



## **Employment and benefits**

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## Labour

### **THE MEASURES IN FAVOUR OF COMPANIES AND EMPLOYEES IN THE "DECRETO RILANCIO"**

The Law Decree no. 34/2020 (the "**Decreto Rilancio**") came into force on the last 19<sup>th</sup> May, following its publication in the Official Gazette.

Such law introduces a series of measures to boost the economy and support businesses.

With particular reference to labour issues, the Title III is dedicated to the "Measures in favour of employees" and runs from Article 66 to Article 103, with interventions which modify the provisions already introduced by Law Decree no. 18/2020, converted into Law no. 27/2020 (the "**Decreto Cura Italia**").

Hereinafter a brief description, with the usual practical approach and with a focus to all the main aspect to be considered.

### **SOCIAL SHOCK ABSORBERS (ARTICLES 68, 69, 70 AND 71)**

The Decreto Rilancio extends the period in which it is possible to use the social shock absorbers introduced to deal with the Covid-19 emergency.

In particular, once the previous nine-week maximum duration of "**cassa integrazione ordinaria Covid-19**" ("**CIGO**") and "**assegno ordinario Covid-19**" ("**FIS**") has been completed, employers will be able to benefit from a further **five weeks**, for a total of **fourteen weeks**, in the period from 23<sup>rd</sup> February 2020 to 31<sup>st</sup> August 2020 (the provisions are also applicable to beneficiaries of "cassa integrazione straordinaria" who request the transfer to CIGO/FIS).

In addition, from 1<sup>st</sup> September 2020 it will be possible to request an additional **four weeks** (to be completed within the 31<sup>st</sup> October 2020).

This limit does not apply to employers in the tourism, trade fairs, congresses and entertainment sector, which will be able to benefit from the additional four weeks also for periods of reduction/suspension of work prior to 1<sup>st</sup> September and therefore in continuity with the first fourteen weeks, for a total of eighteen consecutive weeks.

It can be suitable that, given the silence of the law, in all the cases of extension of wage integration treatment, a further Trade Union consultation will be appropriate, particularly where previous agreements with Trade Unions did not provide for the possibility of extending treatments and suspensions until August 31<sup>st</sup> 2020.

The same approach should also be followed for new requests (i.e. those for suspension periods from September to October 2020).

It should also be noted that the literal text of the provision implies that the total period of 14 weeks of wage integration treatment available until August 31<sup>st</sup> 2020 should be used until that date, while from September 2020 it will restart the "counter" concerning the further 4-week (with no possibility, therefore, to use any additional weeks not used in the previous period).

The Decreto Rilancio confirms the need to follow the procedure involving Trade Unions, for CIGO/FIS applications (the formality was unexpectedly eliminated during the conversion of the Decreto Cura Italia), which provides for information, consultation and joint examination, also to be carried out with telematics means, within three days after the prior notification, without however the need to reach an agreement.

As clarified, this procedure is indeed a corollary of the request for activation of CIGO/FIS, so that INPS has come to make it clear that any agreement can be reached even after the request has been sent to the Institution (see message INPS 1287/2020).

The number of employees who can access to the wage integration treatment has been further extended to the employees hired up to March 25<sup>th</sup> 2020.

On the other hand, the **deadline for the submission of applications** to the INPS to obtain supplementary treatment is reduced from four months from the beginning of the suspension/reduction to the end of the month following the month in which the suspension/reduction began.

An exception is made for applications relating to periods of suspension or reduction of work that began between February 23<sup>rd</sup>, 2020 and April 30<sup>th</sup>, 2020, for which the deadline is set at May 31<sup>st</sup>, 2020.

Therefore, attention should be put to terms of sending the administrative application, because of the restriction introduced.

In any case, applications submitted after the aforementioned deadlines will be considered admissible, but the salary integration treatment cannot be retroactive for more than one week prior to the application itself.

