

COVID-19 and Labour Law: Italy

Chiara Gaglione, Ilaria Purificato, Olga Pavlovna Rymkevich*

Update: 16 June 2020

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 Covid-19 pandemic, with the Government declaring a national health emergency on 31 January 2020. The first significant provision was Decree Law No. 6 of 23 February 2020, converted into Act No. 13, 5 March 2020 by Parliament, authorizing the Government to adopt measures to contain the epidemic through administrative acts.

The Government has acted through a series of decrees, gradually expanding the territorial application of the measures, initially limited to the Regions of Northern Italy, and extending their scope as well as the restrictions on fundamental freedoms. The Decree of the President of the Council of Ministers of 22 March¹ imposed the closure of all non-essential industrial

* Chiara Gaglione, PhD Candidate in Labour, Development and Innovation, Marco Biagi Foundation-University of Modena and Reggio Emilia; Ilaria Purificato, PhD Candidate in Labour, Development and Innovation, Marco Biagi Foundation-University of Modena and Reggio Emilia; Olga Pavlovna Rymkevich, Senior Researcher at Marco Biagi Foundation-University of Modena and Reggio Emilia.

¹ 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 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 would be extended at least until 3 May.

and commercial activities. In response to the general lockdown of business activities,² the Government adopted a series of economic measures aimed at supporting families, workers and undertakings (Decree Law No. 18, 17 March 2020 (known as the *Cura Italia*), converted into Law No. 27 of 24 April 2020 and Decree Law No. 23, 8 April 2020 converted into Law No. 40, 5 June 2020 by the Parliament.

Approximately two months after the beginning of the pandemic, Italy entered the so-called Phase Two, phasing out the lockdown and adopting milder containment measures to deal with the risk of contagion from Covid-19. According to the programme outlined by the Government, the next phase will consist of the exit from the health emergency and the return to regular working conditions and social life.

To regulate this path towards economic recovery, the *Rilancio* Decree³ (Decree Law No. 34, 19 May 2020) was issued, with which the Government allocated EUR 155 billion to deal with an unprecedented crisis generated by the spread of the pandemic. This is a far-reaching measure, with the aim of strengthening healthcare and safety measures; supporting business by providing income support and measures in favour of the cultural and tourism sectors. The decree outlines the national framework within which, from 18 May to 31 July 2020, with specific decrees or ordinances, (State, regional or municipal), the movement of individuals and the operating methods of economic, productive and social activities will be regulated.

Among the most important measures the following one should be mentioned: the allocation of grants to companies and professionals, subject to compliance with the requirements of the decree under examination; the reduction of the amount of *IRAP* (*Imposta Regionale sulle Attività Produttive* or the Regional Tax on Productive Activities) due for 2019 and the advance payment due for the current tax period; provisions aimed at bringing to light and remedying undocumented labour in certain sectors.

With regard to undocumented labour, the decree makes two main provisions. First, it allows employers (Italians, citizens of a Member State of the European Union, or non-EU nationals with a residence permit) to report the existence of irregular employment relationships with Italian, EU or non-EU citizens in order to enable them to be granted legal status by means of a regular employment contract. Second, it allows non-EU citizens, with a residence permit expiring on 31 October 2019 and not renewed, to obtain a temporary residence permit, valid for six months exclusively on Italian territory, to be converted into a residence permit for work purposes provided that, during the period of validity of the six-month permit, the worker produces evidence of being in possession of a regular employment contract. The validity of these measures is subject to compliance with certain time conditions

² The general lockdown of business activities had a major impact on the leading sectors of the economy, involving nearly half of the national workforce. According to a study 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 those working from home. See: https://www.istat.it/it/files//2020/03/Aggiornamento_MemoriaAS-1766_rev31marzo.pdf [08 April 2020].

³ Decree Law No. 34, 19 May 2020.

and legal provisions. The decree law limits the scope of application of the new regulations to certain sectors, including domestic work, personal care services and agriculture; the essential nature of the work of non-EU citizens (including irregular immigrants) in agriculture in particular has become evident during the public health emergency, so much so that the Minister of Agriculture, Teresa Bellanova, insisted on the inclusion of this provision in the *Rilancio* Decree.

