. irrespective of the will of the individual worker and unless otherwise provided for by collective agreements:

- Exceptional technical and production needs, with the impossibility of meeting them by employing other workers.
- Cases of *force majeure* or such that failure to work overtime could result in serious and immediate danger or damage to persons or production.
- Special events, such as exhibitions, fairs and events related to production activity, or the preparation of prototypes or models prepared for them.

6.1.1 Rest Period and Holiday Leave

Legislative Decree No. 66 of 8 April 2003 defines rest periods as everything that is not part of working time. Rest periods include:[192]

- Daily rest.
- Breaks.
- Weekly rest.
- Holiday leave.

Daily rest is a worker's right under the law. The worker is entitled to 11 hours of rest every 24 hours. This rest must be continuous unless the work is characterised by split periods of work during the day. [193]

If the working day exceeds 6 hours, the employee is entitled to a break to restore mental and physical energy and to have a meal. The timing and duration of these breaks are established by collective agreements; in their absence, the employee must be provided with a break to be taken within the start and end of the daily work period, lasting no less than ten minutes. The placement of this

[191] Del Punta, *Diritto del lavoro*, 547 ff.

[192] Del Punta, *Diritto del lavoro*, 545–47.

[193] Del Punta, *Diritto del lavoro*, 545–47.

break should consider production needs. These breaks are unpaid and cannot be counted towards the total working hours.

The worker is entitled to a weekly rest period of at least 24 consecutive hours, in addition to the 11 hours' rest of the previous day. However, this right does not apply to certain categories of workers (shift work, whenever the worker changes teams and cannot take daily or weekly rest periods between the end of one team's service and the beginning of the next team's service; activities characterised by periods of work split throughout the day; for certain categories of persons working in the rail transport sector). The weekly rest period must, as a rule, coincide with Sunday, except in cases—provided for by law—where the weekly rest day may be fixed on a day other than Sunday.[194]

The worker is entitled to an annual period of paid leave of not less than four weeks, with the option for collective agreements to establish more favourable conditions. If the holiday is not taken, it cannot be replaced with the corresponding allowance for the unused holidays, except at the time of termination of the relationship.[195]

6.1.2 Night Work

Night work is regulated by Legislative Decree No. 66 of 8 April 2003 and by collective bargaining to which the law refers. The decree defines nighttime as a period of at least seven consecutive hours including the interval between midnight and 5 am. A night worker is one who alternately during the night period performs at least three hours of his daily working time in the normal way, or one who performs during the night period at least part of his working time according to the rules defined by collective labour agreements. In the absence of collective agreements, any worker who performs at least three hours of night work for a minimum of 80 working days per year shall be regarded as a night worker; the above minimum limit shall be multiplied in the case of part-time work.[196]

A specific regime is outlined for domestic workers, which includes home caregivers, as Legislative Decree No. 66 of 8 April 2003 does not encompass this category. However, the legislation concerning domestic work is notably vague, merely stipulating that

> The worker is entitled to suitable rest periods during the day and not less than 8 consecutive hours of rest at night. In cases of necessary night duties, adequate compensatory rest during the day is obligatory (Article 8, Law No. 339 of 2 April 1958).

Collective agreements provide more precise regulations, albeit applicable only if adopted by the employer. Under the FIDALDO collective agreement (concluded among the most representative unions), cohabiting home caregivers are subject to a maximum daily working period of 10 hours, inclusive of a two-

[194] Del Punta, *Diritto del lavoro*, 549.
[195] Del Punta, *Diritto del lavoro*, 550.
[196] Del Punta, *Diritto del lavoro*, 548.

hour break. The total weekly working hours must not surpass 54 hours (Article 14, CCNL DOMINA FIDALDO). This framework is consistently applied across various collective agreements.

When live-in home caregivers are required to remain available during nighttime hours, they should ideally be guaranteed 11 hours of rest within each 24-hour cycle (Article 10, CCNL DOMINA FIDALDO). However, in practice, these rest hours are often not fully implemented. Moreover, in emergency situations, cohabiting home caregivers can decline to work beyond the stipulated hours only with a "justifiable reason" and do not receive additional compensation for those hours, instead being entitled solely to compensatory rest time (Article 16, CCNL DOMINA FIDALDO).

Non-live-in home caregivers are limited to a maximum of 8 hours per day and a weekly schedule not exceeding 40 hours, calculated over 5 or 6 days.[197]

6.1.3 Part-Time Work

Part-time employment was initially introduced by Law No. 863 of 19 December 1984, under a relatively rigid framework aimed at safeguarding work-life balance in favour of the employee. However, over time, the regulations have evolved to incorporate elements of flexibility, which some argue may compromise the predictability of work schedules. Legislative Decree no. 61 of 25 February 2000, which transposed Directive 81/1997/EC, was subsequently replaced by Article 5(1)(a) of Legislative Decree No. 81 of 15 June 2015, currently governing part-time employment in Articles 4–12.

The part-time contract shall be concluded in writing for evidentiary purposes only (Article 5(1), Legislative Decree No. 81 of 15 June 2015). It shall precisely specify the duration and working hours, detailing the hours on a daily, weekly, monthly, and annual basis.[198]

Recourse to "supplementary work" is possible but must not exceed the normal weekly working time limit (Article 6(1), Legislative Decree No. 81 of 15 June 2015).[199] Overtime regulations are typically determined by collective agreements. However, in their absence, employers may employ supplementary work up to 25% of the agreed working time, provided employees may decline additional work if justified by legitimate reasons such as work, health, family, or vocational training needs, with a corresponding 15% pay increase (Article 6(2), Legislative Decree No. 81 of 15 June 2015). Beyond the normal hours of work, overtime rules apply, calculated on a weekly basis, or averaged over a year.[200]

Parties may include flexible clauses in the part-time employment agreement, as per Article 6 of Legislative Decree 81/2015, regarding changes to service sched-

[197] Borelli, *Who care?*, 182.

[198] Del Punta, *Diritto del lavoro*, 768–69.

[199] "Supplementary work" (*lavoro supplementare*) in the context of part-time employment refers to tasks carried out beyond the predetermined hours outlined in the contract.

[200] Del Punta, *Diritto del lavoro*, 772.

ules or duration increases. In such cases, employees are entitled to a two-day notice and compensation, either through extra payment or compensatory rest.

Overtime becomes mandatory if a flexible clause is agreed upon; otherwise, employers can refuse additional work. A flexible clause may also be agreed upon before a Certification Committee.[201] Regardless, employees cannot be required to exceed 25% of overtime work, except where collective agreements provide otehrwise, with compensation not less than 15% of their salary.[202]

Part-time workers enjoy the same rights as full-time workers and are protected against discrimination based on working hours. Salaries and certain rights are adjusted proportionally to the duration of the working time.[203]

Transformation between part-time and full-time employment is only permissible if agreed upon by both parties. In exceptional cases prescribed by law, there is a right to part-time work, while in other instances, priority is given to part-time assignments.

Part-time employees are allowed to pursue other work or professional activities, as long as they adhere to rules regarding compatibility and conflicts of interest. Requests for part-time employment are subject to company regulations and must be formalised through a written contract that outlines details like duration, working hours, and compensation.[204]

In the public health sector, part-time work is granted by the administration according to an annual planning of personnel needs and at the employee's request for proven personal and/or family needs.

When examining part-time work, it is crucial to acknowledge that in Italy, this employment arrangement frequently engenders difficulties, as it is often not a matter of choice. Involuntary part-time employment is particularly widespread in the service sector, including caregiving, which disproportionately affects women and has considerable economic and social repercussions. One of the underlying factors contributing to this phenomenon is the informal caregiving duties that women typically assume within their families.[205]

6.2 Sick Leave, Accident Leave, Maternity and Parental Leave

Italian law provides legal and social security protection for illness, accident and the birth or adoption of a child.[206]

[201] Certification is a voluntary procedure aimed at confirming that the contract intended for signing meets the form and content requirements mandated by law, with the aim of reducing litigation concerning the classification of certain employment contracts. Certification is performed by a Certification committee.

[202] Del Punta, *Diritto del lavoro*, 772.

[203] Del Punta, *Diritto del lavoro*, 774.

[204] Del Punta, *Diritto del lavoro*, 774–76.

[205] CARE4CARE, "Minutes".

[206] Del Punta, *Diritto del lavoro*, 663–77; Maria Luisa Vallauri, *Genitorialità e lavoro. interessi protetti e tecniche di tutela* (Torino: Giappichelli, 2020).

