

# COVID-19 and Labour Law: Italy

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### Abstract

The article summarises the measures adopted by the Italian Government to protect workers and undertakings from the impact of the COVID-19 pandemic. Emergency legislation has provided for the closure of business and social distancing as well as specific health and safety provisions; it has also allocated economic aid for businesses, workers and families.

**Keywords:** Covid-19; Labour Law; Remote work; Health and safety; Income support.

### 1. General Framework.

Italy was the first country in the European Union to be severely hit by the spread of COVID-19. On 31 January 2020 the Government declared a state of national health emergency.

The first significant follow-up provision was the Legislative Decree No. 6 of 23 February 2020, converted into Act No. 13 of 5 March 2020 by Parliament, which authorized the Government to adopt measures to contain and manage the epidemiological emergency through administrative acts. These measures are aimed first of all at imposing social distancing. For this purpose, schools, universities, sporting events and leisure activities were suspended. Furthermore, drastic limits were imposed on the freedom of movement of individuals and on the exercise of the freedom to conduct a business.

The Government has acted through a series of decrees that have gradually extended the territorial application of the measures - which was initially limited to the Regions of Northern Italy - their subject-matter as well as the degree of the restrictions imposed on fundamental freedoms. This sequence culminated with the closure of all non-essential industrial and commercial activities, that was enacted by the Decree of the President of the Council of Ministers of 22 March<sup>1</sup>.

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<sup>1</sup> The Decree lists the sectors in which businesses are authorized to continue their operations, on the assumption that they belong to the supply chain of essential goods and services like health, agriculture and food. Some

Examining more closely the measures dealing with the pandemic with an effect on employment and working conditions, it is worth noting that the existence of work-related reasons is a ground of exemption from the general duty to stay at home. Nevertheless, the emergency regulations urge companies and workers to adopt social distancing practices also in the workplace, and first and foremost to seek alternative ways to ensure the production of goods and the provision of services, such as remote working, or resorting to holidays and paid leave.

The general lockdown of business activities has had a major impact on the leading sectors of the economy, involving nearly half of the national workforce<sup>2</sup>. In response, the Government has introduced a set of economic measures aimed at supporting families, workers and undertakings (Legislative Decree No. 18 of 17 March 2020 (known as the *Cura Italia*, or Healing Italy) and Legislative Decree No. 23 of 8 April 2020.

## 2. Financial Support for Employees and Businesses and Job Retention.

Title II of the *Cura Italia* Decree addresses the need for economic relief of workers involved in the reduction or closure of business activities. Chapter I supplements the rules on social security benefits for temporary layoffs (*Cassa Integrazione Guadagni* or Wage Guarantee Fund) by introducing a special *Emergenza COVID-19* justification in order to allow employers who have suspended or reduced the work activities due to events related to COVID-19 to apply for benefits to offset the workers' loss of wages.

The special provisions also aim to simplify and speed up the access to income support measures. For instance, it is stated that the ordinary trade union consultation and information procedures should be carried out online and within a three-day timeframe, while the deadline for the submission of the application is longer than usual.

The cited measures have also extended the subjective scope of application of income support to private companies in sectors normally excluded from the benefits (although some exceptions remain, such as domestic work).

Finally, a special allowance of 600 Euros for the month of March has been granted to self-employed workers and seasonal workers in tourism, spas, agricultural and entertainment sectors. The allowance will be paid by the National Social Security Agency (INPS).

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commentators and trade unions have argued that these exceptions include too many loopholes. The Prime Minister Giuseppe Conte announced on 10 April 2020 that the lockdown will be extended at least until 3 May. <sup>2</sup> According to a study released by the National Institute of Statistics (ISTAT), if local units of production are taken into account, it appears that the total units of production that remained active are just over half (51.8%) of the almost 4.8 million units surveyed in 2017, while with reference to the number of employees potentially involved in the measures taken by the Government, ISTAT estimates that 66.7% of 23,360,000 workers (2019 average) are still employed in one of the sectors of economic sectors that are still active. This high percentage indicates the weakness of the restrictive measures taken by the Government but, as specified by ISTAT, the figure must be read as inclusive of workers who perform their activities in the workplace and engaged in working from home. See: [https://www.istat.it/it/files//2020/03/Aggiornamento\\_MemoriaAS-1766\\_rev31marzo.pdf](https://www.istat.it/it/files//2020/03/Aggiornamento_MemoriaAS-1766_rev31marzo.pdf) [08 April 2020].

The Decree also provides for the freezing of collective redundancies procedures active on 23 February 2020 and of layoffs based on reasons relating to production, work organisation and the smooth running of the business.

The Cura Italia Decree also provides (Title IV) financial support for undertakings, including tax credits to cover part of the costs incurred in renting premises and to ensure the sanitation of the workplace and equipment. Further measures of the same kind were enacted by the Legislative Decree No. 23 of 8 April 2020, that aims at granting the immediate availability of financial resources to companies whose operations have been affected by the COVID-19 emergency – in the form of a State guarantee on loans - but also specific measures in terms of tax compliance, health and safety (making it possible to deduct from net tax payable half of the amount of expenses incurred for the purchase of protection devices) and extension of administrative and procedural deadlines.