In general, the Government envisages a reopening in stages of the various commercial activities and an easing of the restrictions on freedom of movement. These objectives were based on an understanding between the State and the Regions, whose institutional collaboration has produced an agreement containing standard guidelines for an end to lockdown in all the Italian regions and autonomous provinces. Italy is gradually moving into Phase 3, where the priorities include the reopening of regional and national borders, with regional borders reopening on 3 June.

2. Financial Support for Employees and Businesses

Title III of the *Rilancio* Decree regulates the economic and social measures adopted by the Government to support workers and companies suffering the negative effects of the public health emergency. Some of these measures introduces changes and extensions to the provisions laid down in the law converting Decree No. 18 of 17 March 2020, whereas others are innovative in their scope.

The measures regulating the *Cassa integrazione guadagni* or Wage Guarantee Fund with the special justification *Emergenza Covid-19* (“Covid-19 Emergency”) in the *Cura Italia* Decree have been confirmed by the latest decree⁴, which has extensively modified the duration of the benefit and introduced derogations to the regulations ordinarily provided for access to benefits by agricultural workers, aimed at abolishing the limits on access and use.

The *Cura Italia* Decree granted self-employed workers, seasonal workers in tourism, spas, entertainment and the agricultural sector an allowance of 600 euros for the month of March. The *Rilancio* Decree provided the first two categories of workers with an indemnity of the same amount for April, while for May it granted them 1000 euros; for entertainment workers, on the other hand, it granted an allowance of 600 euros for both April and May; finally, for agricultural workers, the allowance granted for April is 500 euros. The allowance is to be paid by the National Social Security Agency (INPS).

Furthermore, the Government enacted income support measures for April and May for certain categories of self-employed workers and employees excluded from the Decree No. 18/2020. These measures apply to seasonal workers in sectors other than tourism and spas,

⁴ In the Chapter I of Title II, the Decree No.18/2020 introduced a special “*Emergenza Covid-19*” justification in order to allow employers who have suspended or reduced the work activities due 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.

on call workers with at least 30 working days between 1 January 2019 and 31 January 2020, home sales representatives, occasional self-employed workers and domestic workers.

It must be acknowledged that the procedures for the payment of this income support are complicated, to the point that the President of the Council of Minister, Giuseppe Conte, has publicly apologized for the shortcomings of the systems.⁵

As an alternative to these allowances, the Government provided a two-month extension of the benefits normally paid by the Italian system in favour of those who have involuntarily lost their jobs (*Naspi e DisColl*) for workers who had been in receipt of these benefits until the period between 1 March 2020 and 30 April 2020.

The Decree also contained a series of financial measures to support businesses. Among these, the economic support provided in favour of companies that have purchased equipment and instruments specifically indicated by the regulation in order to reduce the risk of contagion in the workplace, as well as the provision of a tax credit equal to 60% of expenses incurred in 2020 for the adaptation of production processes and work environments to the health requirements and measures to contain Covid-19.

3. Measures in matter of layoffs and fixed-term contracts

Among the measures to protect workers, the Government has introduced some derogations to the existing rules on layoffs and fixed-term contracts in Title III of the *Rilancio* Decree.

With regard to layoffs, Decree No. 34/2020 made changes to the provisions contained in the previous Decree no. 18/2020. Specifically, Art. 80 lays down that the duration of the suspension of collective dismissals or for justified objective reasons is extended from 60 days to five months, starting from the date of entry into force of the same provision. Furthermore, it provides that under certain conditions and without being subject to charges or penalties, the employer can revoke all the dismissals notified between 23 February and 17 March, in the phase prior to lockdown.