For example:

- suspension of work from 20<sup>th</sup> April 2020 → the application for CIGO/FIS must be submitted by 31<sup>st</sup> May 2020;
- suspension of work from March 23<sup>rd</sup>, 2020 → the application for CIGO/FIS, must be submitted by May 31<sup>st</sup>, 2020;
- suspension of work as from May 11<sup>st</sup>, 2020 → the application for CIGO/FIS shall be submitted no later than 30<sup>th</sup> June 2020.

In the above cases, if the application for CIGO/FIS is submitted after these deadlines, it will be considered admissible:

- suspension of work as from April 20<sup>th</sup>, 2020 → application for CIGO/FIS submitted on June 15<sup>th</sup>, 2020 the CIGO/GIS shall take effect from June 8<sup>th</sup>, 2020;
- suspension of work from March 23<sup>rd</sup>, 2020 → application for CIGO/FIS submitted on June 8<sup>th</sup>, 2020 the CIGO/GIS shall take effect from June 1<sup>st</sup>, 2020;
- suspension of work as from May 11<sup>st</sup>, 2020 → application for CIGO/FIS submitted on July 13<sup>rd</sup>, 2020 the CIGO/GIS shall take effect on July 6<sup>th</sup>, 2020.

Also "**cassa integrazione in deroga Covid-19**" ("**CIGD**") also benefits from the time extension up to fourteen weeks, to which may be added the four weeks from September 1<sup>st</sup>.

However, once the nine weeks of CIGD already provided for by the Decreto Cura Italia have elapsed, the intermediation of the Regions will cease and **the companies must send the applications directly to INPS.**

Requests for extension of CIGD can only be submitted directly to **INPS from June 18<sup>th</sup> 2020 and by the end of the month following the one during which the suspension began.** The competence of the Ministry of Labour and Social Policies for multi-located companies still remains.

In addition, the direct payment by INPS will no longer be mandatory for the companies, with the only exception for multi-located employers, as seems to be understood from the literal text of the law. In this case, the employer may decide to pay in advance the treatment to the employees and adjust the amounts at the payment of social security contributions to INPS.

The obligation of a Trade Union agreement (at local level) is reintroduced for all the employer, even for those (which had been excluded from this procedure by the law that converted the

Decreto Cura Italia) who have closed the activity in compliance with the emergency measures issued to deal with the epidemiological emergency by COVID-19. Also for these employers, therefore, it will be necessary to comply with the provisions of the local agreements, which often provide for procedures that are much stricter than the ones provided for by law for CIGO and FIS.

Therefore, the procedure and timing for employers who will not anticipate the wage integration treatments are unique and applicable to CIGO, FIS and CIGD.

Operatively:

- if the employer wants to access CIGO, FIS and CIGD with direct payment by INPS, it must send the application within the fifteenth day from the beginning of the period of suspension or reduction of the work activity, together with the essential data for the calculation and payment in advance to the employees;
- **once the direct payment has been authorised, INPS will provide the employer with a payment in advance of the treatment, equal to 40% of the authorised hours during the entire period**, within 15 days of receipt of the application (the balance with the advance payments will be made after the employer will send the detailed statement within 30 days of the advance payment).

On this point, also by the express reference by the Decree, it will be necessary to wait for the instructions of INPS.

For the processing of CIGO/FIS/CIGD already in progress referred to periods of suspension or reduction of work that began in the period between February 23<sup>rd</sup>, 2020 and 30<sup>th</sup> April 2020, where the direct payment has already been authorized by the competent administrations, employers who have not already done so, must send the necessary data to receive the advance within the above mentioned terms by INPS within 20 days of the entry into force of the Decreto Rilancio.

## **LEAVES, BONUS AND LEAVES FOR THE EMPLOYEE-PARENT (ARTICLES 72 AND 73)**

**Leaves** for employees in the private sector with children not older than 12 years, already provided for by the Decreto Cura Italia are increased to **thirty days**, with an indemnity equal to 50% of the remuneration, and remain available, even fractionally, **until July 31<sup>st</sup>, 2020**.

