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COVID-19 Update

Employment Law

Covid-19 Emergency – Memorandum (summary of the restrictive provision applied in Italy - updated to 19 March 2020)

1. <u>APPLICABLE LAW AND REGULATION</u>

Law Decree no. 6/2020, Decrees of the President of the Council of Ministers ("**DPCM**") 8 March 2020, DPCM 9 March 2020, DPCM 11 March 2020, shared regulatory protocol for the containment of Covid - 19 - executed on March 14, 2020 by Confindustria, Confapi, Confartigianato and CGIL - CISL - UIL (the "**Protocol**") and Law Decree no. 18/2020 of the 17 March 2020.

2. <u>SECURITY MEASURES</u>

<u>Duration</u>: until 25 March 2020 (save for further extension) <u>Zone</u>: Whole Italian territory

Topics	DPCMs provisions and guidelines	Protocol provisions and guidelines
Movements within the territory	 Avoid any movement of individuals <u>entering to</u> and <u>leaving from</u> the whole Italian territory, and <u>within it</u>. Exceptions: Proven working-related reasons; Situations of need; Health related reasons. 	Same
	According to the guidelines provided by the Government, the existence of one of the above exceptions that justify the movements shall be certified by means of a self-statement,	

	 which can also be released by filling a specific form provided by the Police department in case of control. With regard to the movement for "<i>proven working related reasons</i>", it would seem that any working reason can justify it: thus, it appears that, both the work-home travel as well as any travel to go anywhere for business purposes are allowed. In any case, it is advisable for the employer to give the employees who need to move for working reasons a statement certifying the existence of the "<i>working related reasons</i>", so that it can be shown by the workers in the event of police check and kept for any subsequent checks. 	
Criminal liability	Breach of the above provisions is punished pursuant to Section 650 of the Italian Criminal Code (arrest for up to three months or fine of up to € 206), unless the breach constitutes a more serious offense (such as the case referred to in Section 452 of the Italian Criminal Code "Criminal offenses against public health", which provides for imprisonment up to a maximum of 12 years in certain cases). In case of untrue self-statement, the relative criminal sanctions shall be applied according to the cases.	The breach of the provisions of the Protocol does not give rise to criminal liability pursuant to Section 650 of the Italian Criminal Code (non-compliance with an authority measure). In any case, a liability pursuant to Section 2087 of the Italian Civil Code cannot be ruled out as well as an anti- union conduct.
Transport and delivery of goods	<u>Allowed</u> only if adopting all the organizational and health and safety measures suitable to protect workers performing	The employer shall regulate the access of external suppliers and / or drivers within the company's premises/plants as

	the transports.	 follows: Implementation of identification process in entrance, transit and exit for the access of external suppliers and implementation of processes predefining methods, routes and timelines in order to reduce the opportunities of contact between the employees in force in the departments / offices involved; the trucks drivers shall remain on board their vehicles as far as possible and in any case they shall keep a distance of at least one meter from the employees; the trucks drivers are prohibited in entering to the offices; the employer shall identify / install dedicated toilets, providing for a ban on the use of those of employees and ensuring adequate daily cleaning; the employer shall reduce as much as possible the access to external visitors such as, for example, cleaning and
		 maintenance companies to which the above security measures shall be applied; in the transport service organized by the company (e.g. shuttle), the safety of workers shall be guaranteed and respected during each movement.
Obligation to close premises/establishments	There is no a general obligation of locking down and closedown all the activities, however it is suggested to adopt smart-working for all the companies' department able to perform their activity in such way. However, among others, the following activities shall be locked down:	Same

