

The instruments against wage dumping

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Swiss law has three main instruments against "wage dumping", the term used in Ticinese politics for the payment of wages below the local customary level. The first are the accompanying measures (*misure accompagnatorie, flankierende Massnahmen*) introduced together with the free movement of persons. They oblige foreign employers who post workers to Switzerland to observe Swiss minimum conditions and empower tripartite commissions of the Confederation and the cantons, composed of representatives of the State, employers and trade unions, to monitor wages.¹ Where a tripartite commission finds repeated and abusive undercutting of customary wages in a branch, the canton may issue a standard employment contract (*contratto normale di lavoro*, CNL) with binding minimum wages under Art. 360a of the Code of Obligations. The cantonal government may also extend a collective labour agreement to all employers of a branch.

Ticino has used these instruments more than any other canton. In January 2013 the cantonal government introduced three standard employment contracts with minimum wages, for two industrial branches and for retail shops with fewer than ten employees. The Associazione Industrie Ticinesi (AITI), the industrial employers' association, announced an appeal to the Federal Supreme Court. It objected that the minimum wage of CHF 3,000 a month exceeded the wages agreed in existing contracts, that the tripartite commission's sampling was flawed and that the measure would benefit cross-border commuters more than the local industry.² The number of standard employment contracts grew in the following years to cover a large part of the cantonal economy.³

The second instrument is the cantonal minimum wage. After the popular vote of 14 June 2015 on the initiative "Salviamo il lavoro in Ticino", the Grand Council adopted a minimum wage law, the Legge sul salario minimo (LSM). It entered into force on 1 December 2021 and sets minimum hourly

wages by sector. From 2025 the range is CHF 19.75 to 20.25 an hour. The Federal Supreme Court rejected the appeals of several companies against the law.⁴ The minimum wage is defined as a "social" minimum wage designed to secure subsistence, which is the condition under which the Federal Supreme Court has accepted cantonal minimum wages as compatible with the economic freedom guaranteed by the Federal Constitution.⁵ Its enforcement lies with the Ufficio per la sorveglianza del mercato del lavoro (labour market surveillance office) in Bellinzona. Employees may claim unpaid wages for five years, and proceedings concerning claims up to CHF 30,000 are free of court costs.⁶

The third instrument is political. On 25 September 2016, the same day as the "Prima i nostri" vote discussed in the next section, Ticino's voters had to choose between a popular initiative "Basta con il dumping salariale in Ticino" and a counter-proposal of the Grand Council. They preferred the counter-proposal, which the government favoured because it allowed the inspection of the labour market to be strengthened without the annual cost of about CHF 10 million that the initiative would have entailed.⁷ The labour inspectorate and the tripartite commission were reinforced in the following years.

1 What the debate means for employers

For employers in Lugano's financial centre the wage-dumping debate has practical consequences. Banks, fiduciaries and asset managers that hire cross-border commuters must observe the minimum wages of the cantonal law and of any standard employment contract applicable to their branch, which is rarely a constraint for qualified staff but matters for back-office, cleaning and support functions that are often outsourced. They must expect controls by the tripartite commission and must document that wages correspond to the customary level. They also operate in a political environment in which the recruitment of Italian residents is closely watched. Since 2018 they must announce vacancies in occupations with high unemployment to the regional employment offices before advertising them elsewhere, a duty that results from the implementation of the mass immigration initiative of 2014.

2 Notes

1. Federal Act of 8 October 1999 on Flanking Measures for Posted Workers and on the Control of Minimum Wages Provided for in Standard Employment Contracts (Posted Workers Act, EntsG), SR 823.20, Art. 1 (minimum working and wage conditions for workers

posted to Switzerland by employers based abroad), <https://www.droit-bilingue.ch/de-it/8/82/823.20-1-4.html>, and Art. 7 para. 1 (control by the joint bodies of generally binding collective agreements and by the tripartite commissions of the cantons or the Confederation under Art. 360b CO for standard employment contracts with minimum wages under Art. 360a CO), <https://www.droit-bilingue.ch/de-it/8/82/823.20-7-12.html>; Federal Act of 28 September 1956 on the Declaration of General Applicability of Collective Labour Agreements, SR 221.215.311, <https://www.droit-bilingue.ch/de-it/2/22/221.215.311-index.html>. ↩

2. "Sui salari minimi l'AITI ricorre al TF", RSI, 16 January 2013, <https://www.rsi.ch/info/economia/Sui-salari-minimi-lAITI-ricorre-al-TF--765945.html>. ↩
3. Current number and scope of the Ticinese standard employment contracts (Ufficio per la sorveglianza del mercato del lavoro). ↩
4. "Via libera al salario minimo in Canton Ticino", Varesenews, November 2021, <https://www.varesenews.it/2021/11/via-libera-al-salario-minimo-canton-ticino/1400615/?output=pdf> (entry into force on 1 December 2021, range of CHF 19.75 to 20.25 from 2025, appeals rejected by the Federal Supreme Court). Constitution of the Republic and Canton of Ticino of 14 December 1997, SR 131.229, Art. 14, <https://www.droit-bilingue.ch/de-it/1/13/131.229-14-18.html>, whose note records the amendment "accettata in votazione popolare il 14 giu. 2015, in vigore dal 1° set. 2015". ↩
5. Federal Supreme Court, judgment of 21 July 2017, 2C_774/2014, BGE 143 I 403, <https://servat.unibe.ch/dfr/bge/c1143403.html> (minimum wage of the Canton of Neuchâtel; measures pursuing social policy aims fall outside the protection of economic freedom under Art. 94 Cst.). ↩
6. Repubblica e Cantone Ticino, Ufficio per la sorveglianza del mercato del lavoro, leaflet "Come ottenere il salario a cui si ha diritto", https://m4.ti.ch/fileadmin/DFE/DE-USML/salario_minimo/ottenere_salario_diritto.pdf. ↩
7. Consiglio di Stato del Cantone Ticino, press release of 25 September 2016, <https://www3.ti.ch/CAN/comunicati/25-09-2016-comunicato-stampa-555937155558.pdf>. ↩

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