The overall maximum limit for the **purchase of babysitting services** is also increased (from 600 euros to 1,200 Euro, to be paid in several instalments of different amounts) and remains an alternative to taking parental leave.

The amounts may also be used for the applications to summer centres, supplementary services for children, territorial socio-educational services, centres with an educational and recreational function and supplementary or innovative services for early childhood.

The special case of **unpaid leave** for employees with children under the age of 16 years old is also extended (in the original version of the Decreto Cura Italia was limited to parents with children between the ages of 12 and 16), subject to the condition that there is no other parent benefits of wage sustainment instruments in the event of suspension or termination of work or that there is no other non-working parent.

The rule provides that in such cases employees have the real right to suspend work for the entire period of suspension of childcare services and educational activities in schools of all levels. During this period the employee retains the right to maintain his or her job (with express prohibition of dismissal), but there is no provision for the payment of indemnities or the recognition of imputed social security contributions.

In view of the suspension of school activities, the impact on the employers' operations could be significant, also considering that there is no provision for the employer to intervene in any manner in the granting of such leave.

Lastly, additional paid leave pursuant to Law No. 104/92 is provided for employees who assist a disabled person in a serious situation, who is a spouse, relative or similar within the second degree, i.e., within the third degree, beyond the three days per month allowed by the law, with an additional twelve days available in May and June 2020.

### **PROHIBITION OF DISMISSALS AND FIXED-TERM EMPLOYMENT AGREEMENT (ARTICLES 80 AND 93)**

With the Decreto Rilancio, as widely announced, the stop to individual or collective dismissals for justified objective reasons is extended for a period of five months, starting from March 17, 2020 (and therefore until August 17, 2020). During the same period, the procedures for collective and individual dismissals for justified objective reasons in progress are suspended.

As further protection of employability, the employer who has terminated the employment contract for objective reasons during the period from February 23<sup>rd</sup>, 2020 to March 17<sup>th</sup>, 2020, can revoke the termination at any time provided that he simultaneously requests CIGO/FIS/CIGS, with effect from the date on which the dismissal took effect. In this case, the employment relationship shall be deemed to be resumed without interruption, without any charges or sanctions for the employer.

Again, with the aim of preserving employability, as an express exception to art. 21 of Legislative Decree no. 81/2015, it will be possible to **renew or extend until August 30<sup>th</sup>, 2020 the fixed-term employment contracts in force at February 23, 2020**, even in the absence of the causes governed by article 19 of the same Legislative Decree. Or rather, the government seems to identify the reopening of post-lockdown activities as a new grounding cause (in particular, where the law states that it is possible to do so "*to deal with the restart of activities as a result of the epidemiological emergency by COVID-19*").

However, it is not clear whether the deadline of August 30<sup>th</sup>, 2020 refers to the last day for signing the extension or renewal (for periods beyond that date), or whether the date indicated should coincide with the end of the extension or renewal. As a precautionary measure, and with the hope of receiving clarifications from the competent institutions, it is suggested the latter interpretation.

After that date, however, considering the literal text of the provision, the possibility that the restart of the post-COVID-19 activity may be one of the conditions allowing further renewals or extensions beyond 12 months, in full force of the causal regime, should be carefully considered.

That said, the rule introduced by the law converting the Decreto Cura Italia (Law 27/2020), which allows companies in CIGO/FIS/CIGD to proceed with extensions and renewals of fixed-term employment contracts and temporary work also during the period of use of social security benefits is still in force.

However, some doubts still remain and, in particular, it is not clear whether, in case of renewal (but also extension) of a fixed-term contract, after March 25<sup>th</sup>, 2020, the employee can benefit of the social shock absorber. In the writers' opinion, at the current state of the provision, this possibility is excluded, at least for renewals occurring after that date, given the fact that only employees, pursuant to art. 19, paragraph and 22, paragraph. 3 of the Decreto Cura Italia, converted by Law no. 27/2020 and amended by the Decreto Rilancio, hired (and the renewal is a real new hiring) by March 25<sup>th</sup>, 2020 can be suspended with use of the social shock absorbers.