	 Museums, gyms, sports centers and ski resorts; Services related activities (hairdressers, beauticians, etc.); Bar / restaurants; Commercial activities in general (except for, in particular, shops selling groceries and other goods for basic needs, pharmacies, laundries and banking / insurance services). E-commerce activity and in general delivery services are allowed. 	
Behaviours in the workplace	 The activities still admitted may continue to be carried out within the limits of the sanitary prescriptions and - with particular reference to the productive and professional activities - within the following limits: suspension of the activities of the departments not indispensable for production; implementation of anti-contagion safety protocols (e.g. at least one-meter distance between each other) and, where interpersonal distance cannot be respected, adoption of individual protection tools (e.g. gloves, mask, etc.); implementation of sanitization operations at workplace (also using forms of social security measures – <i>ammortizzatori sociali</i>); maximum limitation of movement within the sites and premises, plus restriction with regard to access 	 For the activities still allowed, the employer shall: closedown of all departments other than production or, in any case, those whose operation is possible through the use of smart working, or in any case remotely; proceed with a re-modulation of production levels; ensure a shift schedule for employees dedicated to production with the aim of minimizing contacts and creating autonomous, distinct and recognizable groups; encourage staggered entry / exit times in order to avoid contacts in the common areas as much as possible (entrances, changing rooms, canteen); where possible, dedicate an entry door and an exit door from the premises and ensure the presence of detergents indicated by specific indications; limit travel within the company to the bare minimum and in compliance with company instructions.

to common areas (with exclusive reference to	
production activities).	Employers shall adopt the Protocol and therefore the
	employer shall carry out the following activities:
	a) inform all workers and anyone who enters the company about the provisions of the Authorities. The information in particular must concern:
	 the obligation to stay at home in the presence of fever (over 37.5 °) or other flu symptoms and to call your family doctor and health authority;
	• ban on accessing or staying in the company's premises
	for those who in the last 14 days have had contacts with
	subjects that have been resulted positive for COVID-19
	or come from risk areas according to WHO indications,
	or if the dangerous conditions referred above exist (e.g.
	symptoms of flu, temperature over 37.5°, origin from
	areas at risk or contact with people positive to the virus
	in the previous 14 days, etc.) and obligation to declare it
	if the above conditions occur after entry ¹ ;
	• the commitment to comply with all the provisions of the Authorities and the employer in accessing the company
	(e.g. interpersonal distance of at least 1 meter, hand
	washing, etc.);
	• the commitment to promptly inform the employer of the
	presence of any flu symptoms during the performance

¹ If a self-statement is requested to certify that the employee does not come from epidemiological risk areas and does not have had any risky contacts in the last 14 days with subjects tested positive for COVID-19, according to the Protocol, personal data should be processed in a correct way. To this extent, it is suggested to collect only the necessary, adequate and relevant data with respect to the prevention of COVID-19 infection. For example, if the company requests a statement relating to contacts with people who resulted positive for COVID-19, it should refrain from requesting additional information about the person who resulted positive. Or, if a declaration is requested on the origin from epidemiological risk areas, it is necessary to refrain from requesting additional information regarding the specificities of the places.

of the working activity;
 b) take the following measures to clean and sanitize company's premises: ensure daily cleaning and periodic sanitization of premises, environments, workstations, working tools and common and leisure areas; in the case of presence of a positive person at COVID-19 within company's premises, the premises shall be cleaned and sanitized according to the provisions of circular no. 5443 of 22 February 2020 of the Ministry of Health and their ventilation; grant the cleaning at the end of the shift and the periodic sanitization of keyboards, touch screens, mice with suitable detergents in each company premises; the employer has the faculty to organize special / periodic cleaning interventions using social security measures;
 c) take all personal hygiene precautions and make personal protective equipment available, as better specified below: take all hygienic precautions, especially for hands for which frequent cleaning with soap and water is recommended; provide suitable hand cleaning means; make sure that the masks are used in compliance with the provisions of the WHO (for example, to be used only in the case of colds or in contact with affected people) and in the case of work at a distance of less than one

