



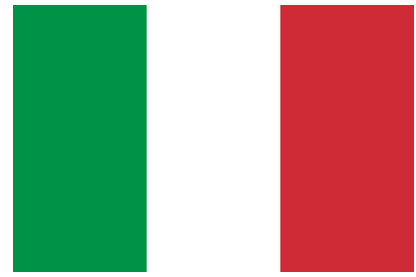
## **Post-employment payments Italian vs. Danish regulation**



Employees may be entitled to certain payments even after the employment has come to an end.

Severance payments, compensation for restrictive covenants and the final settling of holiday allowance are all examples of payments which fall due upon or after the end of an employment relationship, and often it is crucial for an employer to have taken such payments into consideration when making the decision to terminate an employment relationship.

This article provides an overview of some of the most common post-employment payments in Italy and in Denmark.



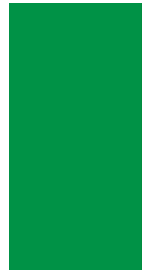
In Italy, the term “post-employment payments” refers to all sums due to an employee upon termination of employment, in addition to the last accrued salary; therefore, based on Italian terminology, this category does not include compensation amounts that an employer may be ordered to pay as a result of a negative outcome before an employment tribunal.

Under Italian law, these amounts are of three different types:

- I. **Severance payments that the employee is entitled to receive in any case of termination of employment (dismissal, resignation, redundancy, expiry of fixed-term employment contract, retirement, etc.)**

**I.I. First of all, we have severance pay (called “TFR” in Italy), which is a deferred remuneration governed by Art. 2120 of the Italian Civil Code.**

We have a very complex regulation on this topic, and for this reason it may be useful to explain it by answering some questions, such as:



## **When does a worker accrue severance pay?**

According to the general rule, an employee accrues severance pay for each year of employment. However, if the employment relationship lasts less than a year, the portion is reduced pro rata in proportion to the months worked; if the employment was for a period of 15 days or more, the entire month of work is counted.

## **How can a worker manage the accrued severance pay?**

Within the first 6 months of employment, an employee can choose between two alternatives:

- (a) to set aside the severance pay accrued in the company, and receive it from the employer on termination of employment (in this case, the rules of the mandatory public social security system are applied);
- b) to allocate the TFR to a supplementary pension fund. The purpose of supplementary pension funds is to ensure the subscriber greater social security protection than that provided by the mandatory public social security system. The reference legislation is currently contained in Legislative Decree No. 252/2005.



## **How is severance pay calculated?**

Pursuant to Article 2120 of the Italian Civil Code, “remuneration to be included for the purposes of calculating severance pay” is all sums paid to an employee in connection with their employment on a non-occasional basis (excluding reimbursement of expenses).

Therefore, only those payments related to unforeseeable or unplanned business situations should be excluded from the calculation.

Otherwise, payments related to work or the organization of work, even if not paid regularly and frequently, should be taken into consideration for the purposes of calculating severance pay.

Collective labour agreements may establish the mandatory items to be included, excluding those items that are not to be considered for severance pay.



## **Can employees ask an employer for early payment of the severance indemnity?**

Pursuant to Article 2120 of the Italian Civil Code, an employee with at least eight years of service with the same employer may request, during their employment, an advance not exceeding 70% of the severance indemnity to which they would be entitled if their employment were terminated on the date of the request.

Such requests must be justified by:

- Healthcare costs for non-routine treatment or surgery recognized by the competent public facilities;
- Purchase of the first home for themselves or their children;
- Expenditure to be incurred during periods of maternity leave, for ongoing learning or to obtain an academic qualification.

The advance may be paid only once in the course of a person's employment, and is deducted from the total severance pay accrued.



## **What is the social insurance contribution and tax regime for severance pay?**

Severance pay is excluded from the taxable base used for the calculation of social insurance contributions. With regard to taxation, tax should be determined on the basis of an average rate, according to the methods provided for the separate taxation of severance pay.

## **What are the consequences for an employer who does not pay severance pay?**

In this case, Italian law provides for civil, criminal and administrative sanctions against the employer.

