

MEASURES CONCERNING FIXED-TERM CONTRACTS

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1. Premise: the «Covid-19» epidemiological emergency

The «Covid-19»¹ epidemiological emergency currently affecting our Country has important repercussions on employment relationships and on the business lifecycle.

From a regulatory point of view, the situation is particularly fluid and constantly evolving: it is therefore necessary to keep it continuously monitored, since the provisions that are valid today may no longer be in force tomorrow.

The information below is updated to 28 May 2020 and therefore takes into account, *inter alia*, the **Law Decree 19 May 2020 no. 34** (so-called «**Rilancio Decree**»), which has amended, among the rest, Law Decree no. 18/2020 (so-called “Cura Italia Decree”), already amended upon conversion of Law 27/2020.

¹ This is the acronym that identifies the respiratory disease caused by the new coronavirus, representing the synthesis of “COrona”, “VIRus”, “Disease” and “2019” as year of identification. The virus was instead called “Respiratory syndrome acute severe coronavirus 2” or “SARS-CoV-2”. More information can be found on the website of the Ministry of health: <http://www.salute.gov.it/>



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Please note that, in addition to the measures adopted at a national level – which are addressed in this document – it is necessary to pay attention to the provisions of the Regions, Prefects and Municipalities, the relevance of which is limited to their respective territories and which cannot be taken into consideration here below.²

2. Measures concerning fixed-term contracts

2.1. The renewal and extension of fixed-term contracts by employers benefiting of “special” social welfare schemes

Upon conversion of the Cura Italia Decree, Law **27/2020** intervened, among the rest, with respect to the relation between social welfare schemes and renewal of fixed-term contracts, in order to protect employees who, upon expiry of the term of their employment contract or upon expiry of their supply of work mission, would have been left without a job and without possibility to benefit from redundancy fund treatments (see Focus «SOCIAL WELFARE SCHEMES »).

Within such perspective, in light of the ongoing Covid-19 epidemiological emergency, **employers benefiting of “special” social welfare schemes** under Articles 19-22 of the same decree, under the terms indicated herein, are entitled, by way of derogation from the provisions under Articles 20, Paragraph 1, letter c), 21, Paragraph 2, and 32, Paragraph 1, letter c), of Legislative Decree 81/2015, to proceed, in the same period, with the renewal or extension of fixed-term contracts, also for supply of work purposes.

Therefore, such employers are entitled to derogate to:

- the prohibition of **supply** of work contracts (Article 32, Paragraph 1, letter c, Legislative Decree 81/2015) or **fixed-term employment** (Article 20, Paragraph 1, letter c, Legislative Decree 81/2015) in production units in which there are ongoing suspensions of work or reduction of working hours within the redundancy fund regime, which concern employees performs tasks to which the supply of work contract and the fixed-term contract refer to respectively;
- the prohibition to proceed with the **rehiring** on a fixed-term basis within 10 days from the expiry of a contract with a duration up to 6 months, or 20 days from the expiry of a contract of a duration exceeding 6 months, the violation of which entails the transformation of the second contract into an indefinite term one (so-called “stop & go” under Article 21, Paragraph 2, Legislative Decree 81/2015).

Since the legal provision introduced by Law 27/2020 makes express reference to the renewal or the extension, it does not seem to allow “new hiring” on a fixed-term basis.

² For example, specific restrictive measures have been issued by the Lombardy Region (see orders no. 514, no. 515 and no. 517 dated 21, 22 and 23 March 2020, which have been enacted pending the entry into force of Law Decree no. 19/2020, the orders no. 521, no. 522, no. 528, no. 537 and no. 538 dated 4, 6, 11 and 30 April 2020 as well as the orders no. 539, 541 and 547 dated 3, 7 and 17 May 2020).

2.2. The new temporary regime of non-causality

The Rilancio Decree, entered into force on 19 May 2020, also provided – through a general provision, applicable to all employers, included those who do not make use of “special” social welfare schemes under the Cura Italia Decree – that, by way of derogation from Article 21 of Legislative Decree 81/2015, in order to deal with the resumption of activities as a consequence of the Covid-19 epidemiological emergency, it is possible to **renew** or **extend** until 30 August the fixed-term employment contracts in force as of 23 February 2020, also in the **absence** of the “**justifying reasons**” under Article 19, Paragraph 1, of Legislative Decree 81/2015 (and, therefore, of temporary and objective needs not linked to the ordinary activity, replacement of employees or needs linked to temporary, significant and non-foreseeable increases of the ordinary activity).

Therefore, a new regime of **temporary non-causality** has been introduced, which allows companies to freely proceed with the extension or renewal of fixed-term contracts in force as of 23 February 2020, within the maximum term of 30 August 2020. To this purpose, it is noted that, based on the indications provided by the Ministry of Labour on its own website,³ the date of 30 August 2020 represents the term for the duration of the fixed-term contracts possibly extended or renewed on the basis of the provision at issue (and not the term within which the renewal or extension can be issued).

Following such date, renewals and the extensions as a result of which the fixed-term contract exceeds the 12-month duration will return to being subject to the existence of the **justifying reasons** under Article 19 of Legislative Decree 81/2015. In the absence of such justifying reasons, the relationship transforms into an indefinite term one.

Despite the above-mentioned ministerial clarifications, some interpretative doubts remain with the respect to the expression “*in order to deal with the resumption of activities as a consequence of the Covid-19 epidemiological emergency*” contained in the legal provision, which, according to some, may be intended as an actual “cause”, this way affecting the power to renew or extend the fixed-term contract in the absence of the “ordinary” justifying reasons. Under a different perspective, instead, such expression does not have a mandatory force.

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³ Link: <https://www.lavoro.gov.it/notizie/Documents/Brochure-MLPS-Decreto-Rilancio.pdf>