### **3. Remote Work and Workplace Health and Safety.**

The Government has encouraged private companies and the public administration to give priority to remote working (in particular working from home) as a means to ensure social distancing without impairing the continuity of business and services operations<sup>3</sup>.

For this purpose, the emergency legislation integrates the statutory regulation of a peculiar kind of remote work, named “agile work” (Act No. 81/2017), by relaxing certain requirements. In particular, the Decrees enacted since 1 March 2020 make it possible to avoid the prior stipulation of an individual agreement between the parties, which normally regulates the execution of remote work performance. The emergency legislation also simplifies the compliance with the employers’ obligations to give information about security risks. However, it is not clear whether the special regulations can be interpreted so as to grant the employer the authority to order the performance of work from the employee’s home. In any case, it should be noted that this kind of remote work arrangements respond, first of all, to a public duty of safety, which requires all citizens to avoid gatherings, even in workplaces.

For cases in which the closure of businesses and social distancing measures like remote work and the use holidays and leaves are not feasible, a number of specific provisions have been put into force to adjust the general statute on risk prevention and health protection at the workplace (Legislative Decree No. 81/2008) to the specific COVID-19-related risks. Thus, following a mandate issued by the Legislative Decree of 11 March 2020, the Government and the social partners drew up the “Shared protocol for the regulation of measures to combat and contain the spread of the COVID-19 virus in the workplace”, signed on 14 March 2020. The Protocol lays down the general guidelines to facilitate companies in adopting their own anti-contagion norms and procedures, in which each company's specific circumstances should be taken into account. The range of measures includes information to

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<sup>3</sup> The Decree of the President of the Council of Ministers of 22 March 2020 ordered the closure of all non-essential industrial and commercial production activities, excluding, however, those that could be performed remotely (art. 1, c. 1, lett. c). Similarly, Legislative Decree No 19/20 requires public administrations to provide essential services using agile work as a priority.

the employees on how to access and exit the work premises in a safe manner; the requirement to keep a safe distance of at least one metre from each other, and to use protective equipment (like face masks, gloves and goggles) wherever this precaution is impossible, the sanitation of the work environment and the working tools.

Those provisions may raise problems relating to the privacy of employees, who may be subject to controls while entering the workplace that would normally be considered intrusive, like a body temperature check. The Protocol, in line with the requirements of the National Data Protection Authority, recommends that the collected data should not be recorded unless this is necessary to justify the prohibition on entering the premises of the undertaking.

#### 4. Support for Caregiving.

The Cura Italia Decree establishes a series of measures to help workers who face increased family responsibilities because of the closure of schools and universities from 5 March 2020. In particular, Article 23 of the Decree specifies the provisions for extraordinary parental leave up to 15 days in the period between 5 March to 3 April 2020<sup>4</sup>. The leave provides for the payment of 50% of the normal salary for families with children under 12 years, while no provision is made for payment in the case of children aged between 12 and 16 years.

These provisions provide more extensive financial aid compared to ordinary leave as specified in Legislative Decree No. 151/2001. In addition, during this period these workers are protected against dismissal with a right to maintain their jobs. This opportunity may be taken by both parents on condition it is not contemporary and neither of the parents is in receipt of alternative means of wage support (such as the Wage Guarantee Fund), is unemployed or currently not working. Employees working from home can also benefit from this leave. Individuals entitled to this leave include workers in the private sector, freelance workers required to make social insurance contributions to INPS, self-employed workers enrolled with INPS and public servants.

Special protection is granted to people looking after family members with a disability (or disabled individuals), duly certified under the provisions of Act No. 104/1992. These measures, specified in Article 24 of the above-mentioned Legislative Decree No. 18/2020, include an additional twelve days of fully paid leave to be taken in March and April (to be distributed at the workers' complete discretion) in addition to three days per month already contemplated by law (which is limited to the current month and cannot be carried forward to the following months)<sup>5</sup>. Unlike the extraordinary parental leave, these days may be used also on an hourly basis.

The INPS Circular No. 45/2020 provides detailed administrative clarification on how to use the extraordinary leave and extended permits for disabled people.

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<sup>4</sup> New decrees will be issued periodically on a two weekly basis depending on the pandemic situation.

<sup>5</sup> In this way the disabled worker or disable people carer has a right to 18 days (3+3+12) for the months of March and April.

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As an alternative to parental leave, parents may receive a voucher for child-minding services ranging from 600 to 1000 euros (for medical personnel)<sup>6</sup> as specified in Articles 23 and 25 of Legislative Decree 18/2020. The age limit of a child is 12 years (except disabled children to whom no age limit is applied). The amount of 600 Euros is a fixed one and does not depend on the number of children. The respective administrative explanations are provided in the INPS Circular No. 44/2020. Unlike the provisions for parental leave, also self-employed workers not registered with INPS are entitled to benefit from this supportive measure.

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<sup>6</sup> Specified in the art. 23, para 3 of the Act 18/2020.