



Bird & Bird

Italy

Employee Invention Laws

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Italy – Employee Invention Laws

Does your country have specific laws governing employee inventions?

Yes, regulated through intellectual property and civil law provisions.

Primary Legislation/Law: Article 64 of the Italian Intellectual Property Code (IIPC).

Supporting Legislation:

- Additional IIPC provisions
- Italian Civil Code (ICC)
- Law 81/2017

Scope: Innovations by employees, researchers, and self-employed workers.

What types of intellectual property are covered by your national employee invention laws (patents, utility models, trade secrets, etc.)?

Article 64 of Italian Intellectual Property Code (IIPC) covers employee-made inventions that are:

- Patented
- Exploited as trade secrets

Extended scope:

Through Articles 86.2, 89.2 and 111.2 IIPC, rules also apply to:

- Utility models
- Topographies of semiconductor products
- New plant varieties

Which categories of employees are covered by your national employee invention laws?

Art. 64 IIPC applies to inventions made by so called "subordinate" employees from both Public and Private sectors.

Employee Definition: Article 2094 ICC defines as "someone who undertakes, for remuneration, to work for a company, providing intellectual or manual labour under employer direction and supervision".

Special Provisions:

- University and public research institution researchers subject to Article 65 IIPC.
- Self-employed workers regulated under Law 81/2017.

What temporal and territorial restrictions apply to employee invention laws in your jurisdiction?

The application of Italian regulation on employee's inventions requires the invention to be made during the employment relationship. Under certain circumstances, Italian regulation on employee's invention also applies after the expiration of the employment agreement. According to, Art. 64.6

IIPC, inventions are assumed to be made during the period of the employment relationship, if the patent application has been submitted within 1 (one) year following the termination of the employment agreement. However, this assumption may be rejected if the employee provides evidence that the invention comes from a research activity performed following the termination of the employment relationship.

Italian law on employee's invention generally applies if the employee habitually carries out his work in Italy. If the work is carried out in a country, but the employment agreement is regulated by a law of a different country, the applicable law shall be checked on a case-by-case basis. Indeed, general rules (Art. 8, EU Reg. no. 593/2008) provide that the non-derogable employment laws most favourable to the employee - which appear to include laws on employee's invention - should be always applied regardless of parties' different agreement.

Do the national employee invention laws recognise different kinds of inventions or are all inventions treated equally?

Yes, in Italy there are different kinds of employee's inventions:

- **Service Invention:** Employer owns; inventive work is part of duties and paid.
- **Company Invention:** Invented during job, but inventive duties not in contract or compensated. Employer owns; employee may claim fair compensation if patented or exploited.
- **Occasional Invention:** Developed independently but relevant to employer. Employee owns. Employer has 3-month window to acquire rights after notification.

Agreements can override rules only if more favorable to employee. Inventions outside these types are owned by the employee.

What is the statutory process of acquiring rights to employee inventions under your national laws? Does the employer acquire rights directly under the law or does the employer need to take separate actions?

The process varies by invention type:

For service and company inventions, the employer automatically acquires rights once legal conditions are met. The employee is recognised only as the author.

For occasional inventions, the employee owns the invention. However, the employer may acquire it by purchasing the patent or requesting a license within three (3) months of being notified of the patent filing.

How are employee invention disputes governed in your jurisdiction? Is there a special dispute resolution mechanism / a body for employee invention related disputes?

Disputes over the existence of an employee invention or related rights fall under the jurisdiction of the Italian IP Civil Court Divisions.

However, determining the amount of fair compensation (for company inventions) or royalties/prices (for occasional inventions) is handled exclusively by a Board of Arbitrators. Under Article 64.4 IIPC, the Board consists of three arbitrators: one appointed by each party and a third chosen by the first two. If they disagree, the President of the Italian IP Court Division appoints the third member.

The Board's decision may be appealed in court if deemed clearly unfair or erroneous.

Are policies on employee inventions commonly used in your jurisdiction? Are there regulatory requirements for implementation of a policy on employee inventions?

It is more frequent for large-medium companies active in R&D and innovation, while small-medium enterprises may not have a specific regulation on employee inventions due to lack of awareness

Do your national laws on employee invention obligate employers to pay compensation to employees when taking rights to an employee invention?

As per service inventions, the employer is not required to pay compensation to employees, as employee's salary already includes compensation for his / her inventive effort.

With reference to company inventions, the employer is required to pay fair compensation to the employee for his / her inventive activity, if one of the following conditions applies:

- i. the employer obtained a patent on the invention
- ii. the invention was exploited by the employer as a trade secret.

As far as occasional inventions are concerned, the employee must receive a royalty or price if the employer decides to acquire the invention.

What are the principles of determining the mandatory compensation according to your national laws on employee inventions?

For company inventions, Art. 64.2 IIPC provides that fair compensation must be calculated considering the following four criteria:

- i. importance of the invention;
- ii. employee's duties inside the company;
- iii. employee's remuneration;
- iv. employer's involvement in the development of the invention.

However, such requirements are considered generic and difficult to apply, therefore Italian Courts usually apply the so-called "German formula": Fair compensation: $V \times P$

"V" stands for the value of the invention, while "P" is a factor proportional to the employee's contribution to the invention and may be determined based on the following criteria:

- i. employee's role in identifying the problem solved by the invention;
- ii. employee's contribution to the solution of the problem;
- iii. employee's duties and position within the company.

As per occasional invention, royalty or price is determined by the following two criteria:

- i. value of the invention
- ii. employer's contribution to the invention.

Does your national laws on employee inventions obligate and/or provide for payment of certain fixed amounts or running compensations, such as royalties?

As per company inventions, fair compensation is usually quantified in a lump sum, but it is also possible to pay royalties on the profits obtained by the employer from the patent or from the exploitation of the invention as a trade secret.

With reference to occasional inventions, the employer may pay a lump sum for acquiring the invention or a royalty if he / she is simply interested in obtaining a license for the patent / trade secret.

What is the general level that is considered sufficient or customary in your jurisdiction as a mandatory compensation?

There is no general level of compensation, as it mainly depends on the value of the invention.



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