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Object: Health emergency related to the Covid-19 – What tools are available to the employer?

1. SMART-WORKING.
2. REDUCTION/SUSPENSION OF THE ACTIVITY.
3. MEASURES PROVIDED BY THE LAW DECREE “CURA ITALIA”.
4. SOCIAL SECURITY PAYMENTS PROVIDED BY LAW DECREE.
5. CONTINUATION OF ACTIVITIES IN THE COMPANY.
6. PROHIBITION OF DISMISSAL.

1. SMART-WORKING

Should it be possible to work remotely, the employer can introduce the smart-working modality. In general, this possibility is granted, pursuant to Law No. 81/2017, only on the basis of the stipulation of an individual agreement with the employee, to be sent to the Ministry of Labour through the "Cliclavoro" website. However, due to the current emergency it is possible for the employer to implement the smart-working modality without agreement, simply by communicating the list of employees involved through the "Cliclavoro" website.

In addition, the employer must send to the employees an information about the risks for their health and safety arising from this modality of carrying out the working activity, which can be found on the INAIL website.

It is also advisable, due to the absence of the agreement, to provide employees with information on the applicable provisions (Law No. 81/2017), specifying that since smart-working is introduced to contain the epidemiological emergency, the performance of the working activities will exclusively be possible from the employee's home.

2. REDUCTION/SUSPENSION OF THE ACTIVITY

A) USE OF HOLIDAYS AND PAID LEAVES

According to the current majority doctrine, it is exceptionally possible for the employer to "force" the employees to use of accrued and non-used holidays and paid leaves. For the use of holidays to be accrued in the current financial year, however, it is advisable to collect the consent of employees, since the possibility of forcing the use of such holidays is debated.

It must also be taken into account that in case the employer considers applying the derogatory furlough, it will first be necessary to use up all ordinary flexibility tools, i.e. holidays and paid leaves.

This way, the employer is also able to reduce the number of holidays accrued by employees over the years, while the latter keep their retribution.

B) INTRODUCTION OF PART-TIME WORK

Working hours can be temporarily reduced due to the reduced workloads caused by the current health emergency. The exact working hours must be defined in the agreement concluded with the single employee. So-called “Vertical part-time” (meaning that the employee works full-time on certain days of the week and has other days off) should be preferred, because it allows to reduce travels and days spent in the company, therefore limiting the risk of infection.

For the employer, the introduction of part-time work implies the possibility of limiting personnel costs, but it correspondingly determines for the employees a - in some cases strong - reduction of their retribution.

3. MEASURES PROVIDED BY THE LAW DECREE ‘CURA ITALIA’

A) PAID LEAVES PURSUANT TO LAW NO. 104/92

Paid leaves to take care of family members with disabilities or in a serious situation according to Law No. 104/92 are increased in the monthly amount of 12 days, with reference to the months of March and April 2020.

B) DAYS OF LEAVE FOR CHILDREN NOT OLDER THAN 12 YEARS OF AGE AND BABY-SITTING SERVICES

Because of the suspension of school services, employees with children not older than 12 years of age may be granted additional parental leave of up to 15 days, even non-consecutive, which be used alternatively between parents. During this period, the concerned workers are granted 50% of their retribution.

Alternatively, a bonus is provided for the purchase of baby-sitting services up to a total of Euro 600,00 granted by means of the so-called “Libretto di famiglia”.

C) LEAVE FOR CHILDREN BETWEEN 12 AND 16 YEARS OF AGE

In the absence of other forms of income support for suspension or termination of working activity in favor of the parents, one of them, alternatively, may abstain from work for the entire duration of the suspension of school services without the right to retribution, but with the right to keep their job position.

4. SOCIAL SECURITY PAYMENTS PROVIDED BY LAW DECREE »

ORDINARY FURLOUGH FOR “EMERGENZA COVID-19”

Scope

Companies of the following sectors: manufacturer industry, transport, extraction, system installation, production and distribution of energy, water and gas, construction and similar.

Artisanal firms of construction sector and similar.

Concerned employees

Blue collar employees, white collar employees, intermediates, equivalents, apprentices with professional contract.

The workers shall be regularly hired and assigned to the relevant production unit for which the Ordinary Furlough (“CIGO”) treatment is requested as of 23 February 2020.

Request and payment

The request shall be submitted to the territorial competent office of the INPS. It can be sent within the end of the 4th month following the beginning of the suspension/reduction of work-activity and must indicate the reason: “emergenza Covid-19”

The payment is carried out in first place by the employer and then reimbursed by the INPS.

