

#STAYATHOME AND THE ITALIAN EMPLOYMENT LEGISLATION

Since the onset of the Covid-19 emergency in Italy, the Government has been taking numerous initiatives to help companies to survive the current situation, including on 17th March when Law Decree no. 18/2020 (the so-called "Save Italy Decree ") was enacted, and on 22nd March when a further Presidential Decree was approved in an attempt to limit the spread of the virus.

In line with the #StayAtHome restrictions, the Government measures are mainly aimed at limiting, to the maximum extent possible, the presence of employees at the employers' premises and in general their movements over the Italian territory.

This objective was pursued primarily by:

- encouraging and easing the use of remote working;
- ordering the closure of all commercial and manufacturing activities (except for a number of specifically identified necessary or strategic activities);
- offering to employers who are forced to suspend or reduce their business a range of social instruments which allow them reduce salary costs while employees receive an allowance from the social security authority (INPS).

For the limited business activities that can continue "on site", the Government - with the support of the employers' associations and employees' trade unions - also identified a series of measures to keep employees' safe at work.

Finally, certain other ancillary measures were implemented, which impact on the management of the employment relationship during the emergency.

REMOTE WORKING

The Government recommends maximizing the use of home work whenever the role can be performed remotely.

Although remote working is normally permitted only with the employee's consent, from the onset of the emergency it is possible to adopt such modality of work in the absence of individual agreements. Other bureaucratic steps have also been lightened, including in terms of health and safety information obligations, to allow the immediate implementation of work at home.

TEMPORARY SUSPENSION OF THE EMPLOYMENT

Various instruments have been made available by the Save Italy Decree in case of temporary suspension of the employment, both upon the initiative of the employer (e.g. use of social security programs or of accrued days of holiday) and upon the initiative of the employee (parental and other leaves).

Social programs

Companies can benefit from a range of social programs – both pre-existing and shaped because of the Covid-19 situation – to cope with the emergency period, including:

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- **Cassa Integrazione Guadagni Ordinaria (CIGO)**, this is a fund available to industrial (and similar) companies staffed with more than 15 employees. The pre-existing "normal" CIGO allows employers to suspend employees from work or reduce their working time on a temporary basis, i.e. over a period of 13 weeks (extendable to 52). However a brand new kind of CIGO has now been introduced, justified by the Covid-19 emergency, which covers a period of 9 weeks and is available to all employees who were in force at the above companies on 23rd February 2020. Before implementing such CIGO trade unions must still be consulted (including through a newly introduced on-line procedure) and a simple administrative application must then be filed. CIGO is fed through an ordinary and pre-existing budget of funds.
- **Cassa Integrazione Guadagni Straordinaria (CIGS)**, including through the so-called solidarity contract. This is a fund available to industrial (and similar) companies staffed with more than 15 employees but also to commercial and tertiary enterprises with more than 50 employees. Employees can be suspended from work or have their working time reduced for longer periods of time (up to 24/36 months) due to exceptional circumstances. It requires a trade union consultation and an articulated administrative application, reflecting a reorganization or redundancy management plan. CIGS is fed through an ordinary and pre-existing budget of funds.
- **Cassa Integrazione Guadagni in deroga (CIGD)**, this is a tool made available to all businesses, even small ones, to cope with the Covid-19 emergency. It has a maximum duration of 9 weeks and will be managed at a Regional level. Single agreements which are being signed with the trade unions in each Region establish the procedures to access such tool. It relies on a limited availability of funds and will be granted on a "first come-first served" basis.

Within all the programs mentioned above, the employees who are suspended from work will **receive an allowance from the social security authority ("INPS")** equal to 80% of the lost salary (with a cap of 1,129 Euro net).

Holidays and permits

One question that has often been raised in the last days is whether or not the employer can require employees to take accrued holidays and paid leaves, and whether accrued holidays must have been used up before accessing social programs.

In principle the law authorizes employers to unilaterally decide when holidays must be used; however the most common national collective agreements have introduced less favourable rules, for instance requiring the employee's consent or consultation with the works councils/trade unions. The Government measures adopted recently encourage the use of accrued holidays and permits, but the Protocol signed by the employers' associations and the employees' trade unions on 14th March, 2020 on its side establishes that holidays can be used only AFTER recourse to social programs, if available.

Despite this uncertainty in the regulatory environment, we believe that it is possible to promote or even impose the use of holidays, especially when there are a considerable number of days of holiday arrears. This is, after all, the direction in which the majority of companies have moved in the last weeks.

If, on the other hand, a more prudent approach is preferred, the consent of the employee concerned should be obtained, which is however a not easy step, including from a practical perspective, in the current emergency situation.