### **1.2. Thirteenth or fourteenth month's salary (or their accruals)**

In Italy, it is common for the annual salary to be paid in 13 or 14 equal monthly instalments. In most cases, the 13th month's salary is paid in December. However, if the employment ends earlier, the thirteenth month payments accrued by the employee at the termination date are also included pro rata in the severance payment.

These last considerations also apply to the fourteenth month's salary.

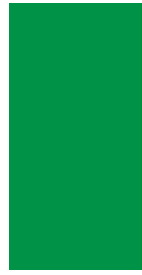


## 2. Indemnity in lieu of notice

The indemnity in lieu of notice is due:

- when an employer gives notice of dismissal (for a reason other than for just cause) and does not require the employee to work the notice period provided by the collective agreement. In this case, at the end of their employment the employee will be paid the remuneration that they would have received if they had worked during the notice period;
- when an employee resigns (for a reason other than constructive dismissal) and does not comply with the notice period provided by the collective agreement. In this case, at the end of the employment the employer will not pay the employee the remuneration that would have been paid during the notice period.





### **3. Other possible severance payments**

#### **3.1. Payments for unused leave and holidays**

During the employment, it may happen that an employee does not take all the leave and holidays to which they are entitled. In this case, at the end of the employment, the employer must pay the amount corresponding to the holidays and leave not taken.

#### **3.2. Incentive to leave**

An employer and employee may reach an agreement whereby the company, at the end of the employment, undertakes to pay the employee a sum by way of redundancy incentive.

In the case of such agreements, this amount also forms part of severance pay.

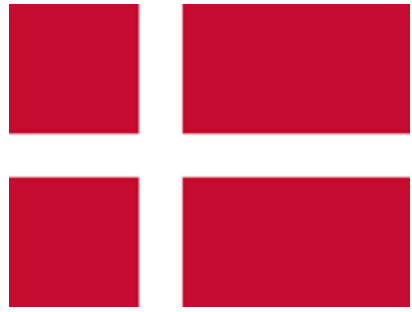
#### **3.3. Sums provided under a non-competition agreement**

With a non-competition agreement, an employer restricts the type and location of work an employee may perform following the termination of their employment, to protect itself from possible competitive activity by a former employee.

To be valid, this agreement must provide for compensation to be paid to the worker, to compensate for the loss of earning opportunities caused by the restriction.

The agreement may provide that this amount is paid in a lump sum upon termination of the employment.

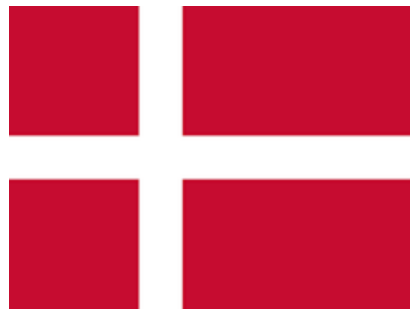
In this case, the compensation provided for in the non-competition agreement will be paid together with the other severance payments.



In Denmark, the term “post-employment payments” can refer to a wide range of payments which the employer is obliged to pay to the employee when the employment comes to an end.

Such payments can for instance be severance payments which are payable according to law due to the employee’s length of service with the employer, amounts payable according to collective bargaining agreements, compensation for restrictive covenants or a compensation which is awarded by a court for unjust dismissal.

It can also cover bonuses falling due after the expiry of the notice period to which the employee has a full or partial entitlement to.

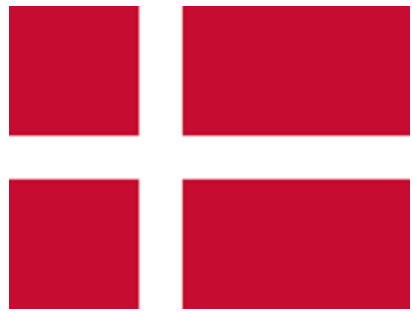


## I. Severance payments that the employer must always pay, in any case of termination of employment

### I.1 Salaried Employees

Salaried employees may be eligible to receive a severance payment upon termination. The Danish Salaried Employee's Act applies to employees whose tasks mainly consist of office work, technical or clinical assistance or employees who are engaged in any kind of trade, including shop assistants. The act also applies to employees who serves as managers without being the registered manager of the company.