The worker has the right to be absent from work and to receive pay or an allowance in the event of illness or accident. The rules are partially different depending on whether the pathological event has an aetiology in the performance of work or not. In particular, the social security body that pays the allowance and the duration of the so-called "time of respite" change. In order for an illness or an accident to have the effect of suspending work performance, imputing to the employer the burden of bearing the employee's absence, it is necessary that they cause absolute and temporary inability to work. When, on the other hand, the impossibility generated by the event is permanent, it determines an unfitness for work that justifies dismissal for objective reasons, unless it is possible to employ the worker in different tasks compatible with his psycho-physical condition. Case law has also brought under this protection cases in which the worker needs to undergo therapeutic treatment, as well as the convalescence time necessary for the restoration of a normal state of health.[207]

In the case of illness or accident due to a common risk, the worker may be absent from work for the duration of the so-called "time of respite" fixed by collective agreements or, in the absence of a provision, by the court according to equity. If the illness or injury is caused by a work-related cause, the worker has the right to be absent until full recovery. During this time, the employee may not be dismissed. Dismissal prior to the expiry of the leave period for a reason inherent in sick leave is null and void. Dismissal for reasons other than sickness and attributable to a justified reason for termination is temporarily ineffective and does not take effect until the end of the sickness or the expiry of the "time of respite". On the other hand, dismissal for just cause, dismissal due to cessation of activity and termination due to expiry of the term in a fixed-term contract shall have immediate effect.

During the period of absence from work due to illness, the worker is entitled to remuneration or an equivalent allowance. The sum paid to the worker is subject to social security contributions. When the law places the financial burden of the worker's absence from work for health reasons on the social security institution (generally INPS, in the case of illness or accident caused by common risks, and INAIL, in the case of occupational illness or accident at work), the employer is in any case obliged to advance the allowance, and can then recover the sum through the mechanism of adjustment of contributions due. The indemnity paid by the social security institution does not correspond to the entire remuneration due to the worker, but collective agreements may provide for an obligation on the part of the employer to supplement the amount due to the worker up to 80% or 100% of the remuneration. There is also a so-called three-day waiting period, during which the employee is not entitled to any economic benefit. The duration of the economic treatment (be it remuneration or indemnity), in any case, may be less than the duration of the period of comportment, and therefore the economic burden of part of the tolerated period of absence

[207] Del Punta, *Diritto del lavoro*, 665–74.

from work may fall on the worker. Sickness and accident periods are counted in the length of service.[208]

Special protection is provided for the mother worker. The source regulating the matter of maternity and parental leave is Legislative Decree No. 151 of 26 March 2001. From the day the pregnancy is notified and until the child is seven months old, the woman has the right not to be employed in dangerous, hard and unhealthy work, including work that involves lifting weights. The employer, when assigning the woman to new tasks, must comply with the provisions of Article 2103 of the Civil Code but, as a last resort, may assign her to inferior tasks while maintaining her level of classification and salary unchanged. When this change of tasks is not possible, the employee is entitled to anticipation of maternity leave. The employer has the obligation to carry out the assessment of specific risks with respect to the condition of pregnant workers and mothers (Article 11 and Article 28 c. 1 Legislative Decree No. 81 of 9 April 2008) and to inform the workers and safety representatives of the results of the assessment and of the prevention and protection measures to be adopted. The worker is also entitled to an indefinite number of paid leaves for carrying out prenatal controls.[209]

The law establishes an absolute prohibition for the employer to engage the employee in any work activity during the two months preceding the birth and the three months following the birth of the child, as well as during the days between the presumed date of birth and the day of the birth. The prohibition also covers days not taken before the birth if the birth takes place before the expected date, even if they exceed the five-month limit. The employee may postpone the start of her leave to the eighth and up to the day of delivery, provided, however, that there is double medical certification. Violation of this prohibition is punishable under criminal law with imprisonment for up to six months. The commencement of maternity leave is brought forward to the third month before the expected date of childbirth if the woman is engaged in work that is burdensome or prejudicial to her own health and/or that of the foetus. During the maternity leave period, the woman is entitled to an allowance equal to 80% of her salary, paid by INPS. In addition, the taking of leave entitles the employee to the crediting of the notional contribution and the periods of absence are taken into account for the purposes of seniority, calculation of 13th-month wage and holidays and are considered as periods of employment for the purposes of career progression. Adoptive and foster parents shall be placed on an equal footing with biological parents in taking maternity leave.[210]

If the mother has died or is seriously ill or has abandoned the child or the child has been entrusted exclusively to the father, the father has the right to abstain from work for the whole duration of the maternity leave (up to 5 months) and certainly for the remaining part of the postpartum maternity leave (Article

[208] Mazzotta, *Diritto del lavoro*, 631–38.

[209] Del Punta, *Diritto del lavoro*, 664–73; Vallauri, *Genitorialità e lavoro.*

[210] Vallauri, *Genitorialità e lavoro.*

28). The leave is covered by an allowance equal to 80% of salary, paid by INPS. In 2012, a mandatory paternity leave was provided for (Article 4(24) Law No. 92 of 28 June 2012), on an experimental basis. The measure was financed until 2022, to become structural in 2023. The employed father, within 5 months from the birth of the child, has the obligation to abstain from work for a period of 10 days, subject to written notice to the employer at least 5 days before the beginning of the leave. An allowance of 100% of the salary is paid for the days of leave. Unlike in the case of maternity leave, the employer is not penalised if he does not require the working father to be absent from work for 10 days. Rather, it is penalised if it prevents or hinders the working father from taking the leave once he has requested it. The paternity leave is also due to adoptive fathers.[211]

Under Article 32, each parent is entitled to take leave from work regardless of whether the other parent is entitled to it. Parents may also take parental leave at the same time, just as the father may take parental leave while the mother takes maternity leave. Each parent may take a maximum of 6 months leave, which becomes 7 months, as an incentive, for the father who is absent for at least 3 months. However, in total, the father and mother may take a maximum of 10 months of leave, raised to 11 if the father has taken at least 3 months of leave. The leave must be taken by the end of the child's twelfth year of life or, in the case of fostering or adoption, by the twelfth year of the child's entry into the family or into Italy, respectively in the case of national or international fostering/adoption. The lone parent, on the other hand, has 11 months of parental leave. The leave, as described, is due to the parents for "each child". It follows that, in the case of a twin or multiple births, the duration of the leave will be proportional to the number of births. Parental leave is also due in the case of national or international fostering and adoption. Worker and/or woman taking parental leave is entitled to an allowance equal to 30% of salary, paid by INPS, for a maximum total period of 9 months, 3 of which are non-transferable. It is due within the 12th year of the child's life or within the 12th year of the child's entry into the family/Italy in case of fostering or adoption.

The Budget Law 2024 (Law No. 213 of 30 December 2023) increased the amount of the parental leave allowance available to mothers or fathers for a second month, out of the total of 6 months within the 6th year of the child's life. In particular, the allowance (ordinarily set at 30% of taxable salary) is increased: a) to 80% for two months in 2024 and b) to 80 per cent for one month and 60 per cent for a further month, when fully effective, from 2025. The innovation is applicable to employees in both the public and private sectors ending their maternity or, alternatively, paternity leave after 31 December 2023.

Periods of parental leave are counted in the seniority and do not lead to a reduction in holidays, or 13th-month wage, with the exception of additional emoluments linked to actual presence on duty, unless otherwise provided for

[211] Vallauri, *Genitorialità e lavoro*.

by collective bargaining. More favourable economic conditions are provided for parents with very low incomes.[212]

The working parent may, in lieu of parental leave and within the limits of his/her remaining leave entitlement, request to convert the full-time employment relationship into a part-time one. There is also a priority in the assignment to the agile work (*lavoro agile*).[213]

During the first year of the child's life, female workers are entitled to two rest periods, of one hour each, which can also be accumulated during the working day. The rest period is only one when the working day is less than six hours. In the case of multiple births, the rest periods are doubled. The working father is also entitled to these rest periods, but only: when the children are entrusted exclusively to him; as an alternative to the employed mother who does not make use of them; when the mother is not an employee and is not entitled to use them. Daily leave is also granted to foster and adoptive parents. These leaves are covered by an allowance equal to the full amount of the salary due for the hours of suspension of work. Both parents, alternatively, are entitled to leave on the occasion of illness of their child up to 8 years of age. When the child is less than 3 years old, the parent may take off work for an indefinite number of days per year, while when the child is between 3 and 8 years old, each parent may take off work for only 5 days per year. If the child's illness results in hospitalisation, it interrupts any leave the parent may be enjoying. Adoptive or foster parents may also take this leave.[214]

The dismissal of a mother worker during the period from the beginning of her pregnancy to the completion of the child's first year of age is prohibited and administratively sanctioned, regardless of whether the employer is aware of the worker's condition. The judge who determines the illegitimacy of the dismissal orders the employer to reinstate the employee. In addition, the judge orders the employer to pay an indemnity of no less than 5 months of the last global remuneration, reduced by the remuneration received from other work activities during the dismissal, with the obligation to pay social security and welfare contributions. Moreover, resignations tendered by the employee during the period of pregnancy and during the first 3 years of the child's life or during the first 3 years of the child's placement with an adopted or foster child, or, in the case of international adoption, during the first 3 years of the child's stay in Italy, must be validated by the territorial labour inspectorate. The same applies in the case of consensual termination of employment.[215]

[212] Del Punta, *Diritto del lavoro*, 664–73; Vallauri, *Genitorialità e lavoro.*

[213] Agile work (*lavoro agile*) is a mode of execution of the employment relationship characterised by the absence of time or space constraints and an organisation by phases, cycles and objectives, established by agreement between the employee and employer; a mode that helps the employee to balance work and lifetime and, at the same time, encourages productivity growth.

