

MEASURES CONCERNING
INDIVIDUAL AND COLLECTIVE DISMISSALS

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

The «Covid-19»¹ epidemiological emergency affecting our country has important repercussions on employment relationships as well as on the life of companies.

From a regulatory perspective, the situation is particularly fluid and continually being updated: it is therefore necessary to keep it constantly monitored since the provisions that are valid today may no longer be in force tomorrow.

The information provided hereunder is updated to 25 May 2020 and therefore takes into account, among the rest, the **Law Decree 19 May 2020 no. 34** (so-called «**Rilancio**

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”. Further information can be found on the website of the Ministry of health: <http://www.salute.gov.it>



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Decree»), which has, *inter alia*, amended the Law Decree no. 18/2020 (so-called “Cura Italia Decree”), already amended upon conversion by the law 27/2020.

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 issued by the Regions, Prefects and Municipalities, the relevance of which is limited to their respective territories and which cannot be taken into consideration here below².

2. Measures concerning dismissals

2.1. Collective and individual dismissals for justified objective reason

Following the amendments made upon conversion by Law no. 27/2020 as well as by the following Rilancio Decree, pursuant to Article 46 of the Cura Italia Decree – indexed “*provisions regarding individual and collective dismissals for justified objective reason*” – for a 5-month period starting from 17 March 2020:

- a) it is prohibited to start **collective dismissal** procedures;
- b) pending collective dismissal procedures that have been started following 23 February 2020 are **suspended**;
- c) the employer, regardless of the number of employees, cannot withdraw for **justified objective reason** (*giustificato motivo oggettivo*) as per Article 3 of Law 604/1966.

As a result of the amendments made by the conversion law, no prejudice is made to the events of termination of the relationship with the personnel used within a contract for services or works followed by the rehiring, upon such termination, by the incoming contractor on the basis of the law, the national collective labour agreement or of a clause of the contract for services or works.

With regard to the individual dismissal for justified objective reason pursuant to Article 3 Law 604/1966, the Rilancio Decree also provided for the suspension of the dismissal procedures under Article 7 Law 604/1966 concerning the **ongoing mandatory preventive attempt of settlement**. The attempt of settlement at issue and, in particular, at the end of 7 days from the request of the parties’ convocation, could have been intended as subject to the suspension already provided for by Article 103 of the Cura Italia Decree, extended by Law Decree 8 April 2020 no. 23 (the so-called «Liquidity Decree») until

² For example, specific restrictive measures for dealing with the emergency 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, containing *inter alia* provisions regarding the adoption of national and local measures, as well as orders no. 521, no. 522 and no. 528 dated 4, 6, 11 and 30 April 2020 and no. 539 of 3 May 2020).

15 May 2020, concerning the “*the procedural terms relating to the performance of administrative procedures at the request of a party or office, pending at the date of 23 February 2020 or started following such date*”.

No provision has been enacted in relation to the individual dismissal of **managers** (*dirigenti*) for objective reasons or on the possible sanctioning consequences for the employer in case a dismissal is issued in violation of the above mentioned prohibition.

However, the Rilancio Decree has added to Article 46 of the Cura Italia Decree a new paragraph 1-*bis*, according to which the employer that, regardless of the number of employees, in the period between 23 February and 17 March 2020 has issued a dismissal for justified objective reason according to Article 3 Law 604/1966 may, by means of derogation from the provisions under Article 18, paragraph 10, of the Statute of Workers, **revoke** at any time such dismissal on condition that a simultaneous request of access to the redundancy fund treatment is made, according to Articles from 19 to 22 of the same Cura Italia Decree (see Focus «SOCIAL WELFARE SCHEMES»), starting from the date of effectiveness of the dismissal. In such case, the employment relationship is considered as seamlessly restored, without any liabilities or sanctions for the employer.