		 <u>meter</u> (together with gloves, glasses, overalls, headphones, gowns etc.) ensure that the protective devices referred to in the previous point comply with the provisions of the scientific and health authorities;
		 d) manage company's common areas as follows: limit the access to common areas, with the provision of (<i>i</i>) continuous ventilation of the premises, (<i>ii</i>) reduction of permanence within these common areas and (<i>iii</i>) maintenance of the safety distance of one meter between the people staying within these areas; organize the spaces and sanitize the changing rooms; grant periodic sanitisation and daily cleaning, with special cleaners in the canteen rooms, on the keyboards of the vending machines for drinks and snacks.
	N/A	Health surveillance shall be carried on respecting the hygiene and health and safety measures included between the indications of the Ministry of Health.
Health and medical controls		 During the whole emergency period, the employer shall: give preference to preventive medical visits, visits on request and visits to return from illness; continue the ongoing periodic health surveillance; collaborate with the competent doctor and the RLS / RLST (representatives of employees for health and safety matters).
		Employer plant doctor (medico competente) shall report to the

	employer any situations of particular fragility and current or past employee pathologies to which the company shall follow appropriate protection in respect of the data protection.
	According to the Protocol, the employer can, before entering the workplace, detecting body temperature of its employees ² .
	If the activity of detecting body temperatures is deemed essential, it would in any case be carried out it in accordance with the provisions of the Protocol for the data protection (see note 2 at the foot of the page).
Managemetn of employees	Should an employee working at company's premises

² The detection of body temperature constitutes a processing of personal data and, therefore, shall be implemented in accordance with the current data protection related regulations. To this end, the Protocol suggests to:

⁻ detect temperature and not record the relevant data. It is possible to identify the subject and record the exceeding of the temperature threshold only if it is necessary to document the reasons that prevented access to company premises;

⁻ provide information on the processing of personal data. As for the contents of the information notice, with reference to the purpose of the treatment, the prevention of contagion from COVID-19 may be indicated and with reference to the legal basis, the implementation of the anti-contagion safety protocols may be indicated in accordance with art. art. 1, no. 7, lett. d) of the DPCM of 11 March 2020 and with reference to the duration of any data retention, reference can be made to the end of the state of emergency;

⁻ define the appropriate security and organizational measures to protect the collected data. In particular, from an organizational perspective, it is necessary to identify the subjects in charge of the processing and provide them with the necessary instructions. To this end, please note that the data can be processed exclusively for the purpose of preventing contagion from COVID-19 and shall not be disclosed or communicated to third parties outside the specific regulatory provisions (e.g. in the event of a request from the Health authority for the reconstruction of the supply chain of any "close contacts of a worker who tested positive for COVID-19);

⁻ in the event of temporary isolation due to exceeding the temperature threshold, ensure methods that guarantee the confidentiality and dignity of the employee. These guarantees shall also be ensured in the event that the worker notifies the personnel department of having had contacts, outside the company context, with subjects who have tested positive for COVID-19 and in the case of removal of the employee who during the performance of his/her working activity develops fever and symptoms of respiratory infection and its colleagues.

with syntoms		 develop fever and symptoms of respiratory infection such as cough, he/she shall immediately declare it to the personnel office. In the presence of a symptomatic employee, the employer shall: proceed with the isolation of the resource, granting his/her dignity in any case; immediately notify the competent health authorities and the emergency numbers for COVID-19 provided by the Region or by the Ministry of Health; collaborate with the Health Authorities for the definition of any "close contacts" of a person present in the company who has been found to be positive with the COVID-19 buffer; ask the positive employee's close contacts to leave the plant as a precaution, according to the indications of the Health Authority.
Business trips	Business trips can be made for "proven reasons". For trips abroad, further limitations provided for by the country of destination should be taken into account. Please refer to "Movements within the territory".	All national and international business trips / temporary assignments are suspended and cancelled, even if already agreed or organized.
Smart working	Applicable even without individual agreement (without prejudice to the communication obligations regarding health and safety, which still need to be complied with as well as the administrative notice to the Italian labour	Applicable even without individual agreement (without prejudice to communication obligations regarding health and safety information as well as the administrative notice to the Italian labour authority).