[214] Del Punta, *Diritto del lavoro*, 664–73; Vallauri, *Genitorialità e lavoro.*

[215] Del Punta, *Diritto del lavoro*, 671; Mazzotta, *Diritto del lavoro,* 177.

6.2.1 Domestic Workers and Home Caregivers

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.[216]

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).[217]

Domestic workers and home caregivers are excluded from the rules limiting dismissal (Article 62 and Articles 2240 and 2244 of the Civil Code). 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

[216] Borelli, *Who care?*

[217] Borelli, *Who care?*, 177.

for dismissal. In the event of voluntary resignation during the protected period, the employee is not required to give notice.[218]

6.3 Occupational Safety and Health

The employer has an obligation to ensure the occupational safety and health (OSH) of workers (Article 2087 of the Civil Code) through the implementation of all measures that meet the case law requirement of the "best technologically feasible arrangement". The notion of workers' health includes psychological health, so the employer is also obliged to detect the risk of work-related stress and to implement all the necessary measures to prevent a condition of psychological malaise from arising from the performance of work.[219]

Specifically, Legislative Decree No. 81 of 9 April 2008 is divided into 14 Titles and about fifty annexes and implementing decrees, substantially taking up in its formulation a regulatory technique of EU derivation.

Title I (common principles), Title XII (provisions on criminal law and criminal procedure) and Title XIII (transitional and final provisions) are those that contain general provisions to which specific provisions are added for each sector, including the healthcare sector. [220]

Legislative Decree No. 81 of 9 April 2008:

a) Lists subjects, functions and activities that cover the whole range of prevention legislation.
b) Identifies the scope of application of this legislation, which extends to all private and public sectors of activity except for domestic workers.
c) Establishes the general protective measures, the duties of the persons involved and the activities that the employer may delegate to designated persons.
d) Provides for risk assessment (a fundamental activity that the employer cannot delegate).
e) Establishes the prevention service, the responsible person for the service appointed by the employer, the tasks and the organisation of the service (internal or external, with one or more members, carried out by the employer himself).
f) Provides for the education, information and training of workers.
g) Provides for health surveillance conducted- in the cases provided for by law—by a competent doctor through a series of medical acts (not only personal examinations) aiming to assess the suitability of the worker for a specific task rather than for work in general.
h) Identifies procedures for emergency management, first aid and fire prevention.
i) Provides for consultation and participation of workers' representatives.
j) Establishes sanctions.

[218] Borelli, *Who care?*, 177.
[219] Del Punta, *Diritto del lavoro*, 615–33.
[220] Del Punta, *Diritto del lavoro*, 621.

Moreover, the legislature strengthened Article 25-septies of Legislative Decree No. 231 of 8 June 2001, expanding corporate administrative liability for manslaughter and for serious or very serious bodily injury committed in breach of OSH rules, where the offence is carried out by corporate representatives and in the company's interest or to its advantage.[221]

Finally, the legislator superseded special legislation based on the technological vision by imposing diversified, interconnected, and planned behaviour and technical, organisational and procedural measures on the employer and workers.[222]

In both private and public healthcare institutions, there is a concerning rise in incidents of physical assault perpetrated by patients or their relatives, particularly targeting nurses. In 2022, a significant 130,000 cases of physical assaults on nurses were recorded.[223] A study conducted by FNOPI in 2023 revealed that 40.2% of surveyed nurses reported experiencing multiple assaults within a year. Notably, these aggressions disproportionately target female nurses and are most prevalent in emergency departments.[224]

During the Italian national stakeholder meeting, trade unions brought attention to the serious issue of physical assaults. Proposed remedies ranged from the deployment of security personnel in hospitals to augmenting public investment in the healthcare sector to enhance service efficiency, thereby addressing the underlying grievances contributing to these assaults.[225]

6.3.1 Domestic Workers and Home Caregivers

Despite the exclusion of domestic workers from the scope of Legislative Decree No. 81 of 9 April (Article 2(1)(a)), aligning with Directive 391/1989, there remains a significant concern for the protection of their well-being. 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

[221] Mazzotta, *Diritto del lavoro*, 566.

[222] Mazzotta, *Diritto del lavoro*, 559.

[223] Del Bufalo Paolo, "Infermieri: aggrediti 130mila l'anno. Le cause, le azioni e i costi (fino a 34 milioni)," *fnopi*, 16 giugno 2022: <https://www.fnopi.it/2022/06/16/aggressioni-130mila-infermieri/> (Accessed January 11, 2024); NURSIND, "Aggressioni ai sanitari, il triste primato spetta agli infermieri," *Nursind Sanità*, <https://www.nursindsanita.it/articolo/6285/aggressioni-ai-sanitari,-il-triste-primato-spetta-agli-infermieri> (Accessed April 29, 2024).

[224] FNOPI, "Aggressioni agli infermieri, nel 2023 i dati si confermano allarmanti: il 40,2% degli intervistati denuncia anche più casi in un anno," (2024), <12-marzo-2024-FNOPI-I-dati-2023-sulle-aggressioni-agli-infermieri-1.pdf> (Accessed January 11, 2024).

[225] CARE4CARE, "Minutes".

> 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).

Despite this legal framework, in practice, there exists a noticeable gap in safety standards compared to those in business environments. This discrepancy significantly reduces the burden on domestic employers, leaving domestic workers inadequately protected.[226]

Moreover, collective agreements often fail to sufficiently address OSH protocols for domestic workers. At best, these agreements may require employers to inform workers of potential risks, but they typically lack provisions for training workers in health and safety procedures. This oversight violates ILO Convention 201, No. 19, which Italy has ratified.

6.4 Short-Term, Long-Term, and Post-Pandemic Implications COVID-19 Pandemic Measures

The COVID-19 pandemic significantly affected the working conditions of care workers. Being essential workers, this group kept performing its tasks even during the pandemic peaks, thus being exposed to a higher health risk. Moreover, the intense working rhythms and the difficulties associated with managing the virus exacerbated their working conditions.

The pandemic reaffirmed the indispensability of care workers. At the same time, the pandemic exposed the vulnerabilities of this sector: employment shortages, difficult working conditions, widespread reliance on foreign workers, often irregularly employed.[227]

Decree-Law No. 34 of 19 May 2020, converted into Law No. 77 of 17 July 2020 introduced a collective regularisation procedure for irregular (undocumented) migrant workers employed in agriculture, care, and domestic work. This measure benefits irregular (undocumented) migrant workers employed in one of these sectors and residing on Italian territory as of 8 March 2020. Article 103 of this decree established that, between 1 June and 15 August 2020, the employer could submit an application to conclude an employment contract or to declare the existence of an irregular employment relationship with an irregular migrant worker present on Italian territory in one of the identified sectors. This application should specify the duration of the employment contract

[226] Luciano Angelini e Paolo Pascucci, "La tutela della salute e sicurezza dei lavoratori domestici. nuovi spunti di riflessione dopo il d.Lgs n. 81/2008," in *Lavoro domestico e di cura: quali diritti?*, a cura di Raffaella Sarti (Roma: Ediesse, 2010), 226–39.

[227] Teresa Matarazzo et al., "CORONAcrisis, studio osservazionale sull'esperienza del personale sanitario nell'emergenza pandemica," in Buoso e Passaro, *Organizzazione e lavoro in sanità*, 251–73; Chiara Contri, Fabrizio Vincenzi, e Katia Varani, "Emergenza sanitaria e condizioni psico-fisiche degli operatori sanitari: un focus sui trattamenti farmacologici," in Buoso e Passaro, *Organizzazione e lavoro in sanità*, 273–96.

and the agreed remuneration, which could not be lower than that provided for in the collective agreement applied in the sector.

