

END OF YEAR LEGISLATIVE PROVISIONS: THE MAIN MEASURES REGARDING EMPLOYMENT AND SOCIAL SECURITY IN THE BUDGET LAW AND DECREE 183 OF 3 DECEMBER 2020

Both the Law of 30 December 2020, no. 178 (the "**Budget Law**") as well as the Decree Law of 3 December 2020, no. 183 ("**Decree 183**") were published in the Official Journal of the Republic of Italy on 30 and 31 December 2020. Both entered into force on 1 January 2021.

1. – THE BUDGET LAW

Art. 1 of the Budget Law sets out a large number of heterogeneous economic and legal measures amounting in total to around Euro 40 billion. Ample space (almost Euro 7 billion) is dedicated to employment and social security matters.

We set forth below a **summary of the main measures regarding employment, social security and incentives**. It is to be noted that most of the new measures will require the enactment of implementing decrees:

- 1.1. Confirmation of the ban on dismissals until 31 March 2021;
- 1.2. Fixed-term contracts (extension and renewals);
- 1.3. Vulnerable workers;
- 1.4. Paternity leave;
- 1.5. Bonuses and benefits;
- 1.6. Pensions
- 1.7. Expansion contract;
- 1.8. Social welfare measures;
- 1.9. Exemption from social security contributions
- 1.10. Incentives to hire workers under 36 years of age;
- 1.11. Incentives to hire female workers;
- 1.12. Support for working mothers;
- 1.13. Extended exemption from contributions in distressed areas;
- 1.14. Funds to support gender pay parity;
- 1.15. Income indemnity for independent contractors

1.1. *Dismissals* (paragraphs 309, 310 and 311)

The rules already in force concerning the ban on dismissals are extended **until 31 March 2021** and therefore regardless of whether the company benefits from COVID-19 social welfare measures or tax relief.

All the provisions and exceptions provided for in the previous legislation are therefore confirmed:

- **collective dismissal** procedures cannot be launched (and those started after 23 February 2020 are suspended);
- it will not be possible to carry out **individual dismissals** for objective reasons (art. 3 of Law 604/1966) or **reactivate relating procedures under art. 7 of Law 604/1966**.

The exceptions to the ban have also been confirmed. These explicitly concern the following cases:

- termination of the employment contract of staff previously employed under a **tender contract** where they are rehired following takeover by a new contractor by law, under the National Collective Bargaining Agreement or a clause in the tender contract;
- termination due to **permanent cessation of business operations** resulting from the winding up of the company where during the winding up there is no continuation of business even on a partial basis, and no transfer of business;
- termination following **bankruptcy** where there is no provision that the undertaking carry on its business on a provisional basis, or if it is ordered to cease operations;
- **voluntary participation** in the incentives to leave in the event of a **trade union agreement** entered into with the comparatively most representative trade unions at national level.

The following dismissals do not fall within the scope of the ban:

- dismissals for subjective (disciplinary) reasons: **just cause** and **justified subjective reason**;
- dismissals in the **probationary** period;
- dismissals for excessive **sick leave**;
- dismissals for having reached the **maximum age limit** for receiving an old-age pension (being at will);
- dismissals of **executives** (on an individual basis);
- dismissals of **domestic staff** (being at will);
- dismissals of **apprentices** at the end of the apprenticeship period pursuant to art. 2118 of the Civil Code, but also for failure to achieve the training objectives in the case of apprenticeship for professional qualifications and diplomas (art. 41(3) and (4), Legislative Decree 81/2015).

On the other hand, dismissals for **supervening unfitness for duties** are **precluded** as they fall within the scope of objective reason, as clarified by the National Labour Inspectorate in memorandum no. 298 of 24 June 2020.

In this sense, the recent controversy in the media caused by the claims of those who believe that an employee who refuses to be vaccinated can be dismissed is an issue that can only be of practical relevance once the freeze on dismissals has been lifted.

Indeed, those who espouse this argument do not consider the employee's refusal to be a breach that may be sanctioned by dismissal on disciplinary grounds but, rather, an objective impediment to the continuation of the employment relationship, i.e. supervening unfitness for duties.

As a consequence, such dismissals would be precluded until the end of the ban on dismissals (which could be further extended, at least in the commercial sector, according to press reports) and, subsequently, would in any case be subject to the fulfilment of the obligation to offer alternative duties or - we believe - remote working, where possible.

