

## **Further measures for the containment and management of the epidemic emergency COVID-19 and first operative questions**

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We would like to inform you, that according to the decree of the President of the Council of Ministers, signed the other night and already in force yesterday, further and stricter measures to combat the COVID-19 (Coronavirus) have been introduced for the whole of Italy, currently valid until 25 March 2020. This decree aims to limit the movement of people to a minimum and to make people stay at home, by suspending a whole range of activities and regulating those that can continue to be exercised, with a general call for the "maximum use of flexible working conditions".

For simplicity and further details find the link to the decree here below:

<http://www.governo.it/it/articolo/coronavirus-conte-firma-il-dpcm-11-marzo-2020/14299>

Regarding the first operative questions that arise, the COVID-19 (Coronavirus) imposes, amongst other implications, the management of the presences at and, very often, the absences from work of the employees, in particular in the light of the recently introduced restrictions by the Government, as well as an analysis of some contractual relationships (differing from the employment relationship) in order to understand how to manage them.

As far as employment relationships are concerned, we remind you that first of all, every employer is obliged to guarantee the safety of his employees. In this regard the Ministerial Decrees on Coronavirus urge the companies to instruct their employees to work from home (the so-called smart working modality), as far as their work can be performed remotely. Should smart working not be possible (for example for blue-collar workers), the Decree allows to qualify the employees' absence from work as holiday or ordinary leave.

In expectation of the next and already announced measures of the Government (mainly regarding the redundancy fund or so called "Cassa Integrazione", about which we will provide updates as soon as possible), in the following we would like to detail some hypothetical situations and solutions:

- **Holidays:** the employer in case of a shutdown or a reduction of the activity (or part of the same) can oblige the relevant employees to use their accrued and unused holidays or ordinary leaves.
- **Unpaid leaves:** in the absence of unused holidays or leaves, the employee who gives his prior consent may take time off work by taking unpaid leave. Please note that in this case, unless otherwise provided for in the applicable national collective labor agreement, no social security contributions will be due.
- **Working hours reduction:** with the previous consent of the relevant employees it will be possible (in specific sectors or divisions of the company) to reduce temporarily the working hours of some or all of the employees.
- **Hour bank:** companies applying the accruing system for overtime hours called hour bank can use the accrued overtime hours to “cover” the absence of their employees.
- **Parental leave:** in case of employees with children up to 12 years a parental leave can be considered, whereas due and according to the legal provisions.
- **Illness:** the employee may stay at home if he shows a regular medical certificate, in case of objective health issues (naturally also if due to the Coronavirus) or if put in quarantine by the Authorities because of relevant symptoms.

As far as the redundancy fund is concerned, please note that currently such fund is for industrial enterprises (ordinary redundancy fund) and companies of the industrial sector, travel and tourism agencies and commercial and logistic companies with more than 50 employees (extraordinary lay-off fund). For other companies with more than 5 employees the Solidarity Integration Fund (F.I.S.) may be available.

With regard to commercial relationships and in particular to contractual agreements there is a real risk, that as a result of the current situation and the measures taken or to be taken, the contractual obligations may not be fulfilled within the terms agreed or may not be fulfilled at all; the question is therefore whether the measures ordered to fight this Coronavirus situation can be considered as events of force majeure, hence justifying contractual delays or non-performances.

In general, a discharge of liability is foreseen whenever the performance of the contractual obligation is considered excessively onerous due to “extraordinary or unforeseeable events”, which legitimates the request of termination of the contract, or when the lack or delay of the performance are due to the subsequent impossibility to perform not attributable to the defaulting party. The “extraordinary and unforeseeable” events considered in the contractual practice as force majeure are for example earthquakes, hurricanes, war, rebellions (and, we add, most likely also “pandemics”).

This said, if there is a non-performance due to an order of a Public Authority (as for example the order to cease the activity), no responsibility can be attributed to the defaulting party. In different situations, if the agreement contains a specific “force majeure” clause, the text of

such agreement has to be analyzed in order to determine if such clause justifies the non-performance of the contractual obligation, whereas in all the other cases, the principles of excessive onerousness and subsequent impossibility as briefly described above shall apply, but with the defaulting party carrying the burden of proof.

We are at your complete disposal for any further information.

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