The government conceived this procedure to regularise and reduce labour shortages in the agricultural sector. However, at the urging of the sector's employer organisations, 85% of the regularisation applications submitted concerned care and domestic workers[228] This procedure posed serious problems for its implementation. The data on the status of the processing of applications show serious delays and long completion times due to critical issues in the wording of the law and administrative difficulties.[229]

The recent Decree of the President of the Council of Ministers concerning the programming of legal entry flows for migrant workers into Italy for the 2023–2025 period has resulted in an increase in quotas for lawful entry for employment purposes. Furthermore, it has expanded the scope of professional categories and production sectors eligible for consideration. Over the span of three years, a total of 452,000 new admissions are projected (136,000 for 2023, 151,000 for 2024, and 165,000 for 2025), contrasted with an identified demand of 833,000 (274,800 for 2023, 277,600 for 2024, and 280,600 for 2025). Specifically, in sectors such as transportation, construction, tourism, mechanics, telecommunications, food processing, and shipbuilding, additional professional profiles have been approved for entry into Italy. In the sector of care and healthcare, employers are permitted to apply for the admission of 9,500 migrant workers annually over the three-year period, equating to a total of 28,500 individuals. However, this figure falls significantly short of meeting the demands of the care sector.[230] According to recent research, the care sector requires between 57,000 and 68,000 migrant workers during the 2023–2025 period.[231]

As part of the emergency measures temporarily adopted to deal with the COVID-19 pandemic, Decree-Law No. 18 of 17 March 2020 converted into Law No. 27 of 24 April 2020 (*Decreto Cura Italia*), also granted domestic workers the right to abstention from work during periods of active surveillance when in close contact with confirmed cases (Article 26(1)). For the purposes of economic treatment, this period was equally equated with illness, so the cost fell entirely on families. Law Decree 18/2020 also extended the provision on contracting the COVID-19 virus at work to domestic workers (Article 42(2)). However, domestic work has not been listed among the services at high risk of contagion for

[228] William Chiaromonte e Madia D'Onghia, "Migranti, lavoro e pandemia: nuovi problemi, vecchie risposte?" *Rivista giuridica del lavoro e della previdenza sociale* 1 (2021): 3, 11.

[229] Radicali, I. Comitato promotore *Ero Straniero – L'umanità che fa bene. La proposta di legge di iniziativa popolare* (2023) <https://erostraniero.radicali.it/la-proposta/> (Accessed September 18, 2023).

[230] 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* 3 (2023).

[231] Fabio Massimo Rottino e Luca Di Sciullo, *Il fabbisogno aggiuntivo di manodopera straniera nel comparto domestico. stima e prospettive* (Roma: Assindacolf, Fondazione CENSIS, 2023).

which "the simple presumption of occupational origin" operates (INAIL Circular No. 13/2020), although the list provided by INAIL is merely illustrative.

During the COVID-19 pandemic, the legislator confirmed the exclusion of domestic workers and home caregivers from the Wages Guarantee Fund in derogation (Article 22(2) Decree-Law No. 18 of 17 March 2020) but created an allowance paid in the case of non-cohabiting domestic workers and home caregivers with Decree-Law No 34 of 19 May 2020. In essence, the legislator presumed that, during the pandemic, cohabiting domestic workers continued to carry out their activities, being regularly paid, a presumption that has been largely disproved.[232]

During the COVID-19 pandemic emergency, the Italian Government adopted a series of assistance measures. A series of economic benefits were provided for employers, workers (both subordinate and—although to a lesser extent—self-employed) and families.[233]

The Italian government recently enacted a landmark reform aimed at addressing the care needs of elderly individuals, both able-bodied and non-self-sufficient.[234] This legislative initiative, which came into effect on 19 March 2024, represent an effort to modernise its eldercare system. The reform seeks to streamline existing policies, enhance coordination in elderly care services, and promote active aging.

The reform, mandated by National Recovery and Resilience Plan directives, was enacted through Legislative Decree No. 29 of 15 March 2024. Article 9 of Legislative Decree No. 29 of 15 March 2024 establishes the Essential Levels of Social Benefits (*Livelli essenziali delle prestazioni sociali*, or LEPS) and the Essential Levels of Health and Sociomedical Assistance (*Livelli essenziali di assistenza sanitaria e sociosanitaria*, or LEA), which are included in the individualised integrated assistance projects (*Progetti individualizzati di assistenza integrata*, or PAI), which are activated by accessing the single access points (*Punti unici di accesso*, or PUA) pertaining to the social territorial ambits (A*mbiti territoriali sociali*, or ATS).

A core aspect of the reform is the emphasis on preventive healthcare measures and promoting active aging. Initiatives such as telemedicine and preventive health screenings aim to enhance early detection and management of health issues among the elderly population, enabling timely interventions and improved health outcomes. Recognising the importance of social connections, the reform introduces measures to combat social isolation and promote community engagement among older adults. Initiatives such as slow tourism, volunteering, and life-

[232] Borelli, *Who care?*, 187.

[233] Rocco Reina e Marzia Ventura, "Profili organizzativi delle Aziende che si occupano di salute," in Buoso e Passaro, *Organizzazione e lavoro in sanità*, 89–118; Caterina Pasquariello, "L'adeguatezza dell'organizzazione nelle aziende sanitarie: l'emergenza COVID-19 e la spinta verso l'innovazione," in Buoso e Passaro, *Organizzazione e lavoro in sanità*, 119–36.

[234] Silvia Borelli, "L'interregno dei servizi di assistenza per le persone non autosufficienti. Spunti di riflessione nella prospettiva giuslavoristica," in Buoso e Passaro, *Organizzazione e lavoro in sanità*, 55–88.

long learning programs aim to enhance social inclusion and overall well-being among seniors. Moreover, to address housing needs, the reform encourages the adoption of innovative housing models, including shared living arrangements and intergenerational cohabitation. These initiatives aim to create supportive environments where older adults can live independently while fostering social connections and mutual support.

While the reform outlines a comprehensive architecture for elderly care, significant challenges remain, particularly concerning the integration of healthcare and social services across the country. Although the government allocated approximately one billion euros to kickstart the reform, experts estimate that at least seven billion euros will be needed over the legislative term to fully realise its objectives. The challenge lies in mobilising adequate resources and fostering collaboration among regional authorities, local health agencies, municipalities, the third sector, private entities, and citizens to ensure the seamless delivery of care services.[235]

6.5 Training and Competence Development

Articles 5 and 6 of Law No 53 of 8 March 2000 and collective agreements regulate training leave in both the private and public sectors.

To ensure the right to education, employees, both in the public and private sectors, have the option to request specific training leave from their employer, as outlined in Article 5 of Law No. 53 of 8 March 2000. This leave is intended to facilitate the completion of the employee's studies or participation in independently chosen training activities not organised by the employer. Collective agreements govern the procedures and timing for taking this leave, within the legal parameters.

These parameters include: a maximum duration of 11 months over the entire working life; the leave can be taken continuously or in fractions; it's only available after 5 years of service in the same company or administration, with a minimum notice period of 30 days. The employer retains the right to refuse or postpone the request based on proven organisational needs, as outlined in collective bargaining agreements.

Training leave is unpaid, it does not contribute to seniority, it cannot be combined with vacation, sick leave, or other types of leave, and it does not qualify for social security coverage. However, job retention is guaranteed during the leave period.[236]

[235] Barbara Gobbi, "Decreto Anziani, con la pubblicazione in Gazzetta operativa la riforma della non autosufficienza. Bellucci: attuazione corale e progressiva," *Il sole 24 ORE*, 19 March, 2024, <https://www.sanita24.ilsole24ore.com/art/dal-governo/2024-03-19/decreto-anziani-la-pubblicazione-gazzetta-operativa-riforma-anche-non-autosufficienza-bellucci-attuazione-corale-e-progressiva-114101.php?uuid=AFhRcB3> (Accessed March 19, 2024); for a critical discussion, see Sofia Gualandi, "Il tradimento della popolazione anziana non autosufficiente. Analisi di una riforma (mancata), tra rinvii a futuri provvedimenti, eccessi di categorialità e dogma dell'invarianza finanziaria," *Rivista giuridica del lavoro e della previdenza sociale* 4 (2024).

[236] Mario Grandi and Giuseppe Pera, *Commentario breve alle leggi sul lavoro* (Padova: CEDAM, 2009).