Consideration must be given, depending on the evolution on the public health situation, to whether the unfitness must be regarded as merely temporary and thus justifying at most a suspension of employment without pay but not dismissal.

1.2 *Fixed-term contracts* (paragraph 279)

The time limit within which fixed-term contracts may be renewed or extended - for a maximum period of 12 months and for one time only - is extended until 31 March 2021, including in the absence of the conditions set out in art. 19(1) of Legislative Decree No. 81/2015, namely:

- temporary and objective needs, outside the ordinary course of business;
- the need to replace other absent workers;
- other needs related to temporary, significant and unforeseeable increases in ordinary business activity.

The provision concerns both **ordinary fixed-term contracts** and those concluded for the purpose of **supplying staff**.

Obviously, 31 March 2021 is the deadline for signing the extension or renewal, although the relationship may continue beyond that date for up to a maximum of a further 12 months.

Finally, it should be noted that, unlike the provisions of art. 19 of Decree-Law No. 18/2020 (the so-called "*Cura Italia*" Decree), there is no derogation from the general principle that the imposition of a time limit **is not allowed** at production units in which there is a suspension of work or a **reduction in working hours under the "*Cassa Integrazione Guadagni*"** (wages guarantee fund). **It is difficult to say whether this is a mere oversight.** It is doubtful, therefore, whether it is possible to extend or renew fixed-term contracts if the employer is using social welfare measures affecting workers employed in the duties to which the fixed-term contract relates.

1.3 *Vulnerable workers and workers with a serious disability* (paragraph 481)

Measures to protect vulnerable workers and workers with severe disabilities (referenced in art. 26, paragraphs 2 and 2-bis, of the so-called "*Cura Italia*" Decree) with the equivalence of the period of absence from work to

hospitalisation and the opportunity to perform one's tasks by way of remote working through, amongst other things, the assignment of different tasks in the same category or at the same contractual level or the performance of specific professional training activities including by remote access are extended until 28 February 2021.

The reactivation of the safeguards provided by the "*Cura Italia*" Decree has made it possible to face a critical issue that arose 15 October 2020 due to the loss of these safeguards. Indeed, in the absence of a specific rule, mere precautionary surveillance for vulnerable persons, as it does not constitute a temporary inability to work due to an acute pathology, did not allow access to social security protection for the common disease.

Should the vulnerable worker contract **Covid-19**, he/she will obviously have the right to access to treatment of the **disease**.

1.4 Paternity leave (paragraphs 25, 363 and 364)

The duration of the compulsory leave granted to the employee father for the year 2021 to be taken within the first five months of the birth of the child is increased to 10 days. It is also specified that leave also applies in the event of perinatal death.

1.5 Bonuses and benefits

A substantial part of the Budget Law is dedicated to bonuses and benefits.

Amongst other things they include:

- provision of funds for the baby bonus for all births in 2021;
- bonus of Euro 500 a month for single mothers and the disabled;
- tablet and mobile phone bonus for low income families in 2021;
- funding in 2021 for the bonus for those who have just reached their 18th birthday.

1.6 Pensions

The following measures are extended **until 31 December 2021**:

- (a) "**Opzione donna**" (the Women's Option) (paragraph 336), which allows early retirement for employed workers who, by 31 December 2020, have reached the age of 58 and have accrued 35 years of contributions; and
- (b) "**APE sociale**" (Early Retirement Allowance) (paragraphs 339 and 340), an early retirement provision aimed at particular categories of workers deemed worthy of benefiting from the measure because, for example, of the arduous nature of their work. The requirements for access remain unchanged. For women with children there is a "contribution discount" for access to the allowance, amounting to 12 months for each child, with a maximum of 24 months (so-called Women's Early Retirement Allowance);

For the details it will be necessary to wait for the appropriate INPS (Italian Social Security Agency) circular that will be published in the next few weeks.

Further, the following measures are also regulated:

- (a) "**Iso-pensione**" (Iso-Pension) (paragraph 345): until 31 December 2023 it is possible to **bring forward** by a maximum of 7 years retirement in case of reduction of staff with the cost being borne in full by the company until the employee has accrued the requirements for a pension;
- (b) the pension scheme for **vertical part-time employment contracts** (paragraph 350): these contracts are to be considered **in their entirety** for the purpose of calculating the satisfaction of pension requirements. For years INPS took the view that only periods of actual work should be taken into account in the calculation whereas workers, on the basis of the principle of non-discrimination, requested that those not worked should also be taken into account because they were *de facto* included in the employment contract. The measure introduced by the Budget Law is therefore an important change for the many employees with vertical part-time contracts.