	 authority). <u>Strongly recommended</u> for the 100% of the workforce; if not possible, it should be applied on a rotational basis, in order to alternate the employees. Within the employer's communication by means of which the smart working is implemented, it would be advisable to specify that – due to organizational reasons – the employer has the right to recall (i.e. to ask to come back to the office) the employees, with notice (e.g. 24 hours). 	Mandatory for all those activities that can be carried out at home or remotely if social safety nets are used, even by way of derogation, shall always evaluate the possibility of ensuring that they concern the entire company structure, if necessary also with appropriate rotations.
Meetings	To be avoided and replaced by remote connections (audio and video conference call – Skype, etc.)	 Physical meetings are not allowed. Where necessary and urgent, in the impossibility of remote connection, attendance shall be reduced to the minimum necessary with respect for interpersonal distancing (at least one meter) and adequate cleaning / ventilation of the rooms. All internal events and all classroom training activities are suspended and cancelled, even if mandatory, even if already organized: these should be replaced with distance training, even for employees working with the smart working modality. Failure to terminate the updating of professional and / or qualifying training within the deadlines for all company roles / functions regarding health and safety at workplace, following the current emergency status and therefore due to force majeure, does not entail the impossibility to continue the performance of the specific role / function.

Holidays and ordinary leave	To be encouraged in all those cases where the on-site service is not necessary and smart working is not yet operationally manageable (e.g. lack of computers to assign, blue collar activities, etc.). In this way the period of leave is not borne by the employer who can balance it imposing to employees the use of accrued holidays. As for extraordinary leave, new law updates should be awaited.	 The Protocol suggests to: primarily use the social safety measures available in compliance with the contractual institutions (e.g. par, <i>rol, banca ore</i>) generally aimed at allowing abstention from work without loss of salary; use, if the use of the above institutions is not enough, the accrued unused holidays.

3. ECONOMIC MEASURES

Issue	Main provisions
Ordinary temporary lay-off (trattamento ordinario di integrazione salariale e assegno ordinario)	 causes: suspension or reduction of working activity for events linked to the epidemiological emergency from COVID-19; terms: starting from February 23, 2020, for a period of maximum nine weeks, within the end of August 2020; to be requested by the end of the fourth month following the one in which the period of suspension or reduction of work began; ordinary allowance (assegno ordinario) to employees with employers enrolled with Fondo di Integrazione Salariale (FIS) with an average workforce of more than 5 employees; recipients: employees in force on February 23, 2020 without a minimum seniority requirement; information, consultation and joint examination with trade unions shall be carried out, also with a telematics procedure, within 3 days following the communication; no assessment of the existence of the grounds (causali) as per the current legislation is required;

	• the period of wage foreseen by the reason COVID-19, does not compete with the limits set by the legislation currently in force.
	The alternative bilateral solidarity funds (Fondi di solidarietà bilaterali alternativi) grant the payment of the ordinary allowance as above.
	Social Security national body (<i>INPS</i>) monitors the spending threshold and does not take into account any application issued after such a threshold has been overcome.
Ordinary temporary lay-off for employers which are already granted with the extraordinary temporary lay-off	 Employers that, as at February 23, 2020, was being granted with an extraordinary temporary lay-off, has the right to suspend and replace such ongoing extraordinary temporary lay-off with the ordinary one described above, for a period not exceeding nine weeks; the additional contribution required by current legislation does not apply; procedural terms for the consultation with trade unions and for the following procedure envisaged by the current legislation do not apply; the granting of the ordinary temporary lay-off is subject to the suspension of the extraordinary temporary lay-off; the period of duration of the ordinary temporary lay-off linked to COVID-19 will not be considered for the achievement of the time limit provided for the extraordinary one.
	Social Security national body (<i>INPS</i>) monitors the spending threshold and <u>does not take into account any application issued after</u> <u>such a threshold has been overcome</u> .
Ordinary allowance (assegno ordinario) for employers which are granted with solidarity allowance (assegno	 employers enrolled with <i>Fondo di Integrazione Salariale (FIS)</i> may require the application of the ordinary temporary lay-off; in this case the ongoing solidarity allowance (<i>assegno di solidarietà</i>) is suspended for a period not exceeding nine weeks; the periods during which the solidarity allowance (<i>assegno di solidarietà</i>) and the ordinary allowance (<i>assegno ordinario</i>) coexist are not taken into account for the achievement of the maximum overall duration of the solidarity allowance; the additional contribution foreseen by current legislation does not apply; may be granted for the same employees who are beneficiaries of the solidarity allowance (<i>assegno di solidarietà</i>) to fully cover working hours.
(assegno straordinario)	