Life-long learning leave is leave aimed at enhancing professional knowledge and skills throughout working life and all workers are entitled to it. The training may correspond to an autonomous choice of the worker or be organised by the company, through company or territorial plans agreed between the social partners. Collective agreements define criteria, modalities and number of hours and may provide for a reduction in working hours for worker training projects, financed by the Regions, using an annual share of the Employment Fund. These training projects can also be submitted directly by workers.[237]

During the national stakeholder meeting, two key challenges within the sector were highlighted, both of which could be addressed through enhanced training initiatives. Firstly, there's a notable gap in understanding among professionals regarding each other's competencies. This lack of clarity often leads to uncertainty about what tasks can be reasonably expected from each role. Secondly, there's a recognised lack of team collaboration skills. Effective teamwork not only relies on understanding the capabilities of team members but also on the development of individual competencies. It was noted that current educational programs fail to provide ample opportunities for professionals to acquaint themselves with one another's strengths. Introducing collaborative elements into training courses could be beneficial in fostering teamwork capabilities among future practitioners.[238]

7. Social Security Coverage and Benefits

Section 7 of the report describes the Italian welfare state. Specifically, it deals with social security measures, social assistance, the national health service and the complementary role of collective bargaining.

7.1 The Italian Welfare State Model

Social security law in Italy encompasses legislation aimed at guaranteeing the protection of persons in situations of socially relevant need. This legislation finds its constitutional foundation in Article 3(2) of the Constitution, which states that the Republic has the obligation to "remove obstacles of an economic and social nature" that prevent substantial equality among citizens.

The Italian welfare state model is a mixed one and incorporates elements of the Bismarckian model (i.e. the social insurance model) and the Beveridgian model (i.e. the social security model).[239]

[237] Grandi e Pera, *Commentario*.

[238] CARE4CARE, "Minutes."

[239] Italian law uses the term "social security" (*previdenza sociale*) to refer to forms of insurance-based social measures, the regulation of which is based on cooperation in the financing of the beneficiaries and on the close correlation between social security contributions and labour income. As opposed to social security, Italian law regulates "social assistance" (*assistenza sociale*) guaranteed by the State through general taxation within the limits of available resources and

The constitutional provision that governs the welfare state in Italy is Article 38 of the Constitution, which provides for social assistance and social security.[240] Article 38(1) establishes a right to social assistance for citizens who are both unable to work and lack the economic means to meet basic living needs. These persons are entitled to existential maintenance in order to meet every day needs. Article 38(2) provides for a right to social security for workers. Workers have the right to have adequate means provided and insured for their life needs in the event of an accident, illness, invalidity and old age, or involuntary unemployment. Article 38(3) affirms the right of disabled and disadvantaged persons to education and vocational training. Article 38(4) stipulates that it is the State that is required to intervene, through specially designed or integrated bodies and institutions to guarantee both assistance and social security. Finally, Article 38(5) recognises the freedom of private care.[241]

Regarding social legislation, the Italian Constitution guarantees equal treatment of nationals and non-nationals. However, legislation limits access to certain social security and assistance benefits for non-nationals. Specifically, benefits under the ordinary social security system (e.g. sickness or old age insurance) tend to be guaranteed to nationals and non-nationals. However, non-national seasonal workers are excluded from unemployment protection and the right to family allowances. Regarding social assistance, non-nationals face significant legislative limitations that link access to benefits to citizenship and/or a specific residence title and/or prolonged residence in the territory.

7.2 Social Security

The Italian social security system tends to cover all workers, employed and self-employed. The five essential pillars that constitute the Italian social security system are:[242]

concerning health services (National Health Service), allowances for the subsistence of persons below the poverty threshold and inclusion measures for marginalised persons.

[240] Maurizio Cinelli, *Diritto della previdenza sociale* (Torino: Giappichelli, 2022); Maurizio Cinelli e Stefano Giubboni, *Lineamenti di diritto della previdenza sociale* (Padova: CEDAM, 2022); Mattia Persiani e Madia D'Onghia, *Diritto della sicurezza sociale* (Torino: Giappichelli, 2022); Edoardo Ales et al., *Diritto della sicurezza sociale* (Milano: Giuffrè, 2021).

[241] Paola Olivelli, *La costituzione e la sicurezza sociale* (Milano: Giuffrè, 1989); Lorenzo Gaeta, *Infortuni sul lavoro e responsabilità civile. Alle origini del diritto del lavoro* (Napoli: Edizioni Scientifiche Italiane, 1986).

[242] Simonetta Renga, *La tutela del reddito. Chiave di volta per il lavoro sostenibile* (Napoli: Editoriale Scientifica. 2022); Stefano Giubboni, Giuseppe Ludovico e Andrea Rossi, *Infortuni sul lavoro e malattie professionali* (Padova: CEDAM, 2020); Gian Guido Balandi et al., *I lavoratori e i cittadini. Dialogo sul diritto sociale* (Bologna: il Mulino, 2020); Simonetta Renga, "La famiglia nella previdenza sociale," in *I lavoratori e i cittadini. Dialoghi sul diritto sociale*, a cura di Gian Guido Balandi et. al. (Bologna: il Mulino, 2020); Guido Canavesi e Edoardo Ales, a cura di, *La tutela per la disoccupazione nelle trasformazioni del lavoro seminari previdenziali maceratesi 2018* (Macerata: eum, 2020); Rosa Casillo, *La pensione di vecchiaia. Un diritto in trasformazione* (Napoli: Edizioni Scientifiche Italiane, 2016); Giuseppe Ludovico, *Tutela previdenziale per gli infortuni sul lavoro e le malattie professionali e respon-*

- Insurance against accidents at work and occupational diseases.
- Insurance against disability, old age and survivors.
- Insurance against unemployment, reduced employment and income discontinuity.
- Protection against employer insolvency.
- Family protection.

A distinction must be made between pension treatments and other forms of social security protection both in relation to subordinate employment and self-employment.

Pension benefits cover all employed and self-employed workers, and also extend to situations where work was absent (e.g. survivor's pension). Employees and, in different forms, self-employed persons have social security protection in case of illness and maternity. Conversely, insurance against accidents at work and occupational diseases applies to all employees and only to a limited number of categories of self-employed workers.

Instruments designed to respond to economic needs following the suspension or loss of work cover all employees and, following the financial and economic crisis of 2009–2012 and the COVID-19 pandemic emergency, partially the self-employed workers.

Institutionally, all forms of protection for employees and some categories of self-employed workers are mainly managed by two public bodies at the national level: the National Social Security Institute (INPS) for pensions and the National Insurance Institute for Accidents at Work (INAIL) for insurance against accidents at work and occupational diseases.

The financing of the social security system is mixed and therefore based on social security contributions and state transfers. The latter increased following the emergence of a structural shortfall during the COVID-19 pandemic and the economic crisis of 2009–2012. However, the increase in contributions has posed the problem of the financial sustainability of the system, leading to periodic consolidation interventions.

The Italian social security model evolved in the 1980s, moving away from the social insurance model to structure itself around the principle of solidarity from a social security perspective. The central moment in this process was the adoption of the pay-as-you-go pension system in the management of social security resources, instead of the capitalisation system typical of social insurance.

The cornerstone of the pension system is intergenerational solidarity between those who work today and those who will work tomorrow. As a consequence of

sabilità civile del datore di lavoro (Milano: Giuffrè, 2012); Giuseppe Alibrandi, *Infortuni sul lavoro e malattie professionali*, a cura di Francesco Facello e Patrizio Rossi (Milano: Giuffrè, 2002); Pietro Zanelli, "Morte del titolare del reddito nel diritto della sicurezza sociale," in *Digesto delle discipline privatistiche. Sezione commerciale* (Torino: UTET, 1994); Olivelli, *La costituzione e la sicurezza sociale* (n.239); Gaeta, *Infortuni sul lavoro e responsabilità civile* (n.239).

the adoption of this model, minimum pensions, the indexation of pensions, and the principle of automaticity of benefits were progressively introduced, allowing the worker access to protection even if the employer fails to pay contributions.

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.[243]

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.[244] 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. The latest agreement, a rarity in number, was finalised with Moldova on18 June 2021, officially enforced on 1 December 2023, as ratified by Law no. 94 of 11 July 2023, which formalised the Agreement between the Italian Republic and the Republic of Moldova on social security. This development was also acknowledged in the INAIL Circular Letter, 11 April 2024, no. 9.[245] 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.

7.2.1 Domestic Workers and Home Caregivers

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).[246]

[243] CARE4CARE, "Minutes"; NOSOTRAS, "Responses".