Another important innovation is the derogation from the general provision (Art. 21 of Legislative Decree No. 81, 15 June 2015) on fixed-term contracts in Art. 93 of the *Rilancio* Decree (Decree Law No. 34/2020) which introduces the possibility to renew or extend fixed-term contracts till 30 August 2020 even without the prerequisites laid down in Art. 19(1) of Decree 81/2015 including staff replacements or temporary and unpredictable needs of an exceptional nature. This is only possible on condition that these employment contracts were concluded before 23 February 2020. The generic provisions of this article gave rise to numerous legal uncertainties regarding the types of enterprises to which it would apply, and the applicability to temporary agency workers. Another crucial point concerns the number of extensions allowed before sanctions are imposed and the contract is converted into an open-ended contract. Since the new provision does not explicitly address this question, it

⁵ The Prime Minister, Giuseppe Conte, apologized to employers and employees during the press conferences on 26 April and 3 June 2020.

might be supposed that the maximum number of extensions without motivation would be a four extensions over a 24-month period. It is evident that further clarification is required with regard to this controversial measure.

4. Remote Work and Workplace Health and Safety

In the recovery phase following lockdown, the importance of remote or smart working as an effective multifunctional measure for restarting the economy clearly emerges. The use of this instrument not only allows for the continuation of production activities compatible with the regulations to reduce the risk of contagion, but also makes it possible to deal with the question of school closures which is putting many Italian families in serious difficulty. In this regard, the Government, with the latest Decree Law (No. 34, 19 May 2020), has provided (Art. 90) that all working parents in the private sector, with at least one child under 14 years of age, have the right to work from home, even in the absence of individual agreements and provided that within the same household there is no other parent in receipt of income support. Clearly, this right is conditional on the assessment of compatibility with the nature of the work performed.

The *Cura Italia* Decree, confirming the fact that remote working is intended to be a multifunctional tool, recognized the right to smart working of all disabled workers (in the conditions referred to in Art. 3 paragraph 3 of Act No. 104/1990) and to those who have a person with a disability in the family, deemed to be a serious case pursuant to the same law, as well as in favour of “immunosuppressed workers and the family members of immunodepressed persons”, assuming that this working method is compatible with the characteristics of the service.

In general terms and, except for the cases so far exposed it should be noted that many interpretative doubts have arisen since the first applications with regard to the simplified version⁶ of remote or smart working introduced by the Government, with the Decree enacted since 1 March 2020, to facilitate its use.

With the same Decree, the legislator gave employers the right to choose between several options that can be used together: either to allow the employee to take annual leave or to be put on smart working. However, it is controversial whether - except for the cases provided for by Art. 90 - there is an effective right of the worker to request remote or smart working if the employer has not arranged it on their own initiative opting for the use of holidays or other kind of leave.

In this regard, the Court of Grosseto handed down a ruling providing that once the conditions for resorting to remote or smart work have been ascertained, the employer cannot deny their implementation, in a discriminatory or unreasonable way, where requested. In the public sector, however, the provision of Art. 87 of Decree Law No. 18/2020, which requires

⁶ The Decrees enacted since 1 March 2020 have made it possible to avoid the prior stipulation of an individual agreement between the parties, which is normally the source for the remote or smart working. The emergency legislation also makes it possible to comply with the employers' obligations to give information about security risks in a simplified manner.

smart working to be a standard way to perform work. The results of the induced experience of smart working for public-sector employees, in this period, are encouraging, suggesting that this new culture of flexibility and results will prevail even after the emergency.

With regard to health and safety in the workplace, mention should be made of a new protocol agreed with the social partners for the regulation of measures aimed at containing the spread of Covid-19. This document, contained in Annex No. 6 of the Prime Ministerial Decree of 26 April 2020, requires clear and precise information on the safety measures adopted to be made available in the workplace, so that every person who enters the workplace is aware of the risks and the containment measures. In addition, the employer is required to sanitize the workplace according to a specific protocol, and to adopt specific prescriptions for the management of common areas in the company, where it is appropriate for workers to have access in limited numbers. In addition, the protocol requires employees to have their temperature measured when entering the company premises, while providing that employees who have tested positive for Covid-19 and then intend to return to work must produce a medical certificate to confirm that they have tested negative on a swab test before returning to work.