According to the Danish Salaried Employee's Act, employees who have been employed for more than 12 years (on the date of the expiry of the notice period) are entitled to a severance payment corresponding to 1 months' salary. If the employee has been employed for more than 17 years (on the date of the expiry of the notice period), the severance payment corresponds to 3 months' salary.



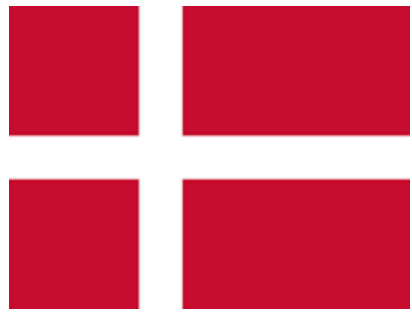
## Calculation of the severance payment as per the Salaried Employee's Act

The severance payment is calculated of all salary parts at the time of the expiry of the notice period. This, includes, amongst other things:

1. Base salary
2. Bonus and commission
3. The taxable value of employee benefits, e.g. free car and telephone
4. Employer's pension contribution
5. Other fixed allowances

### Tax regime of severance payment

Severance Payment are comprised by section 7U of the Danish Tax Assessment Act, which means that an amount of DKK 8,000 can be paid out as a tax-free amount to the employee.



## I.2. Severance payments as per collective bargaining agreements

In Denmark, employee terms and conditions are widely regulated by collective bargaining agreements, and most collective bargaining agreements contain rules on severance payments in the event of termination by the employer and typically connected to the employee's length of service. Provisions for severance payments are for instance contained in the Standard Collective Agreement for the Banks and in the Industrial Agreement.

According to the Industrial Agreement, employees are entitled to a severance payment if they are terminated after more than 3 years of service for the same employer. The severance payment increases after 6 and 8 years of service. Employees covered by the Standard Collective Agreement for Banks must be employed for 12 years to be entitled to a severance payment. The severance payment payable by the employer ranges from 1 month's salary to 6 months' salary depending on the employee's age. The severance payment payable according to the Standard Collective Agreement for Banks is payable in addition to the severance payment payable according to the Danish Salaried Employee's Act.



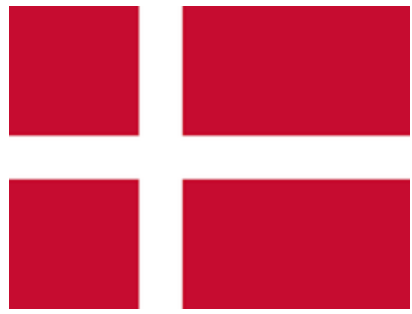
## 2. Compensation that the employer must pay in case of unjust termination

A termination of a salaried employee must be objectively justified. If the termination cannot be reasonably justified, regarding either the employee's conduct and/or the circumstances of the company, and the employee has been employed for more than 12 months at the expiry of the notice period, the employee will be entitled to a compensation.

The compensation is calculated based on the length of employment and the circumstances of the termination. Compensation would not normally exceed the equivalent of half of the employee's required notice period, or 3 months if the employee is above the age of 30. For employees with at least 10 years' seniority compensation can amount to 4 months' salary whilst employee with more than 15 years' seniority may be entitled to compensation of the equivalent of up to 6 months' salary.

The rules only apply to salaried employees. Employees not comprised by the Danish Salaried Employee's Act may be subject to similar rules as per the applicable collective bargaining agreement.

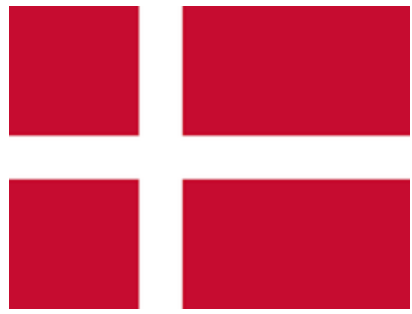
Further, the employer must in all cases comply with the rules laid down in the Danish Act on Equal Treatment and the Danish Anti-Discrimination Act, which amongst other things means that a termination should not be based on an employee's protected characteristics such as gender, age, ethnicity, disability etc. The employee will only be entitled to compensation for either unjust termination or compensation as per the Danish Act on Equal Treatment. The compensation levels as per the Danish Act on Equal Treatment corresponds to 6 to 12 months' salary.



