



# MEMO COVID-19

## A BRIEF GUIDE ON THE MANAGEMENT OF EMPLOYMENT RELATIONSHIPS IN ITALY DURING THE PANDEMIC

April 9, 2020

### Foreword

Parallel to the many devastating consequences all across the board the COVID-19 outbreak, and the virtually general lockdown around the globe that such a sinister event has brought about in the attempt to defy the pandemic, have raised complex legal issues and questions for Italian based businesses that need to be addressed urgently. Among these are, *inter alia*, HR issues and matters of all sorts with which many are grappling these days, including e.g. salary subsidies and the application for their allowance, dismissals vs. the right to keep the employment and, more importantly, safety at work measures and the actions required in case of a contagion of one or more employees. As ever in our firm's history, we thought that we should be of help to all those we know and care for. For this reason, while we are all operating in smart working regime we have taken some extra time to prepare this memorandum and are circulating it to our contacts in hope to shed some light on the current regulatory situation regarding the most important Covid-19 related issues in HR matters. It is made for the benefit of companies, managers and employees and it intends to steer them in the right direction amid the inevitable confusion caused by such an unprecedented situation. Additional specific information is available upon request.

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- I. As a preliminary note and premises to this memorandum let us note that:
  - The regulations tackling the Covid 19 turmoil have been passed progressively over the last few weeks, fundamentally in accordance with the chronological spread of the virus and in reaction to the harrowing consequences that it has caused in



terms of the number of contagion cases and the death toll, which is still rising to this date. Most such rules have been passed by a governmental act, or in the form of a decree issued by the Prime Minister, and not by Parliament, as a consequence of the state of emergency situation that Italy is still experiencing.

- For purposes of identifying the riskiest areas Italy has been broken down in coloured zones, based on the intensity of the contagion and the possibility of being infected. Among these, the cities of Brescia, Bergamo and Milan and their surroundings have initially been labelled as the “red zone”, due to the initial occurrence of the outbreak in that area. As the virus continued to spread geographically and to claim an ever increasing number of lives, the red zone area has been extended to virtually all of northern Italy. Although other areas in Italy are considered to be at risk, as of today there are only few other spots across the country that are red zone labelled, including Rome, northern Italy remaining the main infected area.
- The first Covid 19 decree was passed before March 10, 2020 and focused on employment relations in the red zone area. There have been since a large number of other legislative measures of the same type, still in the form of governmental decrees which have now established the application of the initial regulations to all employees working throughout Italy.

II. The emergency measures for the management of employment relationships are discussed herein in the same chronological order as they have been enacted.

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## I. LAW DECREE NO. 9 DATED MARCH 2, 2020

Under the **Law Decree no. 9 issued on March 2, 2020**, effective March 2, 2020 the measures in force in the red zone areas where the epidemic originally spread (some cities of Lombardy and Veneto, see above) are the following:

- Easier procedures to apply for the ordinary treatment of salary subsidies or for the ordinary allowance of the suspension or reduction of the working activity and the termination of businesses.
- Employers operating in the private sector, including agriculture, who are not allowed to resort to the remedy of the income support established by the current laws, can apply for a salary subsidy “in derogation” to last for the entire duration of the suspension of the employment relationship, and in all cases for a period of three months.
- Self-employed workers are entitled, under certain conditions, to a monthly allowance equal to € 500 for three months.

Public Administration’s employees are eligible to be furnished with informatic tools (such as laptop and tablet) to operate in smart working regime. As regards these employees the period of illness or quarantine or fiduciary stay at home shall be treated as a period of hospitalization.

These regulations are still in force as of today and have not been superseded by those that have been subsequently enacted.

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## II. PRIME MINISTER'S DECREE DATED MARCH 11, 2020

The **Prime Minister's Decree issued on March 11, 2020** introduces some new, further measures effective March 12, 2020 to last until March 25, 2020.

It is recommended to let employees operate in a smart working regime and to adopt the following actions:

- encourage holidays, paid leaves and make use of such other similar possibilities as are contemplated by the applicable national collective agreements;
- interrupt the activities of the business units that are not essential to the production;
- implement a company policy against the contagion and, wherever it should not be possible to respect the one meter social distancing rule, it is recommended to use personal protective equipment at work;
- encourage the sanitisation of the places of work;
- limit the circulation within the business units and the access to common spaces.

## III. PROTOCOL FOR THE REGULATION OF THE MEASURES AGAINST THE SPREAD OF THE VIRUS COVID-19 IN THE PLACES OF WORK

On March 14, 2020, the Italian Government and the so called social parties (the unions and the trade associations) entered into a **Protocol for the regulation of the measure against the spread of the virus Covid-19 in the places of work** (the "Protocol"), to ensure the continuation of the productive activities in better conditions of health and safety at work, by setting out directives for the implementation of the measures of reduction of the outbreak.