1.7 Expansion contract (paragraph 349)

The expansion contract is an experimental tool initially planned for the years 2019 and 2020 for large companies (over 1,000 employees) to be included in the reorganization plans for the purpose of facilitating generational renewal with the acquisition of new professional skills.

As is known, art. 41, paragraphs 1 to 3, of Legislative Decree 148/2015 provided for the possibility for these companies to begin a union consultation procedure aimed at concluding with the government i.e. the Ministry of Labour, and with the comparatively most representative trade unions at national level, a fully-fledged training and retraining process to be carried out through:

- (i) **hourly reductions or suspension of employees** who are paid from the CIGS (**extraordinary wage guarantee fund**) for a maximum period of 18 months on a continuous or non-continuous basis (by way of derogation from the total duration of CIG (wage guarantee fund) measures over the mobile five-year period); Or
- (ii) **the early termination of the employment relationship for workers no more than 5 years after satisfying the requirements for an old-age or early retirement pension** through the payment by the company of an allowance to supplement the **NASPI benefit** (New Social Insurance for Employment) until actual retirement as well as the related figurative contribution for the period not covered by the NASPI benefit (in the event that the operation is aimed at having the worker receive the early retirement pension).

The Budget Law confirms the measure for **2021** and makes some **important changes**:

- (a) it can also be used by companies in any sector employing at least 500 employees (as against 1,000 above). In addition, in order to ensure the solvency of the employer, the Budget Law introduces an obligation for the employer to produce a **bank guarantee** (as is currently the case with the *Iso-pensione*) and to make the monthly payment to INPS of the

relevant funds to ensure the payment of the indemnity accompanying the pension and the figurative contribution.

- (b) **for up to 250 employees**, the company may also have recourse to an employer's contribution more favourable than the indemnity accompanying the old-age or early retirement pension. In this case, the indemnity **is reduced by an amount equivalent to the sum of the NASPI benefit** (unlike that provided for by the general rule) and the employer's payment of social security contributions required for entitlement to an early retirement pension will be reduced by an amount equivalent to the sum of the figurative contribution paid for the NASPI without prejudice in any case to the criteria for calculating the figurative contribution for the beneficiary workers (i.e. the limit of 1.4 times the maximum monthly amount of the NASPI for the current year remains).
- (c) finally, for undertakings or groups of undertakings with a **workforce of more than 1,000** that implement reorganisation and/or restructuring plans of particular strategic importance and **undertake to make at least one hiring for every three workers** who have given consent, the payments referenced above to be made by the employer will be reduced **for a further twelve months**. The amount will be calculated on the basis of the last theoretical monthly payment of the NASPI benefit to the worker.

1.8 Social Welfare Measures (paragraphs 278, from 285 to 290 / and from 299 to 305)

The main measures regarding social welfare measures are as follows:

- (a) **Extension of social welfare measures - CIGO (Ordinary Wage Guarantee Fund), CIGD (Wage Guarantee Fund in Derogation), FIS (Salary Supplement Fund) ordinary allowance - with Covid-19 as the reason for a further 12 weeks**

The 12 weeks are recognised: (i) for **CIGO** pay, in the period **from 1 January to 31 March 2021**, (ii) for ordinary **FIS** and **CIGD** allowance pay in the period **from 1 January to 30 June 2021**. They also apply to workers hired after 25 March 2020 and in any case by virtue of the date of entry into force of the Budget Law.

The periods of wage supplement previously requested and authorised under the so-called "*Compensation Decree*" and which occur, fully or partially, in periods after 1 January 2021 will be imputed, if authorised, to the 12 weeks provided for by the Budget Law. The 12 weeks will, in the aforementioned periods, accordingly constitute the **maximum duration** that can be requested with COVID-19 as the reason.

Contrary to the provisions of the previous framework, an "**additional contribution**" is no longer be made by the employer in relation to any decrease in turnover.

Applications for social security benefits must be submitted by the end of the month following the month in which the suspension and/or reduction of work took effect. During the initial application, this time limit is set for the end of the month following that of the entry into force of the Budget Law (i.e. 28 February 2021).