[244] Chiaromonte e D'Onghia, "Migranti, lavoro e pandemia," 521 ff.

[245] INAIL, "Accordo tra la Repubblica italiana e la Repubblica di Moldova," INAIL, 11 aprile 2024, <https://www.inail.it/cs/internet/comunicazione/avvisi-e-scadenze/avv-internet-accordo-italia-moldova-23.html> (Accessed February 7, 2024).

[246] Borelli, *Who care?*, 187.

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.

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 actually 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. In this case, the amount of unemployment benefits is affected by the calculation on the basis of the conventional wage. Domestic workers and home caregivers do not qualify for other income support measures (such as, for example, the wage guarantee fund).[247]

7.3 Social Assistance

Regarding social assistance, Law No. 328 of 8 November 2000 established an integrated system of measures and social services with an explicit character of universality, which recognises the right to benefits and services for Italian and EU citizens and their family members, as well as for documented third-country nationals, refugees and stateless persons. However, the legitimacy of the different treatment of non-nationals is debated in the case law. Among all protected persons, priority is given to those in conditions of poverty or economic need.[248]

Institutionally, the social assistance system is structured around the principle of subsidiarity, recognised by Article 118(4) of the Constitution.

Administrative functions are divided among several local authorities that compose the Italian State's institutional framework: the Municipalities, the Regions and the State. The municipalities are responsible for the functions concerning welfare interventions at the local level and participation in regional planning. The Regions are responsible for planning, coordinating, directing social interventions and verifying their implementation. The State has powers to direct, coordinate and regulate social policies, as well as to identify the es-

[247] Borelli, *Who care?*, 187–90.

[248] Cinelli, *Diritto della previdenza sociale*.

sential levels of services. Moreover, public administrations must recognise and facilitate the role of private operators.

As for the sources of funding, welfare benefits and services are primarily addressed to those without means of subsistence and are subsidised through taxes paid by citizens.

The typology of benefits and services is very diversified both because of the social dynamics that can generate new needs and because the competence to regulate them lies with the Regions. However, these benefits are provided in the presence of situations of personal and/or family need, both from an economic point of view and in relation to health conditions or social difficulties.

Some economic benefits are provided at the national level and granted by INPS in favour of certain categories of civil invalids: persons with visual disabilities (Law No. 66 of 10 February 1962 and Law No. 382 of 27 May 1970), persons with hearing disabilities (Law No. 381 of 26 May 1970), persons with physical disabilities (Law No. 118 of 30 March 1971).The benefits provided are the civil disability pension and the monthly assistance allowance (Law No. 118 of 30 March 1971). In order to be entitled to these disability benefits, it is necessary to prove a significant reduction in working capacity or a total inability to work, as well as a situation of economic need, attested by the possession of an income requirement. A disabled person who needs continuous assistance and is unable to perform daily acts of life is also entitled to an accompaniment allowance (Law No. 18/1989) in addition to the disability allowance. Upon reaching retirement age (67 years of age), the allowances change to a civil disability pension.[249]

At the state level, the citizenship income was introduced (Law No. 26 of 28 March 2019). It was a social assistance measure to combat poverty and, at the same time, an active labour policy. However, this benefit was repealed by the Meloni government with Budget Law 2023 (Article 1(318) Law No. 197 of 29 December 2022) and will no longer be applied from 2024.

7.4 National Health Service

Article 32 of the Italian Constitution stipulates the right to health.[250] To implement this article, Law No. 833 of 1978 established the National Health Service (NHS). The NHS provides free healthcare to all citizens (including non-nationals) regardless of gender, location, age, income and employment and is based on the following fundamental principles:

- Public responsibility for health protection.
- Universality and fair access to health services.

[249] Cinelli, *Diritto della previdenza sociale*; Cinelli e Giubboni, *Lineamenti di diritto della previdenza sociale*.

[250] For a discussion on the economic and social sustainability of the Italian healthcare organisation see Giulia Pancioli, "La Sostenibilità economico-sociale come modello di sviluppo dell'organizzazione sanitaria," in Buoso e Passaro, *Organizzazione e lavoro in sanità,* 137–60.

- Global coverage based on the care needs of each individual, in accordance with the essential levels of care.
- Public financing through general taxation.
- "Portability" of rights throughout the national territory and reciprocity of care with other Regions.

The governance of the health system is exercised mainly by the State and the Regions, according to the distribution of competencies established by the Constitution and the legislation. The healthcare system is a shared competence between State and Regions. State legislation is responsible for determining the essential levels of care that must be guaranteed throughout the national territory. Regions legislate on the matter in compliance with the fundamental principles and essential levels of care laid down by State legislation. According to the constitutional principle of subsidiarity, the health service is articulated according to two levels of responsibility and governance:[251]

- Central level: the State is in charge of ensuring the right to health to all citizens through a strong system of guarantees, through the essential levels of care.
- Regional Level: the Regions have direct responsibility for the implementation of governance and expenditure to achieve the country's health objectives. The Regions have exclusive competence in regulating and organising services and activities for the protection of health and the criteria for financing local health agencies and hospitals.

The NHS is composed of agencies and bodies of different institutional levels, which contribute to achieving the objectives of protecting the health of citizens. The Ministry of Health is the central authority and is assisted at the national level by the Superior Institute of Health and the Experimental Zoo-prophylactic Institutes. At the territorial level, the Regions and Autonomous Provinces and the Local Health Authorities are NHS bodies.

For the purposes of this study, it is of relevance to note that irregular foreigners are entitled to benefit from health services that cannot be postponed and are urgent on the basis of the provisions of Article 35 of the Consolidated Immigration Act.

7.5 Complementary Role of Collective Bargaining

Since 2016, collective agreements have started to introduce company welfare schemes. The metalworkers' trade unions were the first to sign a collective agreement providing for company welfare in November 2016, followed in June 2017, by the goldsmiths-jewellers and in 2018, by the telecommunications workers.

[251] Ministero della Salute, "Quadro istituzionale e organizzativo del sistema', *Relazione sullo stato sanitario del Paese* (Ministero della Salute 1999) 201 ff.

National collective agreements in the care sector do not provide for specific forms of company welfare. However, healthcare institutions may sign supplementary territorial or company agreements that provide for benefits and company welfare.

In Italy the existing models of company welfare are of two types: compulsory and optional. Compulsory company welfare is that specifically established by a collective agreement, whereas optional welfare is a disbursement established by the employer.[252]

Existing company welfare schemes mainly include purchase vouchers (provided by the company itself or through agreements with other organisations); fuel vouchers; recreational benefits (e.g. magazine or pay TV subscriptions); scholarships; study holidays for youth; educational and training courses; cultural activities; sports activities; medical check-ups and specialist visits; and care services for children, elderly or disabled people.

The devices used to provide these forms of company welfare are digital platforms on which workers have an account that allows them to use the vouchers. These company welfare schemes are not subject to taxation or social security contributions.

8. Concluding Remarks

The Italian care sector has numerous peculiarities from an economic, social, labour law, industrial relations, and social system perspective.

Starting from the economic and social aspects, it can be described based on statistical trends taking into account the different care workers. In the Italian public and private health sector, the health professionals with at least at most a bachelor's degree are predominantly women with a rather high average age who work predominantly as subordinate workers in hospital facilities and are in a condition of high work-related stress due to very severe staff shortages. Regarding remuneration, health professionals have a gross wage which varies between a minimum of 16,016.00 euros and a maximum of 29,495.05 euros per year, which is on average lower than their colleagues in Western European countries. Moreover, to reduce labour costs, public and private health facilities have resorted to widespread outsourcing and precarity of these workers.

In the public and private health and care sectors, social and care workers, along with basic care workers, operate under varied regional regulations. Collective agreements often aim to harmonise these categories, establishing uniform compensation and regulatory standards. Remuneration for these workers typically falls between 13,551.98 euros and 24,308.96 euros annually. Predominantly female, with relatively advanced ages, these workers are primarily employed in health facilities, elderly care centres, and disability residences. Nearly

[252] William Chiaromonte e Maria Luisa Vallauri, a cura di, *Modelli ed esperienze di welfare aziendale* (Torino: Giappichelli, 2018).

all these workers are female, have a fairly high average age, although lower than that of health professionals.

In a 2019 report, the OECD and the European Commission showed that Italy employs fewer health professionals than almost all Western European countries. FNOPI estimates that Italy would need between 50,000 and 60,000 health professionals to bring the country in line with the EU average. Concerning the social and health workers, there are no precise data on the labour shortages.