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With respect to the use of holidays vs the access to social programs, there is no mandatory provision that requires employers to use up accrued holidays as a pre-requisite for their use, as also confirmed by INPS (Message no. 3777 of 18th October 2019). We are aware, however, that some Regions have placed this condition for the use of the CIGD.

Sick leaves, parental leaves and other work-life balance instruments

Several extraordinary types of leave and other measures have been introduced to encourage the life and work balance in times of emergency and closure of schools:

- an extraordinary leave of 15 days (in the overall) in favour of parents of children under 12 years of age (without age limits for disabled children). The leave may be used by one parent at a time. It is not available if one of the parents is unemployed or suspended under a social program. The leave is paid by INPS with an allowance equal to 50% of the salary. The leave will become operational once INPS has issued appropriate instructions. As an alternative, parents may benefit from a voucher of 600 Euro for baby-sitting services;
- unpaid leave for parents of children aged 12 to 16 for the period of school closure. The leave may be used by one parent at a time and cannot be used if one of the parents is unemployed or suspended under a social program;
- a leave of absence for people with serious disabilities or their carers (pursuant to Law n. 104/92), increased by 12 days in March and April 2020 (to be added to the ordinary 3 per month and therefore for a total of 18 days in March and April). The leave is paid by INPS with an allowance equal to 100% of the salary.

Self-isolation and quarantine

Employees who are self-isolating or quarantined according to the applicable rules are considered on sick leave. Exceptionally, this period of absence will not count for the purposes of the maximum period of sick leave an employee is entitled to under the national collective agreement and will be at full charge of the social security authorities (INPS) upon specific request of reimbursement and subject to a certain funded threshold. It is therefore not possible to exclude the risk that, if this threshold is exceeded, all the burdens associated with the employee's illness will be borne by employers.

In the case of Covid-19 contracted at work, the periods of quarantine and self-isolation are considered leaves due to accident at work and thus indemnified by competent authority (INAIL).

WORKING ON SITE – EMPLOYERS' DUTIES OF CARE

The business and manufacturing activities that are exceptionally authorized to continue on site must abide with specific precautions and restrictions to keep employees safe, as dictated by the Government measures and the Protocol on 14th March. Recommendations are as follows:

- suspend manufacturing activities which are not essential in the production cycle;
- when production activities continue: (i) respect the 1-meter distance between employees, (ii) provide them protection devices (iii) limit movements within sites and the access to common spaces (e.g. canteens);
- increase cleaning and sanitization procedures at the site;
- provide employees with adequate information about the Authorities' orders (including duty to stay at home with temperature >37.5° or other relevant symptoms; duty to disclose and

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consequently stay/return home in the presence of other risky conditions, including living with a sick person; duty to respect safety measure when at work);

- employers are allowed to measure temperatures to employees who access a site and must also prevent access to those who have been closed to Covid-19 positive persons (specific rules for the protection of the employees' data must however be adopted);
- suspension of travels which are not strictly necessary;
- a non-taxable salary increase of 100 Euro pro-rated for the month of March is to be provided to those who are required to work on site and not at home (limited to those who have a total annual income not exceeding 40,000 Euro). This amount is to be advanced by the employer and will then be offset with the ordinary procedures by INPS.

For safety at work purposes, it is also advisable to revise/update the companies' risk assessment document ("DVR"), reflecting the biological risk associated with Covid-19.

As it is well known, Government regulations currently prohibit any kind of travel within the national territory "except for travel motivated by (i) proven work-related needs, (ii) situations of absolute urgency or (iii) health reasons". In order to make it easier for employees to travel to the employer's site, the employer may consider giving them a declaration attesting (a) the fact of being included between those limited businesses that can continue to operate and (b) the need to have the employee on site.

NO FIRING. SALARY INCREASE

The prohibition to start collective dismissal procedures for 60 days after 23rd February, 2020 has been introduced, as well as the suspension of those procedures which had been started after such date.

Procedures started BEFORE that date may instead be completed and the related dismissals served in accordance with the ordinary rules.

Individual dismissals for redundancy reasons are also prohibited for 60 days. This prohibition does not apply however to managers (called *dirigenti* in Italy).

This is a very drastic measure, which reduces the flexibility of companies significantly, even taking into account that, in our opinion, breaching the ban would inevitably lead to the dismissed worker being reinstated.

Individual dismissals for disciplinary reasons can instead be served according to the normal rules.

Suspension of the obligations to hire disabled people

The obligation, existing for employers with more than 15 employees, to hire disabled employees is suspended for 2 months.

Suspension of hearings and court deadlines

From 9th March 2020 until 15th April 2020, all hearings relating to civil proceedings are suspended. These provisions also apply to employment-related Court actions, with certain exceptions for urgency/summary proceedings.

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The Employment and Industrial Relations Department of Legance is available to provide any clarifications, also in respect of any specific situation which may be of interest to you.

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