Temporary lay- off (Cassa integrazione in deroga)	 subjects: employers which have no right to be granted with the above listed temporary lay-offs; duration: for the whole suspension of the employment relationship and in any case for a period not exceeding nine weeks; it is required to executed, even in a telematics way, <u>an agreement with trade unions</u> (except for those who employ more than five employees) which are comparatively more representative at national level; the imputed social contributions (<i>contribuzione figurativa</i>) as well as any relevant charge is recognized in favour of the employees; for employees of agricultural sector, the hours of reduction or suspension of activities, within the limits provided for therein, are equated to work for the purpose of calculating agricultural unemployment benefits; domestic-employers are excluded from the provision above.
Collective dismissals	 Starting from the date of effectiveness of the Decree no. 18/2020 and for the following 60 days, any collective dismissal procedures is banned. For the same period, pending collective dismissal procedures started after February 23, 2020 are suspended. The collective dismissal procedures started prior to February 23, 2020, whose legal consultation is in progress on the date of entry into force of the Decree no. 18/2020, continue in their course.
Individual dismissals	 Starting from the date of effectiveness of the Decree no. 18/2020 and for the following 60 days, any individual dismissal grounded by objective reasons and, thus, for any reason related to the production activities, the organization of the business and its regular functioning, is forbidden. It will be still possible to proceed with dismissals for just cause or justified subjective reasons (i.e. significant breach of contractual obligations) as well as, as per a preliminary interpretation, any dismissal for the exceeding the illness period (<i>periodo di comporto</i>) (quarantine period with active surveillance as well as fiduciary isolation shall not be taken into account to this end) as well as any withdrawal during the probationary period. To be still evaluated the chance of dismiss for supervening impossibility.
	 As of March 5, 2020 it has been introduced a so-called "Covid-19 Leave": for those parents who are or employed with private employers, or enrolled with the so called <i>gestione separata</i> of the social
Parental leave	 For those parents who are or employed with private employers, or enrolled with the so called <i>gestione separatu</i> of the social security national body; for period of no more than 15 days – total for both parents – either on a continuous basis or on a segmented one;

	 for old children up to 12 years old (this age limit does not apply to children with serious disabilities); provided that there is no other unemployed parent, non-worker or beneficiary of any other salary support means.
	During the Covid-19 Leave, an allowance equal to 50% of the salary is granted and the relevant employees is paid his/her imputed social contribution.
	Any "ordinary" parental leave periods used during the period of suspension of childhood education services and teaching activities (i.e. from March 5, 2020) are converted into "Covid-19 leave" with the right to the related allowance and are not counted or compensated as ordinary parental leave.
	With regard to the private sector, parents of children between 12 and 16 years of age, are granted with the following:
	 right to abstain from work for the period of suspension of educational services for children and educational activities in schools of all levels; without indemnity right or acknowledgment of imputed social contributions; prohibition of dismissal and right to job retention; provided that there is no other unemployed parent, non-worker or beneficiary of any other salary support means. "Covid-19 Leave" also applies to step parents.
Baby-sitting related bonus	As an alternative to "Covid-19 Leave", parents with children up to 12 years old (this age limit does not apply to children with serious disabilities), without prejudice to the additional conditions provided for these parents, can request a bonus of up to 600 euros for the purchase of babysitting services for the period of suspension of the schools (the bonus is paid through the so-called <i>libretto di famiglia</i>).
Beneficiaries of Law no. 104/1992 related leaves	The days of paid monthly leave covered by imputed social contributions provided for by Article 33 paragraph 3 of Law no. 104/1992 (currently 3 days) are increased by a further 12 days for months of March and April 2020.
Self-isolation related protection	• The period spent in mandatory/fiduciary self-isolation by employees of private sector, is treated as sickness for the purposes of the economic treatment provided for by law and shall not be taken into account for the achievement of the maximum illness period (<i>periodo di comporto</i>).