In the home care sector, home caregivers are essential, as there is a severe lack of public home care. The percentage of migrant women in this sector is preponderant. The wages of these workers are extremely low and often undeclared. The level of irregular or undeclared workers in the sector is the highest in Italy. Home caregivers are subject to the regulation of domestic work at both a legislative and contractual level. This special regulation guarantees far less protection than that generally provided for subordinate workers (e.g. termination of employment at will). This is the result of a progressive reduction of public investments and a corresponding privatisation of home care work. The legislative choice is to shift the costs of caring for the elderly, people with disabilities and vulnerable persons onto families. Therefore, the state reduces public home care and provides monetary allowances to buy the necessary care services on the market. Since the costs of home care are high for families, it can be argued that the legislation provides for less strict and more flexible regulation of home caregivers to enable families to access these services.

Another relevant aspect concerns labour law. Italian labour law aims to protect the subordinate worker who is the weaker party in the employment relationship. Whereas self-employed workers benefit from much less protection than subordinate workers by their alleged professional ability to stay on the market. Italian labour law is the result of the intertwining of legal and contractual regulations. The legal discipline regulates the framework of the employment relationship by determining the powers and obligations of the parties and the sanctions in the event of violation. Collective agreements pervasively complement and derogate from legal regulation. However, the production of collective agreements in the private sector presents several problems. Indeed, private industrial relations are little regulated by law and have developed following a private model. Italian trade unions are unregistered private associations; they have proliferated over time, multiplying based on the constitutional and legal principle of freedom of trade union association. The most representative trade unions in Italy have a confederal character, gathering within them sectoral federal unions. However, the representativeness of trade unions is not certified by any authority (because trade unions are not registered) and this also affects the determination of the coverage of collective agreements negotiated by the social partners. Indeed, collective agreements in the private sector do not have a general effect on all workers because they are not concluded based on the provisions of Article 39(2) of the Constitution, thus being of private law with validity between the parties that signed them. Conversely, in the public sector, the law regulates the system of industrial relations, thus determining collective agree-

ments that have general validity for all workers in the sector and are signed by trade unions whose representativeness is certified.

This system of industrial relations has a strong impact on workers. The proliferation of collective agreements under private law has economically and regulatory disadvantaged workers. Many collective agreements provide for very low wages and poor working conditions. These agreements are often negotiated by trade unions with very little representativeness, but – as the constitutional model of industrial relations is not implemented – they have the same nature of the agreements negotiated by more representative organisations and can be applied by an employer. A further problem with collective agreements concerns the opacity of personnel classification systems. This opacity can lead to economic disadvantages for workers; hence a debate exists as to whether collective agreements are adequate in classifying workers, especially in the care sector. The existence of precise legislation and a collective agreement with general validity in the public sector also raises a problem. Between private and public collective agreements there is both an economic and regulatory discrepancy, which raises the issue of equal treatment and equality between workers doing the same job.

Likewise, the Italian welfare system impacts strongly on workers in the care sector. Italy has a public national health service that allows everyone (national and non-national, regular or irregular) access to healthcare. This system is strongly regionalised; therefore, it is very unequal concerning the services provided and the role of private healthcare. Furthermore, the Regions regulate differently the procedures for obtaining qualifications to exercise the social and care worker and the basic care worker professions. This difference poses a problem for the coherence of the system as well as for the protection of workers. Regionalisation also plays a role in social assistance. Although INPS offers universal benefits, Regions often provide vouchers and allowances to buy care services on the market, thus contributing to the do-it-yourself welfare. The latter has become widespread since the 1990s when Italian public social policy started to place an increasing burden of care costs on families. The consequence was an increase in the supply of social benefits on the market and a reduction in worker protection. Therefore, families to meet basic care needs have resorted to hiring, often irregularly, non-national home caregivers. However, the contraction of regular access migration quotas pursued by Italian governments has resulted in a shortage of these home caregivers, leading to an increase in the employment of undocumented migrants. A reversal in the restrictive access policy occurred in 2021.

The lack of public investment negatively impacted both home caregivers and families. The former receive very little economic and regulatory treatment and experience very stressful working conditions, the latter are deprived of public assistance and have to acquire care services on the market. Other categories of workers are also negatively impacted. Health professionals, social and care workers and basic care workers face complex economic and social conditions. The consequence is an overall deterioration of the work and services offered by the care sector. This system has enormous social and economic costs and is unable to meet care needs decently for all those involved.

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Appendix

The tables below provide a summary of the key elements of the collective agreements applicable to health professionals, social and care workers and basic workers employed in the public and private health sector.[253] The reference contracts include the unified contract for the public sector and the most representa-

[253] The tables are elaborated on the basis of the analysis conducted in Chiara Vannini, "Diritti e doveri del contratto in sanità pubblica e privata," *Nurse24.it*, 21 luglio, 2018, <https://www.nurse24.it/dossier/pubblico-impiego/ccnl-confronto-sanita-privata.html> (Accessed January 26, 2024).

tive contract for the private sector (CCNL for workers in the private healthcare sector associated with ARIS, AIOP, three-year period 2016-2018, in provisional force pending renewal).

Table 1 – Recruitment and Working Hours.

	Public healthcare sector	Private healthcare sector
Recruitment	In the public healthcare sector, employment relationships are established through: - Public competition (for permanent contracts). - Public notice (for fixed-term contracts).	The hiring of employees for private employment is carried out through direct appointment (upon the request of the employee) in accordance with the provisions of the law regarding private law relationships.
Probationary period	- 2 months for categories A and B. - 6 months for all other categories.	- 2 months for categories A and B. - 6 months for all other categories.
Working time	In the public sector, the standard working week consists of 36 hours: - If work is distributed across 5 days, the daily schedule is 7 hours and 12 minutes. - If distributed across 6 days, the daily workload is 6 hours. The minimum weekly working hours are set at 28, while the maximum is capped at 44 hours per week. Additionally, employees are entitled to a minimum of 11 consecutive hours of rest within every 24-hour period.	In the private sector, working hours are structured as follows: - Employees categorized in economic positions ranging from A to DS3 (excluding D4) work for 36 hours. - D4 employees and others work for 38 hours, typically distributed across 6 days. The administration sets the working hours and their allocation. The minimum weekly workload ranges from 28 to a maximum of 44 hours. Workers are entitled to 11 consecutive hours of rest within every 24-hour period.
Part-time	Part-time employment in the public sector is granted according to an annual staffing plan and upon request of the employee for personal needs. It is established at the time of hiring or through transformation during the employment period upon the employee's request. The administration may decide to publish a notice with a related ranking list to assign priorities. The percentage of part-time workers must not exceed 25%. It can be carried out in the following forms: a) Horizontal part-time; b) Vertical part-time; c) Mixed part-time.	Part-time employment in the private sector is established either at the time of hiring or upon request by employees. The percentage of part-time workers must not exceed 25%. It can be carried out in two forms: a) Horizontal part-time; b) Vertical part-time.
Weekly rest	All workers are entitled to one day of rest per week. If this is not possible, they must be provided with two consecutive days off within a 15-day period.	All employees are entitled to a weekly day of rest, typically falling on Sundays. This weekly rest period is non-negotiable and cannot be substituted for monetary compensation.

Table 2 – Holidays and Leave.

	Public healthcare sector	Private healthcare sector
Holidays	Holidays for civil servants are allocated as follows: - Permanent employees with a six-day work schedule are entitled to 32 days of annual leave, with an additional 4 days off. - Fixed-term employees and new recruits within their initial three years receive 30 days of annual leave, with an additional 4 days off. - Permanent employees with a five-day work schedule are entitled to 28 days of annual leave, along with 4 designated public holidays.	30 days of annual leave, plus 4 designated public holidays per year.
Leaves	Paid leave entitlements include: - 8 days per year for participation in competitions, examinations, or optional further training. - 3 days for bereavement. - 3 days per year for personal reasons without justification. - 15 consecutive days for marriage. - Leave for blood donation. - 3 days per year for attendance at court, provided it pertains to a work-related case. - Leave for serving at election polling stations. - 3 days for medical visits or examinations.	Paid leave entitlements include: - Marriage (15 consecutive days). - Examination support for primary, secondary and vocational education courses in state, religious or legally recognised institutions, including universities, for the duration necessary to sit the examinations. - Bereavement (5 days). - Blood donation. - Election duties. - Up to 5 days for important family matters. - Three days per year for documented serious illness of spouse, cohabiting partner or second-degree relative. Unpaid leave may be granted for: - Participation in professional development courses pertinent to the service. If healthcare facilities necessitate staff attendance at such courses, the leaves will be compensated upon submission of exam results and attendance declarations. - Demonstrated need for prolonged care due to family illness (ranging from 15 days to 6 months).
Hourly leave	The employee may request and obtain prior authorisation from the head of the business unit for an hourly leave. - Leave must not exceed half of the daily working time. - Leave must not exceed a total of 36 hours per year. The employee is obliged to make up the missing hours within the following month; failure to make up the hours results in a proportional deduction from the salary.	The company may grant employees, upon request, leave for special personal needs under the following conditions: - Leave must not exceed half of the daily working time. - Leave must not exceed 36 hours per year. The employee is obliged to make up the hours not worked within the following month; failure to do so will result in a proportional reduction in pay.

