

COVID-19

August Decree – Employment law changes

On 13 August, the Italian Government issued Decree Law no. 104 “*Urgent measures in support of and for the relaunch of economy*”, to stem the consequences of the COVID-19 pandemic. The Decree entered into force on 15 August 2020.

In this newsletter we will outline the employment law measures introduced by the decree. We will subsequently provide updates following the issue of clarification by the relevant authorities in connection with sections of the legislation that leave room for interpretation.

1. EXTENSION OF INCOME-SUPPORT BENEFITS

Article 1 deals with the extension of income-support benefits for workers of companies that have temporarily shut down or reduced their business activities in connection with the healthcare emergency (*Cassa Integrazione Ordinaria, Assegno Ordinario Fondo FIS, Cassa Integrazione in Deroga*), for a period of 9 + 9 weeks between 13 July and 31 December 2020.

The weeks of benefits requested under the prior legislation but falling after 12 July will be included in such new 18-week period (for example, if a company had already applied for *Cassa Integrazione* until 31 July, the weeks from 13 to 31 July will be deducted from the additional 18-week period made available by the August decree).

In terms of the cost to the employers, an additional contribution will be payable to take advantage of the additional weeks of income-support benefits starting from the 10th (no contribution will be due for the initial 9-week period).

This additional contribution will be calculated on the basis of the reduction in turnover in the first 2020 half-year compared to the first 2019 half-year, as follows:

- **9%** of the remuneration not paid during *Cassa Integrazione*, if turnover decreased by 20% or less;
- **18%** if no reduction in turnover occurred;

No contribution is due if turnover decreased by more than 20% or if the company started doing business after the first 2019 half-year.

The aggregate 18-week period can be taken in two 9-week instalments. The second 9-week period is granted only to employers who were authorized to take the first 9-week period.

2. EXEMPTION FROM PAYMENT OF SOCIAL SECURITY CONTRIBUTIONS IN CONNECTION WITH THE USE OF INCOME-SUPPORT BENEFITS

Article 3 of the Decree introduced a social security contribution exemption for companies which have not asked to qualify for the additional 18-week period under point 1 but which took advantage of income-support benefits for their workers in May and June.

The exemption (of the employer's share of the social security contributions) is granted as to twice the number of hours during which income-support benefits were applied for in May and June, does not include contributions to INAIL (the Italian worker's compensation insurance authority) and is available **for a maximum of four months, by 31 December 2020.**

The exemption is also available to employers who applied for income-support benefits under the earlier rules but which partly fall within periods subsequent to 12 July 2020.

During the period in which an employer qualifies for the social security contribution exemption, he will be under the prohibition to dismiss workers (see point 5); if he does, the exemption will be revoked.

The COVID-19 income-support benefits and the social security contribution exemption are mutually exclusive; therefore, the choice of one or the other requires careful analysis.

Instructions from INPS (the Italian social security authority) are awaited, especially to determine the amount to the exemption with regard to “twice the number of hours during which income-support benefits were applied for in May and June”.

The application of this provision is subject to authorization by the European Commission.

3. SOCIAL SECURITY CONTRIBUTION EXEMPTION FOR NEW HIRES

Until 31 December 2020, companies who employ workers under an indefinite-term agreement are entitled to full exemption from social security contributions (not including INAIL contributions) for up to 6 months from the employment date and for a maximum of Euro 8,060 per worker per annum (proportionally recalculated on a monthly basis).

The exemption is granted also if fixed-term employment contracts are changed into indefinite-term contracts, and may be combined with other exemptions currently granted by law.

The exemption does not apply to workers who have been employed by the company under an indefinite-term contract for the prior 6 months.

4. FIXED-TERM CONTRACTS

Until 31 December 2020, employers – subject to the standard maximum 24-month period – may renew or extend fixed-term contracts (by way of derogation from the provisions of article 21 of legislative decree 81/2015):

- a) For a maximum of 12 months;
- b) Only once;
- c) With no need to specify the reason for the renewal/extension.

Under the new rules, renewals and extensions may concern all fixed-term contracts.