Amount

The CIGO amounts to 80% of the employee’s global salary, within the maximum limit of Euro 998,18 for wages up to Euro 2.159,48 and of Euro 1.199,72 for wages higher than this limit.

Maximum duration

The CIGO for the “emergenza Covid-19” can be granted for a period of maximum 9 weeks.

Information and trade union consultation

The company must inform and consult the union representatives, inviting them to a joint examination, which shall be carried out, also by electronic means, within 3 days from the request.

Holidays and CIGO (general provisions)

In case of total suspension of the work-activity, there is the possibility for the employer to immediately benefit from the CIGO, postponing for each employee the remaining annual holidays. The use of holidays, both with reference to the ones that have already been accrued and to the ones that are being accrued, can be postponed until the moment when the suspension of work and the CIGO terminate.

Sick leave and CIGO (general provisions)

The CIGO substitutes the indemnity due for sick leave, in case the disease occurred after its activation and also covers for the integration by the company, possibly provided by the NCBA. The employee is therefore not obliged to communicate his/her sickness.

In case the employee is on sick leave, when the CIGO is activated, there are two possible outcomes:

- ✓ if the CIGO implies the total suspension of work-activity and concerns all the staff employed in the same department/office to which the sick worker belongs, the latter is considered in CIGO and not in sick leave;
- ✓ if the CIGO concerns a partial reduction of activities or the suspension of part of the staff employed in the same department/office to which the sick worker belongs, the latter shall continue to receive the sick leave indemnity.

Family support cheques (ANF) and CIGO (general provisions)

The workers using the CIGO are also entitled to the family support cheques.

SALARY INTEGRATION FUND (FIS) IN CASE OF EVEN JUST PARTIAL TERMINATION OF THE ACTIVITY

Scope

Employers, who employ on average more than 5 employees, belonging to sectors, types and size classes not covered by the CIGO or CIGS and who have not set up bilateral solidarity funds or alternative bilateral solidarity funds are subject to the discipline of the Salary Integration Fund.

For the purpose of reaching the size threshold, apprentices are also counted, while the size threshold is verified monthly with reference to the average employment volume in the previous six months.

The ordinary salary integration, on the other hand, can only be granted to employers who employed on average more than 15 employees, including apprentices, in the six months prior to the date on which the work-activity suspensions or reductions began. This threshold is lowered to 5 for the current emergency.

The companies participating in the Salary Integration Fund, as far as the "emergenza Covid-19" is concerned, will refer to the regulations that are provided for the CIGO.

DEROGATORY FURLOUGH (CID)

Article 22 of Law Decree no. 18 of 17 March 2020 extended access to the Derogatory Furlough to all companies, regardless of their sector of activity and the number of workers employed by them, who are excluded from the scope of the other social security payments.

The single Regions and Autonomous Provinces will regulate access to these measures. The CID may be granted for the duration of the suspension of the work-activity and in any case for a period not exceeding 9 weeks.

The CID may be granted only with reference to employees, who were already in force on 23 February 2020.

A general condition for access to the CID is that the employees of the company must have previously used up all ordinary flexibility tools, including accrued and non-used holidays (par. 8, art. 2, Law Decree no. 83473/2014). The flexibility instruments include accrued

and non-used holidays, paid leaves, hour bank (“banca ore”), etc. Accrued and non-used holidays are defined as the residual holidays of the previous year and those accrued up to the date of commencement of the suspension, excluding planned holidays that coincide, for example, with company closures (Min. Lav., note no. 5425/2014). “Paid leaves” means any kind of paid leave (INPS, Memorandum no. 107/2015).

5. CONTINUATION OF ACTIVITIES OF THE COMPANY

On 14 March 2020 Cgil, Cisl and Uil signed an "Agreement on measures aimed at containing the spread of the Covid-19 in the workplace" with the Government and the employers' trade union representatives.

The Agreement provides that "the continuation of production activities can only take place under conditions that ensure adequate levels of protection for the people working". In addition, the social parties agreed on the possibility of the "use of social security payments, with the consequent reduction or suspension of working activity, in order to enable the companies in all sectors to apply such measures and the resulting safety of the workplace".

In detail, the Agreement provides:

INFORMATION DUTIES AND OBLIGATIONS OF EMPLOYEES

The employer must provide the employees and anyone, who enters the company premises, with information leaflets by handing those out and/or posting those at the entrance and in the most visible places of the company premises. The information to be provided therewith regards the obligations: to stay at home in case of fever higher than 37.5 °C or other flu-like symptoms; to declare whether there are dangerous conditions (flu-like symptoms, fever, contact with people tested positive for Covid-19 in the previous 14 days); to respect the provisions of the Authorities (safety distance, frequent hand washing, etc.); and to inform the employer in a timely manner of the presence of symptoms.