In the event of **direct payment by INPS** employers will be required to send all the data necessary for payment or balance of the salary supplement by the end of the month following that of the salary supplement period or, if later, within thirty days of the adoption of the concession measure. During the initial application, this time limit is extended to the thirtieth day following that of the entry into force of the Budget Law (i.e. 31 January 2021), if this latter date is later than that deriving from the provisions above. Failure to comply with these **time limits entails direct transfer to the employer of the burden of payment and related charges.**

(b) Special Salary State Allowance upon termination of operations

Moreover, the Budget Law **extends for 2021 and 2022 the Special Salary State Allowance programme in case of suspension/termination of business operations.**

The above instrument is envisaged under art. 44 of Decree Law 109/2018 until 2020 and has been extended through 2021 and 2022, subject to a spending cap of Euro 200 million for 2021 and of Euro 50 million for 2022. This instrument allows businesses that terminate or reduce their operations to access Special Salary State Allowance **for up to 12 months**, after they stipulate an agreement with the government.

Access to the programme is granted if it is likely that the business may be transferred and consequently the employees rehired, or if reindustrialisation of the manufacturing facilities is possible, or if the employees can be hired elsewhere in accordance with specific, proactive employment policies put in place by the Region involved.

The financial sustainability of the special salary state allowance programme will be assessed upon stipulation of the agreement with the government, and the related financial cost will be identified expressly in the agreement. All stipulated agreements will be submitted to the Ministry of the Economy and Finance and INPS, so as to monitor the spending. If the monthly monitoring report shows that the spending limit has been reached, no further agreements to access the programme can be stipulated.

1.9 Exemption from social security contributions (paragraphs 306 - 308)

Employers that **do not** request any Covid-19 support measures will be able to avail themselves of an additional **period of exemption from paying social security contributions**, of up to **8 weeks**, to be used from **1 January and 31 March 2021**, within the limits of any hours of salary allowance already used in May and June 2020, and excluding the contributions and premia due to the Italian Insurance for Accidents on the Job (INAIL).

Moreover, employers that have requested an exemption from paying social security contributions under the so-called Compensation Decree will be able to **waive** their request for the exemption requested, for the portion of exemptions not yet used, and concurrently file an application to **access the social welfare measures** under the Budget Law.

This is a new option under the law, called **the right to change one's mind**; previous legislation prohibited employers from accessing social welfare measures if they had already requested an exemption from the payment of social security contributions.

This additional 8-week exemption from the payment of social security contributions is conditional upon **authorisation from the European Commission**.

1.10 Incentives to hire workers under 36 years of age (paragraphs 10 -15)

To promote stable employment of young workers, employers will be granted an exemption from the obligation to pay 100% of social security contributions for up to 36 months, up to a maximum of Euro 6,000 per year, in connection with any new hires under open-term contracts or existing employees under fixed-term contracts who are rehired under open-term contracts in 2021 and 2022, provided that at the time of such hiring or re-hiring the employees are not yet 36 years of age.

If the foregoing employees are hired for work in the Regions of Abruzzo, Molise, Campania, Basilicata, Sicily, Puglia, Calabria, and Sardinia, the exemption can be granted for up an extended term of up to 48 months.

This exemption from paying contributions will be granted solely to employers that in the 6 months preceding each new hire/re-hire have not, and in the nine months after such new hire/re-hire do not, terminate any employment contract, either individual or by way of collective termination, of employees hired in the same role and in the same work unit of the employees hired or re-hired in connection with the incentive.

1.11 Incentives to hire female workers (paragraphs 16-19)

A pilot programme set for the **2021-2022** two-year period, grants an **exemption from the obligation to pay social security contributions**, other than contributions and premia due to INAIL, **up to 100% of the contributions and subject to a cap of Euro €6,000.00 per year** payable in connection with contracts hiring female workers. An employer will be eligible for such incentive only if the new hires imply a net increase in the number of the total employees, to be calculated as the difference between the number of workers employed in any given month and the average number of workers employed in the previous twelve months.

The calculations will be weighted to reflect employees under part-time employment contracts, taking into account the ratio of the contractual hours of the part-time employees to those of full-time employees.

The above benefit in connection with the hiring of female workers is conditional upon **authorisation from the European Commission**.

1.12 Support for working mothers (paragraphs 23 - 24)

To facility re-entry at work for working mothers and to ensure work-family balance, for 2021 the **Fund to Foster Families** (under art. 19, paragraph 1, of Decree Law 223/2006) has been increased by Euro 50 million, earmarked to fund the **organisational measures** adopted by employers and businesses to encourage working mothers to re-enter the work force after giving birth.

