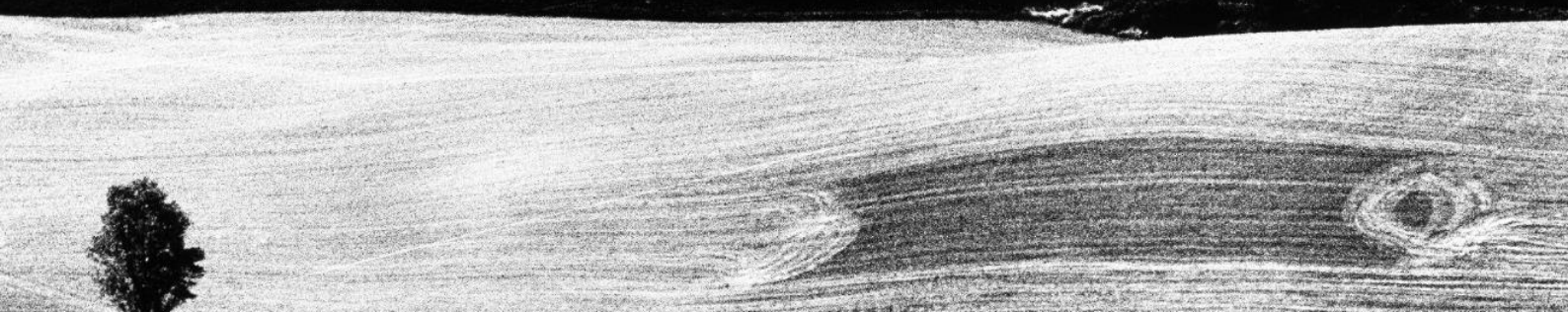


Newsalert

Employment law department

Decreto cura Italia – protection measures towards companies and employees



The Law Decree dated 17 March 2020, no. 18 that sets forth measures to sustain economically families, employees and companies because of COVID-19 pandemic (the “Decree”) introduced several concrete measures effective immediately on companies and workers. In particular, and among others, under this Decree it is provided:

- the possibility to apply for state- funded workers suspension plans that provide wage supplementation (so-called “CIGO”) or similar measures, up to 9 weeks, by following a more simplified process. This measure is open to a wide category of beneficiaries (also because of the CIGO “in derogation”);
- possibility to use paid leaves up to maximum 15 days for parents, following the closing-down of schools, as well as other types of measure to sustain employees economically further to a worktime reduction;
- the quarantine period is qualified as sick leave with all relevant consequences set by the applicable collective agreement in terms of salary in case of sick leave;
- specific indemnities for self-employees and other categories of workers (e.g. seasonal workers, etc.);
- the extension of the terms to pay social charges and insurance premiums.

The Decree also prevents to serve any individual and collective layoff grounded on economic/reorganization related reasons for 60 days following the date on which the Decree becomes enforceable.

Please find below some clarification as to the abovementioned provisions.

I. State- funded workers suspension plans

The Decree provides the payment of the wage integration for 9 weeks maximum for Covid emergency only, by using the ordinary state- funded workers suspension plans, such as: (i) the ordinary wage integration fund (known as "CIGO"), (ii) the ordinary cheque of salary integration provided by the Bilateral Funds of Solidarity or the Wage Integration Fund (known as "FIS") established by the State Social Security Agency (named INPS) or, for those employers to date not covered by the aforesaid social shock absorbers, (iii) the Wage Integration Fund "in derogation" (known as "Cassa in Deroga") to be managed by the Regions and Autonomous Provinces. It is, therefore, crucial for companies to acknowledge at first in which of the above categories they are falling under a social security standpoint in order to identify modality, criteria and limits to apply for the State wage integration regime.

A. Ordinary regime of wage integration

Companies falling within the scope of the ordinary wage integration regime (e.g. manufacturing industries, transportation companies, extractive industries, equipment installation companies, energy water gas production and distribution companies) that suspend or reduce the work activities for causes connected with COVID-19 emergency may apply for the ordinary wage integration - specifying that the reason is the "COVID-19 emergency" - at the following more favorable conditions.

i. Expanded terms for the relevant application

The application for CIGO shall be made within the end of the fourth month following the one in which the work suspension or reduction started.

ii. Duration of the wage integration

The application for CIGO applies retrospectively to periods running from 23 February 2020 until August 2020, up to 9 weeks.