The Protocol provides, inter alia, the following rules:

- **information**: the employer must provide the employees with the following basic information and instructions, or however signal them appropriately at the entrance of the place of work:
  - the obligation for the employee to stay at home in case of temperature (higher than 37.5°) or flu symptoms, and to call the doctor of trust and the health authority to report such health conditions;
  - the obligation to obey the Government and the employer's directives, bearing in mind that it is forbidden to access or stay in the working spaces in case of flu symptoms or in case one has been in close contact with infected individuals.
- **access to the place of work**: employees may be subject to a temperature screening and if the temperature should be higher than 37,5°, access to work will be forbidden to those who have such a symptom, who will also be isolated until the employer receives specific instructions as to how to deal with that situation from the health authorities. These employees shall then call their doctor of trust and follow his instructions (and are not supposed to go to a hospital or an infirmary upon the occurrence of these symptoms). Any employee who has been in contact



in the last 14 days with individuals infected or coming from the areas at risk (the so called red zones) cannot access the place of work.

- **access by external suppliers**: procedures of access, internal circulation and exit must be implemented, and any occasions of contact must be limited, thereby however ensuring the respect of the at-least-one-meter **social distancing measure**. Access by external individuals must be limited, and the company shall provide hygienic services for those individuals, different from those used by the employees.
- **cleaning and sanitation**: the employer must ensure daily cleaning and **periodic sanitation of the places of work, of workstations and of the common spaces**. With reference to these areas, access must be limited, and the requirements of permanent ventilation, limited period of stay and social distancing must be ensured.
- **individual hygienic precautions**: the employer shall provide the employees with detergents for the hands, and their frequent use and wash must be recommended.
- **individual protective equipment**: their use must be recommended. The use of **masks and other equipment** (gloves, glasses, coverall, caps, etc.) is mandatory **if it should not be possible to ensure the respect of the social distancing** requirement or of other organizational solutions.
- **business organization**: as regards productive activities, **working shifts shall be established with the view to limiting contacts among people**, and hours of entrance and exit shall also be established to avoid, to the extent possible, contacts in the common spaces. Companies may close departments or sites other than those regarding production, thereby allowing the continuation of the working activities in a smart-working regime. It is also advisable to use such available contractual tools under the applicable bargaining agreements (holidays, rol, “bank hours”) concerning the interruption of the work that ensure the payment of the salary, and also to resort to salary subsidy remedies wherever possible. Business trips are forbidden.
- **internal circulation, meetings, internal events and training**: circulation inside the business units must be limited; physical meetings are forbidden and must be organized remotely. And, if this should not be possible, participation in meetings shall be limited and all individual precautions shall be respected (social distancing, cleaning, etc.). Also, training programs are interrupted, but can be carried out remotely. The duties related to health & safety can continue to be regularly carried out by those in charge even if the compulsory training program cannot be completed.
- **management of infected people**: the employer must isolate the infected employee and alert **the health authorities and call the emergency number** provided by the Region and the Health Ministry, thereby following their directives and cooperating with them for the management of any “close contacts” with the infected employee in order to put in place the appropriate quarantine measures.

Periodic health tests shall be conducted, as another measure of prevention and an *ad hoc* committee shall be **established within the company** for the implementation and the control of the enforcement of the rules of the Protocols, with the



participation of **Trade Unions and the RLS** (the employees' representative for safety issues).

In order to ensure the implementation of the Protocol against the spread of the virus, the Government encourages to hold meetings with the Trade Unions inside the place of work and, as regards smaller companies, to entertain any such meeting with the Trade Union at territorial level. A permanent consultation with the Trade Unions is required to define the most appropriate measures against the spread of outbreak, taking into account the specific organization of the business. The Protocol must be applied also by contractors who operate inside the principal's business units. In case it should not be possible to apply the provisions of the Protocol, the productive activities may be interrupted, and production will be allowed to continue only if the protection of the employees is ensured.

#### **IV. LAW DECREE no. 18 OF MARCH 17, 2020 (AS MOST RECENTLY UPDATED)**

By **Law Decree n. 18 of March 17, 2020** ("LD") the following measures have been introduced with the purpose to support companies that have suspended or reduced their activity due to the coronavirus epidemic.

- **ban on dismissals**

Effective March 17, 2020, the **procedures of collective dismissal** (Law n. 223/91) are stayed for a period of 60 days, and for the same period the dismissal procedures started before February 23, 2020 and currently pending are suspended.