The implementing regulations governing the Fund are to be set out in a separate Inter-Ministry Decree.

1.13 Extended exemption from contributions in distressed areas (paragraph 161)

To contain the ongoing extraordinary effects on employment caused by the COVID-19 epidemic in areas that are experiencing social and economic distress, and to safeguard employment levels, the exemption from payment of the contributions available under the August Decree will be extended as follows: until 31 December 2025, for 30% of the contributions payable; in 2026 and 2027, for 20% of contributions payable; in 2028 and 2019, for 10% of the contributions payable.

Starting from 1 July 2021 and through 31 December 2029, this benefit/exemption is conditional **upon the authorisation from the European Commission**.

1.14 Funds to support gender pay parity (paragraphs 276- 277)

The Ministry of Labour will create a fund to support gender pay parity, to implement measures to support and to recognise the social and economic value of equal pay and opportunity in the workplace: the fund will be endowed with **Euro 2 million per year** starting from 2022.

The implementing regulations governing the fund are to be set out in a separate Inter-Ministry Decree.

1.15 Income indemnity for independent contractors (paragraphs 386 a 401)

A pilot programme will be created, applicable in the 2021-2023 three-year period, to provide a **special income indemnity** (c.d. **ISCRO**) for independent contractors enrolled with INPS as self-contributing employees: the ISCRO aims to mitigate the adverse effects on the income of these workers as a result of personal, social and economic circumstances that affect their work.

The objective is to support these self-employed workers similarly to the support being granted to employers in connection with subordinate employees. This special income indemnity programme will guarantee a monthly payment ranging **Euro 250 to Euro 800 for up to six months**. The funds will be distributed directly by INPS.

The **requirements** to access to the ISCRO special income indemnity programme include:

- Reported overall annual income of up to Euro 8,145 (with reference to the year before the application is filed, adjusted annually in accordance with the variation of the appropriate consumer price index (ISTAT index for families and workers));
- Enrolment with INPS as self-employed contributors;
- Loss of invoiced revenues by at least 50% during the medical emergency compared to the three years prior the application;
- VAT position opened at least four years prior.

This programme, however, may come to be funded by its very same potential beneficiaries; **the fear is that their income tax rate will be increased by 0.28%**.

At least 300 thousand independent contractors with a VAT position are expected to be able to benefit from this ISCRO special income indemnity. An approximately equal number of contractors who are regulated professionals, e.g. architects, doctors and journalists, will be excluded from the programme because they work in regulated professions and are enrolled with private pension funds organised by their professional regulators rather than with INPS.

2. – DECREE LAW 183

Extension of the simplified remote working regime

Decree Law 183 provides for many new arrangements, here we will examine solely the extension of the emergency remote working regime for subordinated employees in the private sector.

Art. 19, generally titled "*Extension of the terms related to the COVID-19 epidemic and medical emergency*" does not alter the end date of the emergency period - which is currently set as 31 January 2021, although a further extension is envisaged to 30 April 2021 according to recent press - and provides for remote work arrangements in connection with subordinate employment contracts "*up to the date when the COVID-19 emergency ends but no later than 31 March 2021.*"

Until such date, therefore, private-sector employers will be able to implement remote working arrangements for subordinate employees even in absence of individual remote-working agreements with each employee, by using the "simplified procedure" under art. 90, paragraphs 3 and 4, of Decree Law no. 34 of 19 May 2020, converted into Law no. 77 of 17 July 2020 (the *Rilancio* Decree).

Moreover, art. 90, paragraph 1, of the *Rilancio* Decree grants the right to work remotely, until the end of the COVID-19 emergency, to private-sector subordinate employees who have at least **a child under 14 years of age**.

Obviously, this right is only available if remote work modalities are compatible with the type of work to be performed. Moreover, this right is not available for a parent whose family includes another parent who does not work or a parent who has benefits from income support benefits in connection with suspension or termination of work.

Finally, in accordance with art. 21-*ter* of Decree Law 20 of 14 August 2020, converted with amendments into law by conversion law no. 126 of 13 October 2020, the right to work remotely is also available, **until 30 June 2021**, to private-sector subordinate employees who have at least one child with a disability, within the meaning of Law no. 104 of 5 February 1992, provided that the family does not include another parent who does not work, and that the work activity does not necessarily require the employee's physical presence at the place of work.

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