## SMART WORKING (ARTICLE 90)

The Decreto Rilancio introduces a real right to smart working although limited to specific cases.

In particular, employees who have at least one child under the age of 14 years old will have the right to work in smart-working modality, provided that this modality suits with the characteristics of the employment activity, and provided that there is no other parent who is beneficiary of wage sustainment instruments for the event of suspension or termination of work. Also to implement this kind of smart working, Law no. 81/2017 requires information obligations, which are fulfilled by the employer electronically, also using the documentation made available on the website of the National Institute for Occupational Accident Insurance (INAIL).

Operationally, two perplexities immediately emerge: who will assess the suitability of the employment activity with smart working modalities? Furthermore, how will the employer verify that there is no other parent who is a beneficiary of wage sustainment instruments with suspension or termination of work and that there is no other non-working parent?

In addition to the above, it is confirmed that smart working can be used and activated with the simplified procedures (without individual agreement and with simplified communications to the authorities and for H&S purposes) referred to in the previous measures, until July 31, 2020. It is also allowed the use of personal tools of the employee, when not made available by the employer.

The provision leaves the field open to some perplexities, considering that the derogation from the individual agreements was initially provided for (Prime Ministerial Decree of March 22, 2020 and the Decreto Cura Italia) also as a measure to promote employability and guarantee salaries during periods of forced closure of employer structures, while nowadays, in the aftermath of the start of "Phase 2" and with a view to the overall reopening of all activities, employers and employees may have an interest in formalizing an agreement with the employee, given the current structural and no longer emergency nature that smart working is gradually taking on and which could change the employer's organizational aspects in the short and medium term. In this context, the regulation of smart working in regulatory and management terms, through appropriate agreements and protocols, would allow the employer to substantially increase the efficiency of the service rendered, which would no longer be episodic, as well as a more efficient risk management (not only with regard to the obvious data protection and cyber security profiles, but also with regard to the correct regulation of the working activity).

## REMEDIATION OF WORKING TIME FOR TRAINING PURPOSES (ARTICLE 88)

The Decreto Rilancio introduces a new fund (the so-called "**Fondo Nuove Competenze**"), set up by the National Agency for Active Labour Policies (so-called "ANPAL"), in order to cover the cost of hours spent by employers **on training courses for employees**.

In particular, training hours may be established and regulated in agreements with trade union signed at company or territorial level, aimed at implementing specific agreements on "**reshaping working hours for changed organizational and production needs of the employer**".

This provision is not yet fully operational, since for the identification of the criteria and methods of application of the measure and the use of resources, the regulation refers to a decree of the Minister of Labour and Social Policies in agreement with the Minister of Economy and Finance, to be issued within July 19, 2020.

When fully operational, the intervention should make it possible to relieve the employer from the cost of the workforce without recourse to mere social shock absorbers for the time of the

training and, at the same time, allow employees to retrain and/or develop new skills, while maintaining their jobs and - at least in principle - without reducing the salary received.

### **FURTHER MEASURES TO SUPPORT EMPLOYERS (ARTICLES 60, 120 AND 125)**

In order to support and encourage the adoption of measures related to the need to adapt production processes and working environments, and in compliance with the limits and conditions set out in the Communication of the European Commission of 19 March 2020 C(2020) 1863 final "*Temporary framework for State aid measures to support the economy in the current COVID-19 emergency*", the Decreto Rilancio introduces a series of measures providing for subsidies in the form of tax advantages and direct grants.

Among the first, it is provided the tax credit for employers (including sole proprietorships, associations and foundations) that carry out their activities in places open to the public (in the sectors indicated in Annex 1 of the Decreto Rilancio), recognized to the extent of 60% of the expenses incurred in 2020, for a maximum of 80,000 Euro, in relation to the interventions necessary to ensure compliance with health regulations and containment measures against the spread of the COVID-19 virus (including building work necessary for the renovation of changing rooms and canteens, for the construction of medical areas, entrances and common areas, for the purchase of security furniture, as well as in relation to investments in technology).

