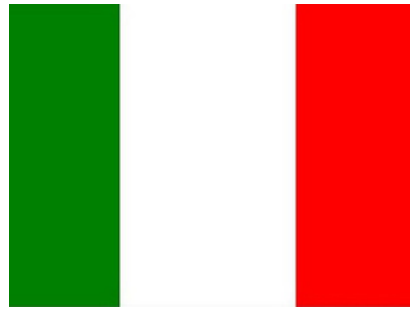
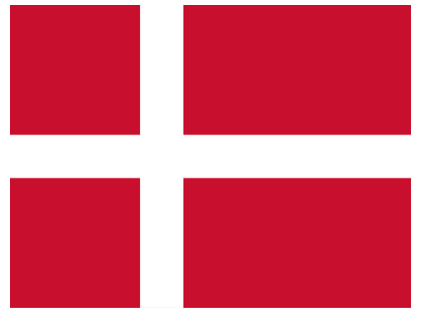




The Limits of Termination: Legal Protections for Employees. Denmark and Italy



Italy - Denmark: Introduction



This article explores the legal framework governing the dismissal of specially protected employee groups under Danish and Italian labour law. Both jurisdictions, while rooted in the broader context of EU employment directives, maintain national rules and procedures that reflect their respective legal traditions and labour market models.

Our colleagues Mads Bernstorn (**Mette Klingsten Law Firm**), and Valentina Messina (**Lexellent Law Firm**), address which categories of employees are afforded special protection, under what circumstances dismissals are prohibited, and the legal exceptions that may apply. It further examines procedural requirements, evidentiary burdens, available remedies in cases of unlawful dismissal, and how each legal system balances employee protection with the employer's need for operational flexibility. By comparing the Danish and Italian approaches, this article offers a cross-jurisdictional perspective on the safeguarding of vulnerable employee groups within the EU framework.



1. Which employee groups are afforded special protection against dismissal under Danish and Italian law?

Italian law provides specific protection against dismissal for categories of employees considered particularly vulnerable. In these groups are included: pregnant women and women until the end of the period of obligatory maternity leave provided by law, mothers with a child under the age of one year; working fathers who took paternity leave within the first year of the child's life; women within the first year of marriage; disabled workers; members of a trade union or workers participating in trade union activities.

In addition, special protection is given against discriminatory dismissal, on grounds related to political or religious belief, race, gender or nationality, or as a result of whistleblowing.



I. Which employee groups are afforded special protection against dismissal under Danish and Italian law?

Under Danish law, certain groups of employees enjoy special protection against dismissal. This includes individuals covered by the Danish Anti-Discrimination Act, which prohibits termination on grounds such as race, ethnic origin, religion or belief, political opinion, sexual orientation, age, disability, and other protected characteristics. Furthermore, pregnant employees and those on maternity, paternity, or adoption leave are safeguarded under the Equal Treatment Act, which prohibits dismissal on grounds of pregnancy or parental leave. Employee representatives, such as shop stewards, benefit from enhanced protection usually provided by collective agreements and case law. Employees who assert their statutory rights, such as those under the Employment Contracts Act, are also protected from retaliatory dismissal. Finally, whistleblowers are also protected under the Danish Whistleblower Act, which implements the EU Whistleblower Directive and extends protection to current and former employees, interns, volunteers, suppliers, and others with work-related knowledge of violations.

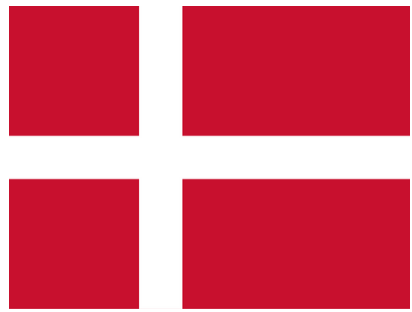


II. Are there cases in which dismissals are forbidden under Danish and Italian law?

Italian Law explicitly prohibits dismissal of working women from the start of pregnancy until the end of the period of obligatory maternity leave provided by law, and of mothers with a child under the age of one year.

