

14. Italy

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Short-term third-country-national workers in Italy suffer both from problems linked to work casualisation and from the fact that many social provisions are guaranteed only to third-country nationals with a long-term residence permit. Moreover, only foreigners holding a residence permit with a validity of more than one year can benefit from social assistance provisions like Italian citizens (Article 41 TUI). Several other restrictions on migrants exist in Italian social security legislation.

Consequently, in order to fully enjoy their rights, third-country nationals often have to engage in lengthy and costly legal proceedings. Obviously, many short-term migrants prefer to give up their rights instead.

Box 1 Sector-specific variations of social security rules

All foreigners regularly residing on the territory have the right to the same treatment as Italian workers. However, third-country-national seasonal workers do not enjoy unemployment benefits and family allowance, while posted third-country nationals benefit from the social security legislation of their country of origin. Besides, short-term migrants cannot access social provisions reserved for long-term residents and foreigners holding a residence permit with a validity of more than one year. Other restrictions on migrants are widespread in Italian social security legislation.

Moreover, short-term migrants also suffer from the fact that work casualisation deeply affects the value of in-cash benefits. Indeed, the benefits received risk being very low, both in the case of the reduction of the normal working time and in the case of short-term contracts.

Table 1.14 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers	Social security legislation in the country of origin applies to migrant workers posted from a company established in the EU. In case of posting from a company established outside the EU, Italian social security legislation applies unless an agreement between Italy and the concerned country exists. In the latter case, posted workers benefit from social security unless they require a long-term residence permit. Posted workers also benefit from social assistance if their permit is valid for more than one year. Workers posted from Italy shall have an Italian work permit. Their social protection depends on the type of permit they hold.					
Intra-corporate transfers (ICT)	If the inter-corporate transfer takes place from a company established in the EU, Regulation 1231/2010 applies. Consequently, the social security legislation of the country of origin is applicable (Article 12 Regulation 883/2004). If the inter-corporate transfer takes place from a company established outside the EU, Italian social security legislation applies unless an agreement between Italy and the concerned country exists. In the latter case, migrant workers benefit from social security unless they require a long-term residence permit; they also benefit from social assistance if their permit has a validity of more than one year.					

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Seasonal workers (SWs)	Equal treatment with local workers	Equal treatment with local workers	No	No (typically, their permit is valid < one year and they do not qualify)	Equal treatment with local workers	No
Temporary agency workers (TAWs)	Temporary agency workers benefit from the principle of equal treatment with the user's workers. However, entitlement to a social security benefit depends on the type of work permit they have.					
High-level professionals (Blue cards)	Equal treatment with local workers	Equal treatment with local workers	Equal treatment with local workers	Equal treatment with local workers if their permit has a validity of more than one year	Equal treatment with local workers	Equal treatment with local workers
Self-employed	Migrants with a permit for self-employment must fully respect Italian social security legislation. In Italy, the self-employed are usually obliged to pay social contributions and do not benefit from all the social protection enjoyed by employees.					

Source: Author's analysis, 2022.

Box 2 Changes during Covid-19

During the pandemic, the Italian legislator decided to regularise work permits outside the quota system for irregular migrants present in the country. Because of the many loopholes of the procedure, however, only few migrants managed to obtain the work permit.

Irregular migrants in sectors excluded from the 2020 regularisation, as well as irregular migrants who could not meet its strict conditions, were trapped in illegality: because of the mobility restrictions, they could not travel back to their countries of origin, while the 'unrealistic' procedure for obtaining a work permit in Italy they could not find a regular job. Consequently, they were further exposed to exploitation and the risk of Covid contagion. Indeed, in Italy, irregular migrants can access only essential health care (Article 35 TUI) and risk deportation when claiming health and safety measures at work, and they do not have the right to non-essential medical-care.

Description of the Italian system

1. Overview of social security rights of short-term TCN migrant workers

Short-term third-country-national workers in Italy suffer from problems linked to work casualisation (§3) and from the fact that several social benefits are available only to third-country nationals with a long-term resident permit (Article 80 co. 19 Law 388/2000). Moreover, only foreigners with a residence permit valid for more than one year can benefit from social assistance in the same way as Italian citizens (Article 41 TUI).

Both rules have been challenged several times before the Italian Constitutional Court because of the possible violation of the equality principle (Article 3 Italian Constitution) and before the European Court of Justice because of a possible violation of the principle of equal treatment between foreigners and national workers.

Italian social security legislation also discriminates against migrants, for example, in the rules excluding, for the purposes of determining entitlement to a family benefit, family members who do not reside in the territory of that Member State (see § 6) or the rules requiring a certain duration of residence (see Constitutional Court, decision no. 44/2020).¹

Consequently, in order to enjoy their rights fully, third-country nationals often have to engage in lengthy and costly legal proceedings; and, obviously, many short-term migrants prefer to renounce their rights instead.

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

(i) Third-country-national seasonal workers

Third-country-national seasonal workers with a valid residence permit benefit from the same rights as Italian workers. However, Article 25 of the Legislative Decree 286/1998 (TUI) rules out unemployment benefits and family allowance. This rule discourages regularisation of the employment relationship: indeed, why should a third-country national ask for a regular contract of employment and pay social contributions if anyway they do not have a right to all the corresponding benefits?

1. For example, ten years' residence is required to benefit from citizen's income (Article 2 co. 1, a) Law 26/2019), while two years' residence are required to benefit from universal family allowance (Article 2, co. 1, f), 4) Law 46/2021). The former benefit is available only to migrants with a long-term residence permit.