Until this same deadline employers are not allowed to dismiss employees **for justified or objective cause** (regardless of the number of employees employed).

- **ordinary treatment of salary subsidy and ordinary allowance**

Employers whose business has been suspended or reduced for events connected to the coronavirus emergency can submit an application for the **ordinary treatment of salary subsidy or for the ordinary allowance** under the cause "emergency COVID-19", for a maximum period of **nine weeks** and however no later than August 2020. The application must be submitted within the end of the fourth month after the one when the suspension or reduction of the working activity started.

Employers **are not required to:**

- implement Trade Unions procedures as set forth by article 14 of Legislative Decree n. 148/15, unless **the notice, the consultation and any required joint meeting** can be carried out by electronic means within 3 days after the notice;
- abide by the deadline of 15 days from the suspension or reduction of the business for the submission of the application as set out by article 15 of Legislative Decree n. 148/15;
- pay the additional contribution that would be normally due upon the employer in case of salary subsidies.

The period of ordinary treatment of salary subsidy and the ordinary allowance granted on the basis of the LD shall not be summed up when calculating it for the



purposes of determining the maximum duration of the ordinary and extraordinary salary subsidies (*cassa integrazione guadagni ordinaria e straordinaria*, “CIGO” and “CIGS”) and is not considered for the purposes of their following applications.

The ordinary allowance is granted also to employees of companies enrolled in the Fund of salary subsidy (*Fondo di integrazione salariale*) who employ more than 5 employees.

Under the newer provisions set out by the just enacted Law Decree no. 23 of April 8, 2020, the above-mentioned measures may be granted to **the employees that, as of March 17, 2020, are employed** by the employers who submit the relevant application (the length of employment requirement of 90 days as set out by article 1, paragraph 2, Legislative Decree n. 148/15 does not apply).

- **companies that are implementing the extraordinary treatment of salary subsidies**

Employers who, as of February 23, 2020, operate under the extraordinary treatment of salary subsidies, may submit an application for the **ordinary treatment of salary subsidy** according to the LD for a maximum period of **9 weeks**. This treatment suspends and replaces the extraordinary treatment in course and may concern the same employees for covering the entire working hour. The ordinary treatment can be granted only if the extraordinary treatment is suspended.

The period of coexistence of ordinary (according to the LD) and extraordinary treatment of salary subsidies are not summed up for the purposes of calculating the maximum duration of the salary subsidy period set forth by the law. The payment of the **additional contribution upon the employer is not required in this case**.

With reference to Trade Unions procedures, the timelines set out in articles 24 and 25 of Legislative Decree n. 148/2015 do not apply (e.g., amongst others, the deadline to proceed to the consultation procedure with the Unions in case of a transfer of assets).

- **employers with solidarity allowances in course**

Employers registered with the Fund of salary subsidy who, at the date of February 23, 2020 have in course a solidarity allowance, can submit an application for the **ordinary allowance** introduced by the LD for a maximum period of **9 weeks**, that may concern the same employees for covering the entire working hours.

The period of coexistence of ordinary (according to the LD) and solidarity allowance is not considered for the purposes of the maximum duration as set forth by the law for this measure. The payment of additional contribution is not required.

- **salary subsidies in derogation**

The Regions and the independent Provinces, with reference to employers of private sector (excluded the domestic work), that are excluded from the provisions of law in the matter of suspension or reduction of the working hours, can grant treatments of **salary subsidies in derogation** for the duration of the suspension and anyway for a maximum period of **9 weeks** due to the emergency derived from the



spread of COVID-19. An agreement with the Trade Unions is required, except for employers with not more than 5 employees.

Under the newly enacted provisions (Law Decree no. 23 of April 8, 2020) the treatment concerns employees already employed as of March 17, 2020 (the length of working period of 90 days requirement does not apply) and will be granted within the limit of 3.293,2 millions of euro, divided among the Regions and independent Provinces by means of one or more decrees of the Labour and Financial Ministries.

The treatments of salary subsidies are granted by means of decree of the Regions and the independent Provinces and shall be sent to INPS (the social security institute) within 48 hours after the issue. The Regions and the independent Provinces shall send to INPS also the list of the beneficiaries and the latter provide the treatments. The applications are to be addressed to the Regions and the independent Provinces that manage them based on the chronological sequence of submission.