Pending official confirmation from the Labor Ministry, it is believed that 31 December 2020 should be intended as the deadline for deciding on the extension or renewal, and not as the date by which the extension or renewal are to be concluded. Consequently, any extension or renewal may have an impact also in 2021.

Another issue to be clarified by the Ministry is whether the new provisions apply also for workers who were already eligible for the extension with no need to specify a reason therefor until 30 August 2020, pursuant to “*Decreto Rilancio*”. Pending official guidance, it is believed that the two provisions are unrelated and that the one under Decree 104/2020 has no retroactive effect (as it applies as of the date of its entry into force, i.e. 15 August 2020). The same interpretation should apply in respect of the condition under letter b) above, “only once”. In practice, the fact that a fixed-term contract had already been extended without specific reasons in accordance with the “ordinary” rules, should not prevent employers from taking advantage of the new provisions under the August decree. For example, a fixed-term agreement entered into on 20 August 2019 for an initial 9-month duration (expiring 20 May 2020), and subsequently extended for a 3-month period (until 20 August 2020), should be eligible for the extension with no need to specify the relevant reason, introduced by Decree 104/2020.

5. PROHIBITION TO DISMISS

Article 14 of Decree Law 104/2020, named “*extension of the provisions on collective and individual dismissals due to justified objective reasons*” has extended to **31 December 2020** (although official confirmation is required) the prohibition to dismiss introduced by “*Decreto Cura Italia*” until 17 August 2020.

Article 14(1) provides that employers who ***have not wholly taken advantage of the*** COVID-19 related income-support benefits or of the ***social security contribution exemption*** (see point 2 above) **are not allowed** to initiate collective dismissal procedures; likewise, collective dismissal procedures started after 23 February 2020 have been suspended.

Article 14(2) provides that employers **are not allowed** to ***terminate an employment contract due to justified objective reasons***; furthermore, ongoing dismissal procedures for justified objective reasons, initiated after the required notification to the competent labor authority (*Direzione Territoriale del Lavoro*) are to be suspended.

Purpose of the measure is to prevent termination of employment for financial reasons until the employer:

- a) Has taken advantage of all income-support benefits provided by decree law 104/2020; or
- b) Has taken advantage of the social security contribution exemption.

The rule does not set a deadline for the end of the prohibition to dismiss, but simply links it to the occurrence of one of the above conditions. Therefore, (i) if income-support benefits are applied for, the prohibition expires at the end of the 18th week and (ii) if the social security contribution exemption is applied for, the prohibition expires at the end of the incentive and in any case not later than 4 months after the entry into force of the decree.

While it is clear how the expiration date of the prohibition is determined for companies which take advantage of one of the two above benefits, there are doubts as to how it should be determined for

companies which have not applied for either. According to the literal interpretation of the rules, the prohibition to dismiss should apply also for these companies, on the basis that according to the Decree the prohibition applies throughout the period in which companies are able to take advantage of the 18-week period of income-support benefits (starting from 13 July 2020). Therefore, throughout the period in which the income-support benefits are available (between 13 July to 31 December), companies may not dismiss their employees.

It is clear that the intention of the lawmakers is to avoid that company first dismiss employees and then apply for the benefits or exemption.

Article 14(3) provides for exceptions to the prohibition, as follows:

- a) Dismissals in connection with the definitive shutdown of business as a result of liquidation without continuation (if during the liquidation proceedings no sale of a set of assets takes place which may constitute a transfer of business or of a business division pursuant to article 2112 of the Italian civil code);
- b) Bankruptcy;
- c) Collective company agreements with the trade unions to offer termination incentives to those workers who wish to accept the arrangement. Such workers are in any case eligible for the NASPI unemployment benefits.

The case under letter c) could be a helpful instrument to implement corporate reorganizations. The pre-condition is the execution of an agreement with the Trade Unions to offer “collective” incentives to leave, to be individually accepted by the workers concerned. The difference with the consensual termination of employment is that under this procedure workers will be eligible for the NASPI unemployment benefits.

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