### 3. Separation Agreements

Some employers may choose to enter into a separation agreement as an alternative to termination of the employment or in addition hereto in order to settle all outstanding claims. Usually, separation agreements are offered to the employee to avoid any future claims on the lawfulness of a termination.

To give the employee an incentive to enter into a separation agreement, it is customary to offer the employee a severance payment. The size of the severance payment can vary depending on the case and the employee's length of service however, they are typically fixed between 1 to 6 months' salary.



#### 4. Restrictive covenants

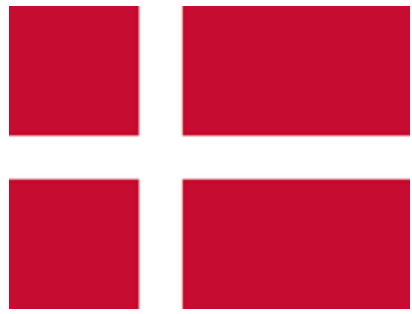
Employees who are subject to a non-competition clause or a non-solicitation of customers clause are entitled to a compensation. The compensation constitutes 40% of the salary at the time of the expiry of the notice period if the non-competition clause or the non-solicitation clause has a duration of 6 months. The compensation is reduced to 16% of the salary if the employee finds other suitable employment during the restricted period.

If the non-competition clause or the non-solicitation clause has a duration of 12 months, the compensation constitutes 60% of the salary. A combined non-competition clause and non-solicitation clause can have a maximum duration of 6 months, and the compensation for such combined clause also constitutes 60% of the salary.

If an employee who is comprised by a combined clause or a clause with a duration of 12 months finds other suitable employment during the restricted period, the compensation is reduced to 24% of the salary.

The compensation is payable monthly in arrears for the duration of the restrictive covenant, except for the compensation for the first two months, which must be paid out as a lump sum together with the last ordinary salary.





## 5. Bonusses

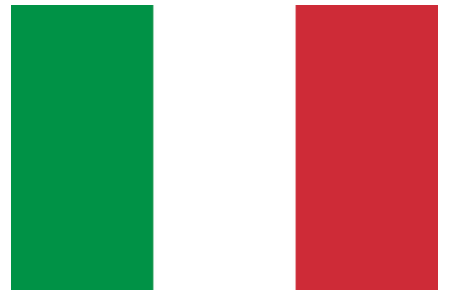
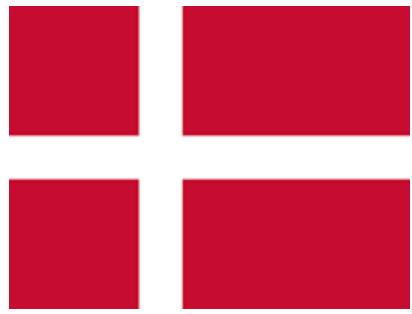
Salaried employees who are comprised by a bonus scheme are entitled to bonus until the expiry of the notice period. This also applies if the employee is released from the obligation to work during the notice period.

If a salaried employee is comprised by a bonus scheme where the calculation of the bonus depends on the results of the company in the financial year, and the salaried employee ceases being employed during the financial year, the salaried employee will be entitled to a pro rata bonus corresponding to the length of employment in the financial year.

The employee does not have a right to preliminary payout of bonus in case of termination and must wait to receive bonus until the ordinary time of payout, unless another agreement is entered into for instance in connection with a separation agreement.

## 6. Compensation for unused holidays

The employer has a duty to settle unused holiday upon termination of employment. The holiday allowance can usually not be paid out directly to the employee but must be paid into the Holiday Account (in Danish “FerieKonto”). The employee can then withdraw the holiday allowance when taking holiday after termination.



Post-employment entitlements can differ a lot from jurisdiction to jurisdiction and it can be challenging to have a full overview of the financial implications, if it becomes necessary to make an employee redundant.

If you have any questions to post-employment payments or other employment matters in Italy and/or in Denmark, we would be happy to advise and support you.

Please feel free to contact Chiara D'Angelo at [ChiaraDAngelo@lexellent.it](mailto:ChiaraDAngelo@lexellent.it) for questions regarding Italian law and Mads Bernstorn at [mkb@mklaw.dk](mailto:mkb@mklaw.dk) for questions regarding Danish law.



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