The treatment shall be granted only by means of a direct payment by INPS (employers must send to INPS the necessary data for the payment of the salary subsidies as set forth by article 44, paragraph 6ter, Legislative Decree n. 148/15)

- **leave**

Effective March 5, 2020, considering the shutdown of schools, parents who are employees in the private sector have the right, **for a period of 15 days and with reference to children who are not more than 12 years old** (this limitation of age does not apply in case of disabled children), to enjoy a specific entailing **the payment of 50% of the salary**, calculated according to article 23 of Legislative Decree n. 151/2001.

This leave is granted alternatively to both parents, so long as one of them is not already enjoying measures of income support.

Parents who are subject to the "*Gestione separata INPS*", (a special social security regime), and who have children who are under 12 years of age, have the right to enjoy a specific leave with an allowance for each day equal to 50% of 1/365 of the individual income calculated according to the method used for maternity allowances. The same allowance is granted to the parents registered with the INPS' ordinary regime by an amount equal to 50% of the daily compensation set annually by the law, according to the type of the autonomous job carried out.

**Alternatively**, the above workers have the right to choose **a bonus for the services of baby-sitting within the limit of € 600**, to be used for the period starting from March 5 onwards. This bonus is granted also to the self-employed workers not registered with INPS, with certain caveats.

For public employees working in the medical sector the bonus is equal to € 1.000.

- **right of abstention from work**

The parents who are employees in the private sector who have **children who are between 12 and 16**, have the right of **abstention from work** for the period of



shutdown of the school, **without receiving the payment of any compensation but with the right to keep their job, and are protected by the temporary ban of dismissals** provided that in the family there is not a parent who already enjoys measures of income support.

- **permits under article 33, law n. 104/92**

The number of days of monthly paid permit **is increased by 12 days, to be used** in the months of **March and April 2020**.

- **Quarantine**

The period of quarantine and of any fiduciary stay at home **is treated as illness** for the purposes of the economical treatment set out by law and shall not be calculated as a the period of absence during which the right to keep the employment is in force.

The employee's doctor of trust shall issue a certificate of illness regarding the decision about the quarantine or the stay at home remedy.

- **self-employed people**

Self-employed people (who possess a VAT number that is valid as of February 23, 2020) or collaborators under a contract in force at the same date, who are subject to the "*Gestione separata INPS*", who are not retired nor enrolled in other type of social contributions forms, are entitled under certain conditions to receive an allowance for the month of March 2020 of € 600 at the charge of INPS.

- **allowance for seasonal workers of tourism and spas**

Workers who have terminated unintentionally their employment in the period from January 1, 2019 until March 17, 2020, who are not retired and without an employment, are entitled to an allowance for the month of March 2020 equal to € 600 in charge of INPS.

- **workers of agricultural sector**

These workers, if not retired, who worked for at least 50 days during 2019, are entitled to an allowance for the month of March 2020 equal to € 600 to be paid by INPS.

For the fixed-term and open-term workers of the agricultural sector, the deadline for the submission of unemployment applications is extended, for those concerning the year 2019, until June 1, 2020.

- **extension of the deadlines in matters of social contribution**

Effective February 23, 2020 until June 1, 2020, the deadlines concerning the payment of social contributions, assistance and insurance services provided by INPS and INAIL (the social security insurance company that looks after incidents at work) are suspended.

- **right of priority for smart working**

Until April 30, 2020 disabled employees or those who have disabled people in their family, are entitled to carry out their activity in smart-working regime, provided that



it is compatible with their tasks. Employees in the private sector with a disability have the priority in the acceptance of the requests of smart-working.

- **INAIL's provisions**

Effective February 23, 2020 until June 1, 2020, deadlines concerning the requests of services provided by INAIL are suspended and the lapse of time will restart after the period of suspension. In case the infection of coronavirus (SARS- CoV-2) occurs at the place of work, the doctor looking after that patient shall issue a certificate of injury and send it to INAIL which will then provide the measures allowed in cases of injury according to the provisions of law currently in force.

The remedies provided by INAIL in case of infection of coronavirus at work are valid also for the period of quarantine or of fiduciary stay at home with abstention from work. These events are the competence of the insurance management.

## **V. PRIME MINISTER'S DECREE ISSUED ON MARCH 22, 2020**

By the **Prime Minister's Decree of March 22, 2020**, the Italian Government has locked down all the **productive industrial and commercial businesses**, with some exceptions (mainly, the businesses connected with the management of the emergency and those of public interest or are essential for the living). Professional activities such as law services and the like are not suspended. The productive activities which are suspended may continue to be carried out only if it is possible to run them in a smart-working regime.

These above-mentioned provisions, initially in force up to April 3, 2020 have been extended up to **April 13, 2020** (according to Ministerial Decree of 1 April. 2020). **Further extensions are very likely to be given.**



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