iii. No need to specify the reasons for the application

It is not required to demonstrate the transitoriness or the market temporary difficulties causing the business suspension; indeed, it is sufficient to specify that the application is due to "COVID-19 emergency".

iv. Neutralization of the periods of wage integration

The period during which this special salary integration is used does not count for the purpose of verifying if the statutory time limits for the use of state- funded workers suspension plans set by Legislative Decree no. 148/15 are honored and it is also neutralized for the purpose of applying for the wage integration afterwards. This means that (i) if a company was already benefitting of an ordinary or extraordinary wage integration regime due to a suspension of the work activity these programs are suspended and may be replaced temporarily by the special wage integration scheme grounded on the "COVID-19 emergency" or (ii) if the company is applying for this special shock absorber due to COVID now, it will be allowed to apply for other state- funded workers suspension plans afterwards within the terms set by the relevant laws.

v. Exoneration from the obligation to pay the additional fee

Without prejudice to the obligation to pay the ordinary fee already paid on a monthly basis by the companies (i.e. the fee that is due regardless the actual use of the wage integration, the measure of which varies depending on the business sector in which the company operates), when the employer applies for the wage integration due to "COVID-19 emergency", the latter is

not required to pay the additional fee based on the actual use of said social shock absorbers, as required under legislative decree no. 148/2015.

vi. No need to meet the requirement referred to the employee's actual seniority in order to benefit of the wage integration

Those employees benefitting of the wage integration (i.e. non-executive employees hired under an employment agreement, including apprentices hired to gain a certain proficiency) don't need to have a seniority of 90 days of actual work as of the application date; therefore, all employees in force at employers applying for CIGO since 23 February 2020 may benefit of this wage integration.

vii. Information and consultation procedure with the unions

The Decree specifies that the consultation procedure with the unions under art. 14 of Legislative Decree no. 148/15 is no longer required. However, a more flexible procedure of information/consultation/ examination with the unions has to be carried out, even online, within 3 days following the date on which the preventive communication has been sent.

B. Salary integration fund (known as "FIS") and bilateral solidarity funds

Likewise, also for those employers who already pay the relevant contribution to the Salary integration fund (FIS) implemented by INPS (e.g. employers who in average employ more than 5 and less than 50 employees and who do not fall within the scope of the ordinary or extraordinary wage integration scheme set by the Government and who operate within sectors for which no bilateral solidarity funds or alternative bilateral solidarity funds have been activated and who, as said, are registered with FIS) it is possible to apply for the ordinary cheque due to COVID-19 emergency.

Even in this scenario, additional to the conditions set under section A, paragraphs from i. to vii., the following more favorable conditions apply:

- i. exceptionally, the ordinary cheque may be provided – besides for those employers employing more than 15 employees - also for those employers registered with FIS who employ between 5 and 15 employees, who generally don't fall within the scope of the rules regarding the application of the ordinary cheque. The aforesaid wage integration scheme, upon request of the employer, may be provided by INPS directly;*
- ii. only for 2020, the "company threshold" – i.e. the monetary limit within which the FIS payouts are set for each employer (i.e. 10 times the amount of the ordinary social charges due by the employer) – shall not apply.*

Also, the Bilateral Funds set by art. 27 of Legislative Decree no. 148/2015 guarantee the payment of the ordinary cheque with the same modality of the ordinary wage integration (CIGO).

Please note that the income support measures described under paragraphs A) and B) are subject, in 2020, to an expenditure limit of maximum Euro 1,347,2 million.

C. Wage integration fund "in derogation"

Secondly, for those employers and companies who do not fall within the scope of the aforesaid measures (e.g. companies operating in the trade and/or tourism sector which are not registered with FIS), the Decree provides that the Regions and autonomous provinces may grant, as a result of the COVID-19 emergency, wage integration schemes “in derogation”, while the employment relationships are suspended and up to 9 weeks.

In order to benefit of the wage integration “in derogation” employers must execute an agreement with the trade unions that are mostly representative at national level, even on-line for those employers employing at least 5 employees.

This measure may be granted within the limit of Euro 3,293,2 million in 2020, as of 23 February 2020 and only for those employees in force since the above-mentioned date.

For this social state- funded workers suspension plan, managed by the Regions, the intervention of the Regions/autonomous provinces is therefore required.

Lastly, it is worth-noting that the Decree provides specific provisions for those companies that currently benefit of extraordinary wage integration measures or that benefit of solidarity cheques assistance, which will be suspended to benefit of the special social shock absorber triggered by Covid emergency.