The ban on dismissal also applies to working fathers who have taken paternity leave provided by law (only ten days!) for the duration of the leave until the child's first birthday. The same protection is provided in cases of adoption and/or fostering for a period of one year after the child enters the family. In the case of international adoption, the dismissal ban begins to run from the date of communication of the proposal to meet the minor to be adopted or of receipt of an invitation to go abroad to receive the adoption proposal.

The ban on dismissal also applies to women who marry and covers the period from the date of the request for publication of the banns to the date of the first wedding anniversary. The law presumes that dismissal of a woman during such time would be as a result of the marriage.



II. Are there cases in which dismissals are forbidden under Danish and Italian law?

Danish law explicitly prohibits dismissal in certain circumstances. Termination is unlawful if it is wholly or partly based on a protected characteristic under the Anti-Discrimination Act. Similarly, terminating employees due to pregnancy or due to maternity, paternity, or adoption leave is not permitted. The dismissal of employee representatives is likewise forbidden unless there are compelling, objective reasons that justify such action. Dismissal is also prohibited as a form of retaliation against whistleblowers who report or disclose serious legal violations.



III. Are there any exceptions to the above prohibitions on dismissal?

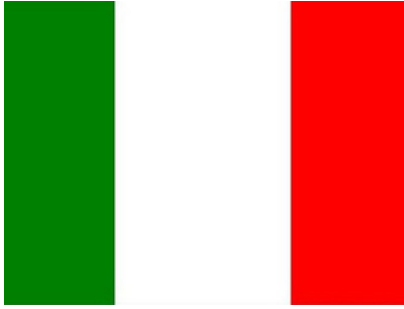
The above prohibitions do not apply to dismissal of working mothers or fathers for just cause, as a result of failure to pass the probationary period, due to company closure, or due to the expiration of the term.

An exception to the ban on dismissing a recently married worker is effective if the employer can prove that the dismissal was not due to the marriage, but for one of the following reasons: termination of the employment relationship for just cause, closure of the company for which the employee works; completion of the work for which the worker was hired; termination of employment due to the expiration of the contract.



III. Are there any exceptions to the above prohibitions on dismissal?

Exceptions do exist under Danish law but are interpreted narrowly. In cases involving discrimination or whistleblowing, dismissal may only be allowed if the employer can demonstrate that the decision was based solely on legitimate and unrelated grounds. Likewise, pregnant employees and employees on parental leave may only be dismissed in exceptional situations unrelated to their protected status - such as serious misconduct or company closure. Regarding employee representatives, termination is permitted only if the employer can establish compelling reasons and demonstrate that no alternative solutions are available.



IV. What legal requirements and procedures apply when dismissing a specially protected employee?

No specific procedures are provided for dismissing protected employees.

However, an employer intending to dismiss a member of a works council is required to give prior notice to the trade union in order to have authorization for the dismissal.

Before dismissing workers with disability, the employer is required to make "reasonable accommodations" in order to avoid the termination.



IV. What legal requirements and procedures apply when dismissing a specially protected employee?

Although Danish law does not prescribe any specific procedural requirements for dismissing employees protected under the Equal Treatment Act, the Anti-Discrimination Act, or the Whistleblower Protection Act, it is strongly recommended that employers approach such situations with caution and thorough documentation. While there is no legal obligation to conduct formal consultations or follow a set dismissal process, best practice suggests that employers should engage with the employee before making a final decision and carefully assess the circumstances surrounding the dismissal.

In particular, employers should ensure that the dismissal is not based, in whole or in part, on a protected ground such as gender, pregnancy, parental leave, age, disability, or whistleblowing activity. To minimise legal risk and support a lawful decision, it is advisable to document demonstrating the objective reasons for the dismissal. This proactive approach can help prevent disputes and demonstrate that the employer has acted fairly and lawfully.

For employee representatives, additional procedural steps often apply in cases of termination, including the need to follow specific rules set out in collective agreements and to justify the dismissal with compelling, well-documented reasons.



V. How does the burden of proof differ in dismissal cases involving specially protected employees?

In cases of discriminatory dismissal, the employee bears the burden of proving the risk factor and demonstrating that the treatment received is less favorable than that reserved for individuals in similar circumstances, while at the same time inferring a significant correlation between these elements. The employer, on the other hand, must prove unequivocal circumstances that are sufficient to exclude, with precision, gravity, and consistency of meaning, the discriminatory nature of the dismissal.

