Pirola
Pennuto
Zei
& Associati
studio di consulenza
tributaria e legale

COVID-19

Decree Law no 18 of 17/03/2020 ("Cura Italia") introducing measures in support of the national healthcare service and of families, workers and companies in connection with the COVID-19 emergency

Temporary suspension of dismissals

Decree no 18/2020 (the "Decree"), introducing measures in support of the national healthcare service and of families, workers and companies in connection with the COVID-19 emergency, was published in the Italian official journal on 17 March 2020.

One of the measures introduced by article 46 is the temporary suspension of appeals against dismissals, to avoid adverse implications for workers concerned by individual or collective redundancy procedures during the current medical emergency.

In particular, the rule provides that "*Starting from the effective date of the Decree, the start of the procedures under articles 4, 5 and 24 of law no 223 of 23 July 1991 shall be prohibited for 60 days*", and that *"during the same period, all pending procedures initiated after 23 February shall be suspended. Until the end of the above period, employers, regardless of their headcount, may not terminate employment contracts for justified objective reasons pursuant to article 3 of law no 604 of 15 July 1966*".

Therefore, during the sixty days subsequent to the entry into force of the Decree (i.e., until 16 May 2020), employers will not be allowed either to implement collective redundancy procedures (pursuant to law 223/1991) or carry out individual dismissals for justified objective reasons pursuant to article 3 of law 604/1966.

Employers will also have to "suspend" any collective redundancy procedures initiated from 24 February 2020 onwards and still in progress at the date of entry into force of the decree (17 March 2020); such procedures may be resumed not earlier than 60 days after the date of publication of the Decree, i.e. 16 May 2020 (or such extended period as may be specified at a later time).

Consequently, no such collective dismissals can be carried out until 16 May 2020 - even if trade union agreements for the start of the procedure regulated by law 223/1991 had been reached before 24 February 2020 and provided the criteria for dismissal of redundant staff.

Likewise, no new collective dismissal procedure pursuant to law 223/1991 can be initiated during such 60-day period, regardless of the reasons for termination.

As regards individual dismissals for objective justified reasons, the newly introduced rule provides for a temporary prohibition to dismiss individual workers for reasons related to manufacturing activities, the organization of work and its regular functioning during the 60-day period subsequent

to the date of entry into force of the decree, regardless of the size of the employer and of the reasons for such dismissals.

Consequently:

- With regard to workers hired before 7 March 2015 (date of entry into force of legislative decree 23/2015 – concerning "*tutele crescenti*"), employers may not initiate the attempts at conciliation and the procedures preparatory to the dismissal of individual workers due to justified objective reasons pursuant to 7 of law 604/66; where such procedures had already been initiated at the date of entry into force of the Decree, they may not end with the worker's dismissal;
- During the 60-day period subsequent to the date of entry into force of the rule, neither workers hired under the "*tutele crescenti*" regime pursuant to legislative decree 23/2015 nor workers under the "*tutela obbligatoria*" regime (to which the individual dismissal procedure pursuant to article 7 of law 604/1966 may not apply), can be dismissed for justified objective reasons pursuant to article 3 of law 604/1966.

Note, however, that the rule does not mention disciplinary dismissals pursuant to article 2119 of the civil code: therefore, the prohibition to dismiss under the Decree has not been extended to termination with cause or termination for a justified subjective reason, which therefore appear not to have been limited or suspended and should continue to apply throughout the emergency period, if the relevant conditions occur.

Furthermore, since *dirigenti* (managers/executives) are not subject to the rules on individual dismissals pursuant to article 3 of law 604/1966, the prohibition to dismiss under the Decree does not appear to be applicable to the individual termination of employment of *dirigenti*.

Finally, since the Decree does not expressly mention other reasons for termination (e.g., termination for unsuccessful completion of the probationary period, or for conclusion of the "period of grace" – i.e., the period during sick leave when an employee may not be dismissed), it is believed, that – at least formally – these cases fall outside the scope of the rule. Nevertheless, in the circumstances, a case-by-case analysis will be required, since the repercussions of the medical emergency on productive activities could prevent a worker from completing the probationary period or force him/her to be absent for work due to a particular medical condition (e.g., self-quarantine), which may be disregarded for the purpose of determining the end of the "grace period", and justify an extensive interpretation of the prohibition, to include such circumstances.

Per ulteriori approfondimenti:

Pirola Pennuto Zei & Associati – Dipartimento Labour & Compliance

- ***Avv. Roberta Di Vieto***: roberta.di.vieto@studiopirola.com