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Social measures with reference COVID 19: the National Labour Inspectorate starts checks

For all clients

The National Labour Inspectorate (I.N.L.) has announced "the need to activate widespread controls on the correct use of public resources allocated to social measures with reference COVID-19", in order to counter any fraudulent or elusive conduct. This is what has been so far communicated in Circular no. 532 published on 12 June 2020: the subjects of the controls will be both employers who have applied for lay-off payments and workers (seasonal, agricultural, self-employed...) who have submitted applications for income support allowances.

The aforesaid Circular first of all recalls, briefly, the rules introduced in the matter of social measures by the so-called Rilancio Decree ("Relaunch-Decree") (and must be integrated with Decree Law no. 52 of 16.06.2020, published later and which – as we briefly remind - has included the possibility, for companies that have exhausted before 31.08.20 the 14 weeks of COVID-19 supplementary treatments (i.e. the initial 9 and the subsequent 5 weeks of extension introduced by the Rilancio Decree), to immediately benefit from the additional 4 weeks, which were originally available only for the period of 1 September 2020 - 31 October 2020).

After recalling the current regulatory framework, the I.N.L. points out that checks will be carried out against:

- companies that have applied for ordinary lay-off payments, wage supplement fund and exceptional lay-off fund;
- seasonal workers in tourism and spas, agricultural workers, self-employed workers registered with the Special Management of the general compulsory Insurance who have applied for income support benefits.

The Inspectorate will determine whether and according to which priorities to carry out controls, based on specific criteria. In addition to giving priority to cases reported as urgent by the I.N.P.S., particular attention will be paid to the following situations:

- companies operating in sectors that have suffered activity interruptions;
- companies operating by way of derogation from the restrictive measures provided for in the legislation issued in relation to the epidemiological emergency;
- companies that have submitted applications for registration or changes to the labour grading with retroactive effect in the period immediately preceding the requests for treatment of the various forms of lay-off funds;
- hiring, transformation and requalification of employment relationships in periods immediately prior to the requests for treatment of the various forms of lay-off funds;
- number of employees concerned by the social measures and possible outsourcings;
- companies/employers who have placed staff in smart working and requested the payment of social measures;
- companies that have not communicated to INPS the resumption, even partially, of their work activity.

The Interregional Inspectorates will be responsible for monitoring these controls: when the final inspection report is drawn up, the inspection staff will report, in the event of irregular situations, that the employer is "beneficiary of social security benefits". It has also been announced that, as a result of the "lock-down", inspections will be intensified in the following sectors: agriculture, construction, logistics and transport, as well as in those excluded from the activity blockage (digital platforms, wholesale, tertiary and so on).

The Inspectorate, together with the I.N.P.S., declared that the above measures are deemed necessary to cope with the changes that occurred with the Covid-19, given the need to enhance the function of social protection and to fight against offences of greater social and economic value. As of this month, therefore, inspection activities are likely to be intensified in the light of the above.

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COVID-19 and medical certification management: INPS instructions

For all clients

With message no. 2584 of 24 June 2020, INPS provided guidance on the management of medical certifications produced by private employees during the period of the Covid-19 emergency, in implementation of Article 26 of Decree Law no. 18 of 2020 (better known as the Decree "Cura Italia", converted with amendments by Law no. 27 of 24 April 2020, and subsequently amended by Decree Law no. 34 of 20 May 2020, the so-called Relaunch Decree "Rilancio").

The Institution in its message distinguishes in particular three cases:

1) Equating quarantine to illness (art. 26, paragraph 1 of the Decree Cura Italia)

in case of: (i) quarantine with active supervision; (ii) home stay on a trust base with active supervision; (iii) precautionary quarantine.

If such circumstances are given, employees are entitled to a social security allowance (with related representative contribution), based on the company sector and their proper qualification. In addition to this, there is a possible salary supplement, payable by the employer, according to the specific collective wage agreements (with related contribution coverage).

In addition, it is provided that these periods are not to be counted for the achievement of the maximum limit for the illness period as governed by collective wage agreements (i.e. the period during which the employee absent due to illness is entitled to retain his workplace). The Institute also specifies that for the purposes of the recognition of social security protection, the employee is required to produce the medical certificate of illness issued by the attending general practitioner substantiating the period of quarantine and containing the details of the relevant measure issued by the public health operator (as provided for by art. 26, paragraph 3 of the Decree Cura Italia); the certificate must be drawn up electronically since the first day of illness. If the certificate is to be issued on paper, it must be sent to INPS within two days, as provided for by the general rules of reference.

If, at the time of issue of the certificate, the physician does not have the information relating to the measure by which quarantine has been ordered, it may be acquired and subsequently communicated to INPS by the employee who will be required to transmit, by ordinary mail or certified e-mail PEC, the details of the measure (i.e. protocol number, data of the public health facility that issued the measure, date of drafting and prescribed period of surveillance) and, where possible, attach the measure itself. Pending the integration by the employee, the certificate is considered suspended and the activities aimed at the recognition of the sickness benefit continue once the anomaly has been remedied.

2) Particularly serious pathologies (art. 26, paragraph 2 Decree Cura Italia)

Art. 26, paragraph 2 of the Decree Cura Italia provides for the following so-called frail employees the equalization of the period of absence with hospitalisation (until the end of 31 July 2020): (i) employees with particularly serious pathologies (employees in the private and

public sectors in possession of the recognition of disability with connotation of seriousness (art. 3, paragraph 3, of Law n. 104 of 1992); (ii) employees in possession of the recognition of disability (art. 3, paragraph 1, of Law n. 104 of 1992).

In these cases, the employee must obtain the medical certification of illness from his general practitioner. The so-called frail workers are entitled to the INPS indemnity to the extent provided for hospitalisation, with a reduction to 2/5 of the quota in the absence of dependent family members.

With reference to the health certification necessary for the start of the procedure for the recognition of the service equivalent to hospitalisation, it is specified that the general practitioner must provide the details of the patient's clinical situation from which the risk situation clearly emerges, as well as the references of the recognition report of the state of disability or of the certification issued by the competent medical-legal bodies of the local health authorities.

3) Illness for COVID-19 (art. 26, paragraph 6 Decree Cura Italia)

In cases of manifest Covid-19-sickness, the employee shall obtain the certificate of illness from his general practitioner (without the need for any provision on the part of the public health operator).

This case falls within the usual management of the common illness and is also recognised to workers registered with the Separate Account, on the basis of the specific reference legislation.

The INPS message concludes with the indications about the so-called transitional period, with a derogation rule for the period prior to the entry into force of the Decree Cura Italia (i.e. 17 March 2020), for which are considered valid: (i) the medical illness certificates transmitted even in the absence of the public health operator's measure; (ii) the measures issued by the public health operator presented by the employees even in the absence of the medical certificates drawn up by their general practitioners.

We are at your disposal for any further help.



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