In terms of health and safety, there has been extensive debate about the liability of the employer in case of the employee contracting Covid-19, and multiple safety obligations are imposed on the employer so that the worker is effectively safeguarded from any risk connected with the workplace. The debate arose in relation to Art. 42 of Decree Law No. 18/2020 which expressly classifies Covid-19 infections contracted in the workplace as an occupational injury and, as such, covered by occupational insurance. Since this provision was intended to apply to employers, both public and private, in the initial interpretations it was argued that contagion from Covid-19 automatically entails liability on the part of the employer. A circular from the national institute of insurance against accidents at work has clarified the matter, specifying that the recognition of the contagion as an occupational injury does not automatically entail liability on the part of the employer.

5. Support for Caregiving

Given the public health emergency, when families not only had to face serious economic challenges but also could no longer rely on the informal support provided by grandparents, the state adopted a series of support measures the effectiveness of which we now seek to evaluate.

The *Cura Italia* Decree established a series of measures to help workers who face increased family responsibilities due to the closure of schools from 5 March 2020. In spite of the gradual easing of lockdown measures the *Rilancio* Decree No. 34, 19 May 2020, adopts the same logic as its predecessor, extending the support measures for several more months.

In particular, Art. 23 of the Decree specified the provisions for extraordinary parental leave up to 15 days in the period between 5 March to 3 April 2020⁷. This parental leave

⁷ New decrees will be issued periodically on a two weekly basis depending on the pandemic.

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 families with children aged between 12 and 16. The *Rilancio* Decree confirms these provisions (Art. 72) granting 30 days of extraordinary parental leave to be taken by 31 July on a continuous basis or as a series of periods of leave. Those who have already taken 15 days of leave may take the remaining 15 days. The leave is paid at a rate of 50% in the case of families with children up to the age of 12 years. The provisions of the *Rilancio* Decree lay down that unpaid leave may be taken by parents with children up to the age of 16, removing the exclusion for children between 12-16 years.

These provisions provide more extensive financial aid compared to ordinary leave as specified in Legislative Decree No. 151/2001⁸. In addition, during this period these workers are protected against dismissal with the right to maintain their jobs. This opportunity may be taken by both parents on condition that it is not contemporary and neither of the parents is in receipt of alternative means of wage support such as the Wage Guarantee Fund, and neither 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 employees.

Special protection is granted to people looking after family members with a disability (or disabled individuals), duly certified pursuant to Act No. 104/1992. These measures, specified in Art. 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 worker's complete discretion, in addition to three days per month already provided by law (which is limited to the current month and cannot be carried forward to the following months).⁹ The *Rilancio* Decree (Art. 73) extends this period up to further 12 days to be taken in an identical manner between May and June. Unlike the extraordinary parental leave, these days of leave 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 people with disabilities.

As an alternative to parental leave, parents may receive a voucher for child-minding services ranging from 600 to 1000 euros (for medical personnel)¹⁰ as specified in Art. 23 and 25 of Decree Law No. 18/2020. The *Rilancio* Decree (Art. 75) increases these amounts respectively to 1200 and 2000 euros. The logic is the same as in case of parental leave. Those who have already received a bonus of 600 euro (or 1000 euro) may request the other 600 euros (1000 euros) by the end of July. In addition to the *Cura Italia* Decree, the new Decree contemplates the possibility to use these funds to cover the enrolment fees for summer camps and other educational and recreational services for children. The age limit of the child is 12 years (except for disabled children for whom no age limit is laid down). The amount is

⁸ This is higher than the normal threshold for parental leave which is 30% of the salary paid for six months up to the age of six years, Art 34(1), Legislative Decree No. 151, 26 March 2001.

⁹ In this way the disabled worker or carer of disabled persons has a right to 18 days (3+3+12) for the months of March and April.

¹⁰ Specified in Art. 23, para 3 of Act 18/2020.

a fixed one and does not depend on the number of children. The respective administrative explanations are provided in 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 support measure.

Copyright © 2020 Chiara Gaglione, Ilaria Purificato, Olga Pavlovna Rymkevich. This article is released under a Creative Commons Attribution 4.0 International License