(ii) Third-country-national posted workers

Regulation 883/2004 applies to third-country nationals posted in Italy by an employer established in the EU (Regulation 1231/2010). If the conditions established by Article 12 are fulfilled, posted third-country nationals benefit from the social security legislation of their country of origin. Consequently, the rule that requires that social contributions be calculated on the basis of the salary established by the national collective agreement signed by the most representative trade unions and employers' associations (Article 1, para. 1, Law Decree No. 338/1989) is not applicable and this can severely lower the amount of social benefits for posted workers. Moreover, in case of work accidents, posted workers receive health care assistance that may differ significantly from that enjoyed by local workers.

In case of bogus posting of workers, the Italian Social Security Institute (INPS) has complained about the cumbersome procedure outlined by Regulation 883/2004 for recovering social security contributions. Indeed, sometimes INPS has decided to suspend or limit investigations because of their sheer onerousness; in this case, workers illegally posted remain affiliated to the social security system of the country of origin – that is, they cannot exercise their social security rights in Italy.

Posting by employers from outside the EU does not fall within the scope of the EU legislation. In the latter case, Italian social security regulations apply unless an agreement exists between Italy and the third country concerned.²

(iii) Third-country-national temporary agency workers

Italian legislation does not provide for a specific social security regime for temporary agency workers (TAWs). The latter's social benefits are profoundly affected by work casualisation (see §3). This problem concerns migrant workers, in particular, because of their vulnerability (see the report on immigration rules and labour law).

Social security for posted temporary agency workers is regulated by Regulation 883/2004 if the posting agency is established in the EU. If the latter is based outside the EU, Italian social security law applies unless there is an agreement with the country of origin that rules differently.

3. Conditions for obtaining different social security rights

Italian social security schemes vary according to type of employment or self-employment. The main differences are related to: (i) people obliged to pay social contributions; (ii) the amount of contributions; (iii) protected events; and (iv) benefits received. The first two elements have a profound impact on labour costs; in a nutshell, we can say that more reliance on work performed by those who

2. The list of bilateral agreements is available here: <https://www.inps.it/nuovoportaleinps/default.aspx?itemdir=49954>

are covered mandatorily by social security schemes for the self-employed reduces the social costs of those for whom the work is carried out.

Moreover, in the main regime for employees, almost all the benefits are set as a percentage of wages. Sometimes, the duration of the benefit depends on the duration of the contract. Consequently, work casualisation deeply affects the value of in-cash benefits: indeed, the benefits received risk being very low if normal working time is reduced and in the case of short-term contracts.

4. Portability of benefits between host country and country of origin

Portability of benefits between countries is regulated for third-country nationals by Regulation 883/2004, if they fall within its scope. In other cases, the applicable rules vary according to agreement, if any, between Italy and the third country concerned. If such an agreement does not exist, portability of benefits is very difficult.

Another problem faced by third-country nationals is the impossibility of recovering social contributions paid in Italy when they leave the country. In this case, third-country nationals retain their acquired social security rights and can enjoy social benefits once they meet the eligibility requirements (Article 22 par. 13 TUI). This rule does not consider that, once they have left, third-country nationals often do not have any link with Italy and consequently are unable to enforce their rights (for example, they do not have an Italian bank account where they can receive social benefits). Besides, third-country nationals may struggle to fulfil the eligibility conditions established by Italian law (for example, retirement age). Consequently, foreigners often have no interest in paying social contributions, and so do not seek regular employment relationships.

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

As explained in the report on immigration rules and labour law, during the pandemic the Italian legislator decided to promote regularisation, giving employers the possibility of applying for work permits outside the quota system for irregular migrants already present in the country. Because of the procedure's many loopholes, however, only a few migrants managed to obtain such a permit.

Irregular migrants in sectors excluded from the 2020 regularisation, as well as irregular migrants who were unable to meet its strict conditions, were trapped in illegality: because of the mobility restrictions, they could not travel back to their countries of origin; because of the 'unrealistic' procedure for obtaining an ordinary work permit in Italy, they could not find a regular job there. Consequently, they were further exposed to exploitation and the risk of catching Covid-19. Indeed, in Italy, irregular migrants can access only essential health care (Article 35 TUI) and use medical facilities that do not report irregular migrants to the authorities

(Article 35 TUI). Irregular migrants do not have access to non-essential medical care and risk deportation when demanding compliance with OSH measures.

In order to alleviate the social and economic consequences of the pandemic, several social security measures were adopted. All of them have been ensured to legally resident migrants, notwithstanding their residence permit (see, for example, the emergency income regulated by Article 82 Law Decree 34/2020).

6. Overview of enforcement and monitoring

As already mentioned, third-country nationals struggle to enforce their social security rights because of the many rules that make social benefits (such as family and maternity allowances) conditional on possession of a long-term residence permit. These rules have been challenged by the European Court of Justice (ECJ), which states that third-country nationals who are entitled to work ‘are to enjoy equal treatment with nationals of the Member State where they reside with regard to branches of social security, as defined in Regulation No. 883/2004’ (ECJ, 2 September 2021, C-350/20, *INPS*, § 45; see also ECJ, 21 June 2017, C-449/16, *Martinez Silva*).

Other legal disputes concern the rules that exclude, when determining rights to family benefits, family members who do not reside in the territory of that Member State. The ECJ also considers these rules as not consistent with EU law.³

Several judges – included the Court of Cassation (order no. 9378/2021 and 9379/2021) – still refuse to disapply the national rules that infringe EU law, which would extend the social benefits currently restricted to certain third-country nationals (long term residents) to all third-country nationals with a single work permit or a residence permit for other purposes that allows them to work.

3. The cases concern Article 11 of Directive 2003/109/EC (see ECJ, 25 November 2020, C-303/19, *INPS*) and Article 12 of Directive 2011/98/EC (see ECJ, 25 November 2020, C-302/19, *INPS*). These are rules that have vertical direct effect.