	 With reference to the aforementioned periods, a medical certificate shall be issued with the specific indication of the reason that gave rise to the mandatory/fiduciary self-isolation with active surveillance. By way of derogation from the current provisions, the charges borne by the employer, which apply to the social security institution, and the relevant social security charges are to be borne by the State. Until April 30, 2020, for all those employees with severe disabilities or certification of risk from immunosuppression or from the results of oncological pathologies or from carrying out life-saving therapies, the period of absence is equivalent to hospitalization.
Indemnities for self-employed workers and collaborators	Self-employed workers with a VAT number active on February 23, 2020 as well as any coordinated and continuous collaborator enrolled with the so-called <i>gestione separata</i> of the national social security body (INPS) who are not retired and not enrolled with other compulsory social security funds, are granted an indemnity for the month of March 2020 equal to 600 euros, which does not contribute to the formation of personal income pursuant to the TUIR (tax-related legislative decree).
Indemnity for seasonal and SPA centres employees	 Seasonal employees (<i>lavoratori stagionali</i>) in the tourism sector and within SPA centres are granted an allowance for the month of March 2020 of 600 euros, which does not contribute to the formation of income pursuant to the TUIR, provided that: have been terminated (involuntary) the employment relationship between 1 January 2019 and the date of effectiveness of this provision; is are not retired or employed on the date of effectiveness of this provision.
Prorogation of terms for applying for NASpI e DIS- COLL (unemployment related allowances)	 In case of involuntary termination of the employment occurred between 1 January 2020 and up to 31 December 2020, the expiry terms provided for the NASpI related request as well as the DIS-COLL related ones are extended from 68 to 128 days. For NASpI and DIS-COLL applications submitted after the ordinary deadline, the effect of the service from the sixty-eighth day following the date of involuntary termination of the employment relationship is reserved.
Smart working right of	Employees employed within private sectors suffering from serious and proven pathologies, for which a reduced working capacity remains, have a right of precedence in accessing the smart working modalities.

precedence for disabled	
<i>Una-tantum</i> bonus for those who work during March	Employees who have a total income of no more than 40,000 euros are entitled to a bonus, for the month of March 2020, which does not contribute to the calculation of income for tax and social security purposes, equal to 100 euros to be prorated taking into account the number of working days of presence during the aforementioned month. The bonus is anticipated by the employer and subsequently compensated with the ordinary legal procedures.
Tax credit for sanitizing activities	A tax credit of 50% up to a maximum of 20,000 euros is provided for all the costs for sanitizing the environments and work tools (where documented by the employers).
Judicial terms	From March 9 to April 15, 2020, hearings are postponed to a later date than April 15, 2020 and the expiry of the terms for the fulfilment of any act related to these proceedings is suspended.

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Co-Head of the Employment Law department, they render continuous assistance rendered in relation to labour law. They assist clients operating on a wide range of business sectors in all matters relating to the management of employment relationships, both autonomous and subordinate, including new types of management of employment relationships, advising domestic and international entities including those in financial distress. They also advise our clients on matters of social security, trade union negotiations, labor and safety at work and labour law aspects of their extraordinary corporate transactions. Our lawyers are renowned labour lawyers who focuses in particular on restructuring processes, collective dismissals, transfers of business and stock option plans, as well as in domestic and cross-border labour aspects of extraordinary transactions. They have in-depth expertise in HR contracts both in out-of-court settlements and in litigation before the court, in remuneration policies as well as in the area of agency and distribution contracts.

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