ACCESS AND EXIT REGULATIONS

The employer is allowed to measure the temperature of persons entering the company's premises, paying attention to compliance with data protection provisions. Further, the employer must prohibit the entrance to persons with symptoms or persons who have been in contact with persons tested positive to Covid-19 and must stagger entrances and exits, so to avoid excessive gathering of people. If possible, it is recommended to provide a door of entry and a different one of exit and to ensure the availability of disinfectants (adequately indicated).

RELATIONS WITH SUPPLIERS AND TRANSPORTERS

The employer must provide for entry, transit and exit procedures as well as predefined routes and timing, to avoid the contact with the personal. Drivers must remain in their

vehicles and the access to company's offices is not allowed. Therefore, dedicated bathrooms for suppliers/transporters and/or other external personnel must be provided. In any case, the access of visitors must be reduced as far as possible.

CLEANING PROCEDURES AND HYGIENE IN WORK AND COMMON AREAS

The employer must guarantee the daily cleaning and periodic sanitization of premises, workstations and common areas as well as the periodic sanitization with appropriate disinfectants of keyboard, touch screen and mouse. The company must provide adequate hand cleaning disinfectants and the frequent hand cleaning with soap and water is generally recommended. With regards to common areas, including canteens and changing rooms, a restricted access, continuous ventilation, reduced time of stay and keeping of the distance of 1 meter between people must be ensured. In the changing rooms, it is necessary to provide spaces for the storage of work-clothes and adequate hygienic conditions must be ensured. Further, periodic sanitization and daily cleaning of the canteen and the keypads of the beverage and snack dispensers must be guaranteed.

ADDITIONAL EMPLOYEE'S PROTECTION MEASURES

In order to reduce the contemporary presence in the company and, consequently, the contacts:

- All departments other than those assigned to production purposes and those regarding which the use of smart working is not possible must be closed;
- Production levels should be reduced;
- Shift schedules for employees assigned to production should be organized.

All national and international business travels, also if already agreed upon or organized, are suspended and cancelled. Meetings, which require the physical attendance, are not allowed. Further, all internal events and training activities in the premises of the company- including the mandatory ones (e.g. on health and safety) - must be suspended and cancelled.

Persons, who were undertaking mandatory training on health and safety in the workplace (e.g. responsible for the fire protection), will still be able to temporarily carry out the function assigned to them, even if they have not completed the training.

The medical surveillance (also periodic) must proceed according to the indications of the Ministry of Health. The competent physician reports to the company situations of particular fragility, in observance of applicable data protection provisions.

In case the distance between people in the company must be lower than 1 meter, the use of masks and other Personal Protective Equipment complying with provisions of health authorities is necessary.

ACTIONS IN CASE OF EMPLOYEES WITH SYMPTOMS/ TESTED POSITIVE FOR COVID-19

In case of fever and respiratory infection symptoms that have emerged while at the workplace, the employee must immediately inform the HR department, which must immediately proceed with the isolation of the employee according to provisions of the health authority. The employee must not visit the emergency room and/or to the company infirmary and the employer must immediately alert the competent health authorities and the emergency numbers for the Covid-19 emergency. In case of a positive test result, the company must collaborate to identify possible "close contacts " of employees tested positive for Covid-19.

6. PROHIBITION OF DISMISSAL

In case of fever and respiratory infection symptoms that have emerged while at the workplace, the employee must immediately inform the HR department, which must immediately proceed with the isolation of the employee according to provisions of the health authority. The employee must not visit the emergency room and/or to the company infirmary and the employer must immediately alert the competent health authorities and the emergency numbers for the Covid-19 emergency. Pursuant to art. 46 of the "Cura Italia" Law Decree, from the date of entry into force of the decree (17 March 2020), the beginning of collective dismissal procedures is precluded for 60 days. During the same period, pending proceedings initiated after 23 February 2020 are suspended.

Until the expiration of the before-mentioned deadline, the employer, regardless of the number of employees, cannot terminate an employment contract for justified objective reason pursuant to art. 3 of Law no. 604/1966 of a positive test result, the company must collaborate to identify possible "close contacts " of employees tested positive for Covid-19.

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The Firm, BĒS Associati, remains as usual at full disposal for any further information or clarification. Please use your contact details.

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