
Legal Report



Preliminary comments on Law Decree dated 22 March 2021, no. 41 ("**Decreto Sostegni**") containing measures to support businesses connected with the COVID-19 emergency.

April 2021



Update

Background

Law Decree dated 22 march 2021 no. 41, the so-called “*Decreto Sostegni*” (“**Decree**”), provides a series of new measures to support businesses and connected with the Covid-19 emergency

This document seeks to provide an initial and general overview of some of the main provisions in relation to employment law as contained in the Decree.

Please do not hesitate to contact our team if you require any further information.

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1 Changes in the rules on salary supplements

The Decree provides, for those employers suspending or reducing their business activity as a result of the COVID-19 epidemic, the possibility to apply for up to **13 weeks** of ordinary wage supplement treatment (“**CIGO**”) under the heading “COVID-19 emergency”, which can be used between **1 April and 30 June 2021**. Employers taking advantage of this possibility **are not required to pay any additional contributions**.

The Decree also provides for a possibility to apply for up to **28 weeks** ordinary allowance (“**FIS**”) and wage supplementation in derogation (“**CIGD**”), which can be used between 1 April and 31 December 2021. Employers taking advantage of this possibility **are not required to pay any additional contributions**.

Applications must be presented within the end of the month following that in which the period of suspension or reduction in business began, and, at the earliest, within 30 April 2021.

The Decree specifies that the payment of the new salary supplements can be made both by direct payment by INPS, including the advance payment mechanism by INPS of up to 40%, and by the ordinary methods, that is, through payment by the employer.

The employer is required to send INPS the data necessary for the payment or for payment of the balance of the salary supplement within the end of the month following that in which the salary supplement period is located, or, if later, within thirty days from the adoption of the order granting the salary supplement. In the phase of first application, the relevant due dates are moved to the thirtieth day following 23 March 2021 (date of entry into force of the Decree). Upon expiry of the relevant dates, the payment of the supplementary salary and the related charges remain the responsibility of the defaulting employer.

2 Extension on the ban on collective dismissals and individual dismissals on justified objective grounds

The Decree extends the ban on collective dismissals and individual dismissals on justified objective grounds, for all employers, **until 30 June 2021**.

Businesses falling within the scope of application of the ordinary wage supplement treatment (industry and construction) can therefore start dismissals on objective grounds from 1 July 2021.

For those employers who on the other hand benefit from the CIGD wage supplementation in derogation, the FIS ordinary wage supplement or the wage supplements for agricultural workers (“**CISOA**”) under the heading “COVID-19”, there is a **further extension in the ban on dismissals from 1 July 2021 to 31 October 2021**. The wording does not clarify if, in order that this extension apply, it is necessary or otherwise to have effectively taken advantage of the relevant salary supplement. Until clarification is available, it is preferable to assume that for those companies the prohibition applies until 31 October 2021 irrespective of whether or not the company has utilised the relevant measures.

Having said this, the termination of employment for economic reasons is in any case permitted in the following cases:

- redundancies based on the definitive cessation of the company's business or the definitive cessation of the company's activity following its liquidation without the continuation, even partial, of the business (provided there is no transfer of business or of any branch of business pursuant to art. 2112 civil code);
- where a shop floor agreement is entered into with the senior representative trade unions at national level as an incentive to terminate the employment relationship, and limited to those employees who adhere (and who will in any case be entitled to the NASPI unemployment benefit);
- in the event of bankruptcy when the provisional continued operation of the company is not envisaged and the termination of the company's business is ordered. If the provisional continuance of a specific branch of business is provided, the ban does not apply to dismissals made in other areas that do not form part of the same branch of business.

The exception to the ban, previously provided in the case of a change on a general contractor with the subsequent rehiring of staff by the new general contractor, continues to apply.

Update

3 Extensions and renewals of fixed-term contracts (including staff leasing)

The Decree confirms for 2021 an important provision on relation to fixed-term contracts.

In particular, until 31 December 2021, it is possible to renew/extend only once and for a maximum period of 12 months – subject always to the maximum overall duration of 24 months – existing fixed-term employment contracts, even in the absence of the necessary grounds as provided by art. 19, paragraph 1, of Legislative Decree no. 81/2015.

For the purposes of the correct application of the above provisions, renewals and extensions that took place before 23 March 2021 are not taken into account. Therefore, employers who have already benefited from an extension or renewal by virtue of the previous regime for fixed-term contracts, to be able to apply a further extension/renewal provided that the fixed-term contract's overall duration does not exceed 24 months in total.

4 Measures in support of vulnerable workers

The Decree extends **until 30 June 2021** the measures provided for so-called vulnerable workers¹.

In particular, until said date, the absence from work of employees in a state of particular vulnerability connected with the pandemic is considered on a par with a hospital stay, if prescribed by the competent health authorities, with the following specifications: (i) the worker is entitled to refrain from work **only if their service cannot be rendered in** smart working mode; (ii) any period of absence will not be taken into account in the calculation of the protected period during which a position must be held open for an employee.

Further, and again until 30 June 2021, vulnerable workers may render their services in smart working mode, including further to having been attributed a different task provided that the same is included in the same category or area as their level of employment, or

in the alternative take part in specific professional training, also remotely.

¹ Vulnerable workers means all public and private employees holding the certification issued by the competent medical-legal bodies, certifying the existence of risk due to immunosuppression or following various forms of

cancer or the performance of related life-saving therapies, including workers holding a certification of a serious disability.

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