On the other hand, all employers (including non-commercial entities and recognised religious bodies) are entitled to a tax credit equal to 60% of the expenses incurred in 2020 for the disinfection of the places and tools used, as well as for the purchase of personal protective equipment and other devices to ensure the health of workers and users. The tax credit is up to a maximum of 60,000 Euro for each beneficiary, for a total of maximum 200 million Euro for year 2020.

Finally, it is worth mentioning the introduction of a particular form of subsidy granted in order to contribute to the payment of employees' wages and salaries and the compensation of self-employed workers, with the aim of safeguarding employment and avoiding redundancies during the emergency period and, in particular, to contribute to companies' wage costs, including contributions and social security contributions.

The measure should not consist on a "wage integration treatment", as it is conditioned to the full operative employment of the beneficiary employees.

The grant will be awarded for a period not exceeding 12 months (with the possibility of backdating the application to February 1st 2020) and will aim to remunerate the employer with a maximum of 80% of the gross monthly salaries (including the employer's social security contributions) of employees "*who would otherwise have been dismissed as a result of the suspension or reduction in employer activities due to the COVID-19 pandemic and on condition that the personnel benefiting from it continue to work continuously throughout the period for which the aid is granted*".

On this point it will be necessary to wait for the local regulations of Regions and Autonomous Provinces, also because, in compliance with the above mentioned Communication of the European Commission of March 19<sup>th</sup>, 2020, such aid can be considered eligible under European legislation only to the extent that it confers a selective advantage. In this respect, as also reiterated in the Explanatory guidelines to the Decreto Rilancio, this circumstance can only occur if the aid is limited to certain sectors, regions or types of enterprises.

Further instructions in this respect are therefore awaited.

Furthermore, the Decreto Rilancio establishes that, in order to promote the implementation of the provisions set out in the Protocol regulating measures to contain and face the spread of the COVID-19 virus in the workplace, INAIL (the Italian Public Work related Insurance Fund) promotes extraordinary measures for companies that have introduced in the workplace,

following the Decreto Cura Italia, interventions to reduce the risk of contagion through the purchase of:

- tools and equipment for the isolation or distancing of employees, including the related installation costs;
- electronic devices and sensors for the distancing of employees;
- equipment for the isolation or distancing of employees from external users and from the employees of third-party suppliers of goods and services;
- devices for the disinfection of workplaces; systems and instrumentation for the control of access to workplaces useful to detect indicators of a possible state of contagion;
- devices and other personal protective equipment.

Also in this case, the operating procedures for access to these aids are still to be awaited.

### **REGULARIZATION OF IRREGULAR WORK FOR SPECIFIC SECTORS (ART. 103)**

In the sectors of agriculture, livestock and animal husbandry, fisheries and aquaculture and related activities, as well as personal care and domestic work to support family needs, in order to ensure adequate levels of individual and collective health protection as a result of the contingent and exceptional health emergency related to the disaster resulting from the spread of the COVID-19 contagion and encourage the regularization of irregular employment relationships, the possibility to apply for a contract of employment with foreign citizens which are already on the national territory or to declare the existence of an irregular employment relationship, still in progress, with Italian citizens or foreign nationals is permitted only under strict conditions.

Likewise, foreign citizens, with a residence permit expired on October 31st, 2019, not renewed or converted into another residence permit, can apply for a temporary residence permit, valid only in the national territory, for a period of six months from the submission of the application.

If, at the end of the duration of the temporary residence permit, the citizen submits a contract of employment or pay and social security documentation proving that he or she is working in accordance with the law in the areas referred to in paragraph 3, the permit is converted into a residence permit for work purposes.

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*For any doubts on legal impact of COVID-19:*

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