Table 3 – Illness and Accidents.

	Public healthcare sector	Private healthcare sector
Illness	Job retention for a maximum of 18 months within a three-year period (an additional 18 months in case of serious illness) Economic treatment: - First 9 months: full monthly fixed salary. - Following 3 months: 90% of the salary. - Following 6 months: 50% of the salary. For any additional 18-month extension, the employee is not compensated.	Job retention is guaranteed for a maximum of 18 months within a four-year period. This duration is extended to 20 months in the case of recurrent illnesses requiring prolonged hospitalisation. If the employee remains hospitalised beyond 20 months, he/she has the option of requesting three months of unpaid leave. Regarding economic treatment: - Full compensation at 100% of salary is provided for the initial 12 months within the four-year period.
Accidents	Job retention up to a maximum of 18 months, extendable to a further 18 months in the case of particularly serious circumstances. Normal pay is due for the entire period	100% of remuneration for the first 12 months in a four-year period

Table 4 – Vocational Training.

	Public healthcare sector	Private healthcare sector
Training	- Participation in competitions, examinations, or optional training (8 days per year). - Specific leave for training, reserved for employees with at least 5 years' seniority in the same hospital unit and institution, reserved for 10% of employees.	Paid leave is granted to attend training, qualification, and retraining courses relevant to the respective subject, as follows: - Up to 12% of staff in the health and welfare sector, classified in categories A and B. - Up to 8% of the remaining staff, excluding medical personnel, across all classifications.
Learning leave	A maximum of 150 individual annual hours are allocated, targeting 3% of the workforce. These hours are compensated and assigned to pursue university, post-university, primary, secondary, or professional qualification studies leading to a professional degree.	A maximum of 150 individual hours are allocated to 3% of the staff on duty. These hours are compensated exclusively for the attainment of compulsory qualifications. On the other hand, attendance required for the attainment of qualifications or certifications in university courses, state schools or legally recognised institutes is not remunerated.

Table 5 – Overtime work and allowances

	Public healthcare sector	Private healthcare sector
Overtime work	- The annual limit for overtime hours is set at 180 hours, with provisions allowing for exceptions under extraordinary circumstances, permitting a maximum of 250 hours annually. Public employees have the option to receive compensation or time off for overtime worked. Economic compensation for overtime: - A 15% increase is applied for daytime overtime. - A 30% increase is applied for overtime worked on public holidays and during nighttime hours. - Overtime worked during nighttime hours and on public holidays is compensated at a rate of 50% above the standard wage.	- Annual overtime may not exceed 180 hours. - Overtime may be compensated with leave at the employee's request and according to the needs of the service. Overtime compensation rates are as follows: - 20% increase for daytime overtime hours. - 30% increase for night or holiday overtime hours. - 50% increase for night and holiday overtime.
Required availability or on-call service	The on-call service must: - Be limited to night shifts and holidays. - Be limited to a maximum of 6 shifts per month. - Have a duration of 12 hours, or for a shorter period, but not less than 4 hours. It entitles the employee to an allowance of 20.66 euros; for shifts shorter than 12 hours but longer than 4 hours, an allowance of 1.89 euros per hour is granted with a 10% premium. - In addition to the allowance, the service hours are remunerated as overtime with the applicable overtime premiums.	The on-call service entails the following guidelines: - It must occur outside of regular scheduled working hours. - Each session spans 12 hours, entitling the employee to a gross allowance of 21.69 euros per 12-hour period. For shorter durations, the allowance is prorated and increased by 10%. - The service cannot be less than 4 hours in duration. - Any work performed during a call-out is categorized as additional or overtime work, compensated either monetarily or with compensatory time off, depending on service needs and the individual's preference. - No more than 8 days of availability per month may be scheduled for each employee.
Allowances	The allowances for public employees are classified as follows: - Night duty allowance: 4 euros gross per hour worked between 10pm and 6am. - Holiday shift allowance: 2.55 euros gross per hour. - Allowances for intensive and sub-intensive care: 5.00 euros per day for health and social workers and 1.50 euros per day for technical assistants and support staff.	- Radiological risk allowance: 1,239.50 euros gross per year, distributed proportionally according to actual service. In addition, 15 days of leave per year are granted for radiological risk. - Anti-tubercular prophylaxis allowance: 0.16 euros gross per day, applicable to all staff working in the tisological wards or operating units. - Night shift allowance: 2.74 euros gross for each hour of service between 10pm and 6am.

	Public healthcare sector	Private healthcare sector
	- Allowances for nephrology and dialysis services: 5.00 euros per day for health and social workers and 1.50 euros for technical assistants and support staff. - Allowances for home care services: 5.00 euros gross for health and social work staff, and 1.50 euros for technical assistants and support staff. - Allowance for infectious disease or similar hospital unit workers: 5 euros gross per shift for health and social work staff, and 1.50 euros for technical care workers and support staff. - Allowance for emergency service operators: 5.00 euros gross per shift for healthcare and social-healthcare staff, and 1.50 euros for technical assistance and support staff.	- Holiday shift allowance: 17.82 euros gross if the service exceeds half of the shift, reduced to 8.91 euros gross if the service is half or less of the shift, with a minimum duration of 2 hours. - Allowance for 3-shift work: 4.50 euros per day, provided the staff is effectively rotated in the morning, afternoon, and night shifts during the month. - Allowances for intensive care: 4.13 euros per day. - Allowances for sub-intensive care, nephrology, and dialysis services: 4.13 euros. - Allowances for working two shifts: 2.06 euros per day, provided there is an effective rotation of staff between the two shifts during the month. - Home care allowance: 5.16 euros gross.

Table 6 – Personnel classification and disciplinary measures.

	Public healthcare sector	Private healthcare sector
Personnel Classification	The classification system comprises the following categories: - Health professionals and administrative officials. - Assistants. - Operators. - Support staff.	The classification system comprises five categories denoted as A, B, C, D, and E. Category D includes a subcategory known as the Super Economic Level (DS), which is further segmented into five economic positions.
Disciplinary measures	Misconduct by public employee, as provided for in the disciplinary rules, may result in the following administrative measures: - Verbal reprimand. - Written reprimand/censure. - Fine, up to a maximum of 4 hours' pay. - Suspension from duty without pay for up to 10 days. - Suspension from duty without pay, from 11 days to a maximum of 6 months. - Dismissal with notice. - Dismissal without notice. In addition: - Suspension from work without pay for up to 15 days. - Suspension from work without pay for a minimum of 3 days and a maximum of 3 months. - Suspension from work without pay up to a maximum of 3 months.	An employee's misconduct may result in the following disciplinary measures being taken by the Administration: - Verbal reprimand. - Written reprimand. - Fine not exceeding the amount of four hours' pay. - Suspension from work and pay for a period not exceeding 10 days.

	Public healthcare sector	Private healthcare sector
Termination of employment	The permanent employment contact may conclude under the following circumstances: - Upon reaching the maximum retirement age as stipulated by current legislation. - Through termination initiated by either the employer (dismissal) or the employee (resignation). - Due to the death of the employee. - For exceeding the sick leave duration outlined in the collective labour agreement (CCNL). - Following an accident, occupational disease, or incapacitating condition that renders the individual unfit for work (unfitness for profitable work). - For dismissal resulting from a serious breach of the disciplinary code. - Upon loss of citizenship, where citizenship is a prerequisite for employment. Notice Except in cases of automatic dismissal or dismissal without notice, notice of dismissal is provided as follows: - Two months for employees with a length of service of up to five years. - Three months for employees with a length of service of up to ten years. - Four months for employees with more than ten years of service. If the employee chooses to terminate the contract, he/she must give written notice to the company and the notice period is halved.	The employment relationship terminates in the following cases: - By dismissal of the employee under the laws in force for private law relationships. - By resignation of the employee. - By death of the employee. - By compulsory retirement due to age limit. Notice The notice period for dismissal or resignation, for personnel hired on an indefinite-term basis and who have completed the probationary period, is set at 30 days for all employees