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II. Measures to support employees with children

The Decree provides the following measures aimed at supporting workers with children following the closing-down of schools:

- as from March 5th, 2020, the Decree grants workers (i) with children who are up to 12 years old or (ii) with children, of any age, with disabilities in a situation of ascertained seriousness – pursuant to Law n. 104/1992 – enrolled in schools of all levels and degrees or hosted in day care centers, the possibility to take a paid leave up to maximum 15 days;
- such leave is granted, alternatively, to both parents and is conditional upon the circumstance that, in the household, there is no other parent benefiting of income support incentives granted in the event of suspension or termination of the work activity or other unemployed or non-working parent;
- during the paid leave period, the INPS will pay, to employees of the private sector, an indemnity equal to 50% of the salary;
- as an alternative to the paid leave, at the occurrence of the same circumstances mentioned above, workers can opt for the payment of a bonus – within the maximum overall limit of Euro 600 – to be used to purchase baby-sitting services;
- the aforesaid measures (i.e. the paid leave and the baby-sitting bonus) are granted within a limit of expenditure (Euro 1,261.1 million for year 2020); once the limit is reached, INPS will reject the submitted applications;
- the Decree grants workers with children between 12 and 16 years old an unpaid leave to be used during the closing down schools period; thus, to the extent that, in the household, there is no other parent benefiting of income support incentives granted in the event of suspension or termination of working activity or other non-working parent.

III. Increase of the leaves granted pursuant to Law n. 104/1992

The Decree provides that, in addition to the no. 3 days of paid leave granted pursuant to art. 33, paragraph 3, of Law no. 104/1992, the same beneficiaries are granted with twelve days to be used during March and April 2020.

IV. 60-day prohibition of collective dismissals and dismissals grounded on justified objective reasons

With regard to dismissals, the Decree provides that:

- for 60 days as from the date on which the Decree becomes enforceable – regardless of the employer's size requirement set forth by applicable law provisions – individual dismissals grounded on justified objective reasons, as well as collective dismissal procedures pursuant to Law no. 223/1991, are prevented;
- for the same period, the collective dismissal procedures – which have started after February 23rd, 2020 – are suspended.

V. Qualification of the quarantine as sick leave

The Decree provides that the quarantine period is qualified as sick leave, with all relevant consequences set by the applicable collective agreement in terms of salary to be paid during the sick leave; additionally, the quarantine period does not count for the purpose of reaching the limit of the overall period of sickness during which the employee is entitled to preserve his/her employment (so called "*periodo di comporta*").

Moreover, until 30th April 2020 for those employees who are recognized as suffering severe disability pursuant to art. 3, section 3 of Law no. 104/1992 and to those employees with a certification released by the competent legal medical bodies which certifies greater risks deriving from immunodepression or from results from oncologic pathologies or from the performance of the relevant life-saving therapies according to art. 3 of Law no. 104/1992 the sick leave prescribed by the medical authorities is considered as hospitalization.

VI. Further provisions regarding smart working

With regard to smart working, the Decree provides that:

- workers with serious and documented sickness, having a reduced working capacity, are granted with a right of priority to require smart working;
- a right to the smart working until 30 April 2020, unless not compatible with the work activity, or those employees affected with disability pursuant to art. 3, section 3 of Law no. 104/1992 or having, within their household, a person suffering of a disability pursuant to art. 3, section 3 of Law no. 104/1992.

VII. Prevention to dismiss parents with children following the suspension of the activities of semi-residential centers

Until April 30th 2020, should a parent cohabitating with a disabled subject be absent from work, such circumstance cannot constitute just cause to terminate the employment pursuant to art. 2119 of the Italian Civil Code; to be granted with such protection, the parent shall communicate in advance and document the impossibility of taking care of the disabled subject as a result of the suspension of the activities carried out in semi-residential centers for disabled subjects.

VIII. Bonus for employees

The Decree provides that employees with an overall annual income lower than Euro 40,000 in the precedent year is granted, in March 2020, a 100 Euros bonus – excluded from the base calculation of the relevant employment income for tax and social security purposes. The effective bonus amount shall be calculated in accordance with the number of working days performed at the working premises during March 2020. The bonus can be paid as from the pay-slip of April 2020 and within the year end adjustment term. The payment of the bonus is set-off pursuant to art. 17 of the Legislative Decree no. 241 /1997.