Moreover, the Rilancio Decree – after having provided, with effect from 19 May 2020 and until the date of termination of the state of emergency, in order to guarantee the safe execution of the productive and commercial activities in relation to the risk of contagion, the obligation for the employer to ensure the **exceptional health surveillance** of workers who are more exposed to the risk of contagion, due to the age or the risk condition arising from immunosuppression, also linked to the Covid-19 disease, or from the results of oncological diseases or from the execution of life-saving therapies or, in any case, from co-morbidities that may involve a higher risk (see Focus «THE SO-CALLED «phase 2». THE GRADUAL RESUMPTION OF ACTIVITIES») - provided that the **unsuitability** to the task ascertained during the exceptional health surveillance **cannot**, in any case, justify the **dismissal**.

2.2. Disciplinary dismissal

With respect, instead, to disciplinary dismissals, Article 47 of the Cura Italia Decree also provided that, until 30 April 2020, the absence from the workplace by one of the parents living with a disabled person could **not** constitute a **just cause** pursuant to Article 2119 of the Italian Civil Code, upon condition of prior communication and motivation of the impossibility of taking care of the **disabled** person following the suspension of the activities by the semi-residential centers, however described by the regional regulations, of a social-welfare, social-educational, multifunctional, social-occupational, health and social health care nature.

The extent of such provision has not been extended neither upon conversion of the Cura Italia Decree by law no. 27/2020 nor by the following Rilancio Decree.

2.3. The use of social welfare schemes and subsidies aimed at avoiding dismissals during the Covid-19 pandemic

In order to support companies affected by the crisis linked to the Covid-19 epidemiological emergency, which – as said – are subject to the prohibition to dismiss due to “economic reasons”, the legislator has provided some special rules concerning **social welfare schemes**, by way of derogation from the rules governing “common” social welfare schemes under Legislative Decree 148/2015.

It is noted, however, that, despite the extension of the term issued by the Rilancio Decree, the “special” social welfare schemes introduced by the emergency legislation are not available for the entire period of validity of the prohibition of dismissal, since they can only be applied for a period of **14 weeks**, from 23 February to 31 August 2020, and, where necessary, of **4 additional** weeks, from 1 September to 31 October 2020.

To this purpose, the modalities of calculation of the weeks of social welfare schemes indicated by INPS in the circular letter no. 58/2009 may turn out to be useful, as they allow to exclude from such calculation any days of redundancy fund requested but not used. Upon final balance, by applying the calculation criteria specified by INPS and even considering as used each day during which at least one employee has been placed under the redundancy fund regime, some residual usable weeks may result, which may be included in a new request (see Focus «THE SOCIAL WELFARE SCHEMES»).

In addition to the social welfare schemes, Article 60 of the Rilancio Decree provided for additional support under the form of **subsidies for the payment of the salary** of employees in order to avoid dismissals during the Covid-19 pandemic. In particular, such subsidies can be granted by the Regions, the Autonomous Provinces, also by promoting coordination actions during the Conference of Regions and Autonomous Provinces, by the local authorities and by the Commercial Chambers, from their own resources:

- a) in order to contribute to the salary costs, including contribution and insurance fees, for companies, including self-employed workers;
- b) in the form of regimes destined to companies of specific sectors or regions or of certain dimensions, particularly affected by the Covid-19 pandemic;
- c) for a period not exceeding twelve months starting from the date of request of support or from the date starting from which the subsidy can be referred to the beneficiary if previous, for employees who would otherwise be dismissed following the suspension or reduction of the business activities due to the Covid-19 pandemic (in any case, on condition that the personnel who benefits from them continues to carry out the working activity on a continuous basis during the entire period of grant of support).

The above mentioned subsidies – which cannot consist, in any case, of wage subsidy treatments – may be combined with:

- other support measures regarding employment, generally available or selective, as long as the support does not entail an over-compensation of the salary costs regarding the personnel at issue;
- the deferrals of taxes and payments of social security contributions.

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