In cases of dismissal of a working mother or father in the period of protection, the employer must prove that the dismissal is for just cause, as a result of failure to pass the probationary period, due to company closure, or termination of employment due to expiration of the contract.

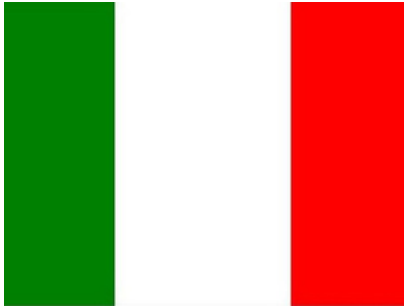
In cases of dismissal within the first year of marriage the employer must prove that dismissal is not due to marriage, but for just cause, termination of activities for which the employee works, completion of the works for which the worker was hired, or termination of employment due to expiration of the contract.



V. How does the burden of proof differ in dismissal cases involving specially protected employees?

In dismissal cases involving claims under the Danish Anti-Discrimination Act, the Equal Treatment Act, or the Whistleblower Protection Act, the burden of proof follows a shared or reversed pattern. Generally, if the employee presents facts that give rise to a presumption that the dismissal was based on a protected ground - such as discrimination or whistleblowing - the burden shifts to the employer to prove that the dismissal was based on lawful and objective reasons unrelated to the protected characteristic or activity.

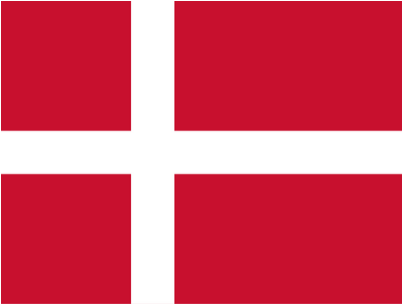
However, in cases where a dismissal occurs during pregnancy or leave in connection with childbirth, Danish law imposes a reversed burden of proof, meaning that the employer must demonstrate that the dismissal was not influenced, directly or indirectly, by the employee's pregnancy or leave.



VI. What sanctions or legal remedies are available to employees who are unlawfully dismissed while under special protection?

Dismissals of specially protected workers and, in general, dismissal for discriminatory reasons are considered null by Italian law. In these cases, the employer is ordered to reinstate the employee and to pay damages consisting of an indemnity calculated on the basis of the last remuneration received, accrued from the date of dismissal to that of effective reinstatement, any earnings made elsewhere being deducted. This compensation must not in any case be less than 5 months' salary and is subject to the payment of social insurance contributions.

As alternative to reinstatement, the employee is entitled to ask for the payment of an indemnity equal to 15 months' pay, based on the last salary and subject to the payment of social insurance contributions.



VI. What sanctions or legal remedies are available to employees who are unlawfully dismissed while under special protection?

Employees who are unlawfully dismissed while under special protection in Denmark are entitled to a range of remedies. These may include financial compensation, the amount of which depends on factors such as seniority and the severity of the violation. In some cases, particularly involving employee representatives or discriminatory dismissals, the dismissal may be declared void, and the employee reinstated.

However, in Denmark it is very uncommon for an employee to be reinstated, and in practice most cases are solved by awarding the employee a financial compensation. Whistleblowers who face retaliatory dismissal are entitled to effective remedies, including compensation and potential reinstatement, depending on the circumstances.



VII. How is the employer's need for operational flexibility balanced against the protection of protected employees in Denmark and in Italy?

The exceptions to the prohibitions on dismissal constitute a balancing of employers' needs against those of protected employees.

In other cases, to lawfully terminate a protected employee, the employer needs to prove that the role covered by the employee has been actually deleted and no other suitable positions are available in the company's organization. Otherwise, in cases of disciplinary dismissal, the employer must be able to prove just cause or subjective justified reasons for the dismissal.



VII. How is the employer's need for operational flexibility balanced against the protection of protected employees in Denmark and in Italy?

While Danish employers generally have discretion to dismiss employees for operational reasons, this flexibility is significantly limited in cases involving specially protected employees. The law requires employers to demonstrate compelling and objective reasons for dismissal that are entirely unrelated to the employee's protected status.

Furthermore, employers must often show that no viable alternatives to dismissal exist.



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Read more [here](#).



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