

## Employment Briefing 36/2020

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### EXTENSION TO BAN ON DISMISSALS

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Article 14 of the *August Decree*, in force from 15<sup>th</sup> August 2020, **extended** the ban on dismissals with economic justification up to 31<sup>st</sup> December 2020 modulating, however, its content on the basis of certain considerations within companies.

Those employers who have **not fully benefited** from the new salary supplement measures attributable to the COVID-19 epidemiological emergency, or those exempt from contributions having not applied for Ordinary Earnings Guarantee Funds (CIG), are **excluded** with:

- The commencement of **collective dismissal** procedures (Articles 4, 5 and 24, Law 223/1991) and the pending procedures started after 23<sup>rd</sup> February 2020 also suspended;
- The **right to withdraw from a contract** for justified objective motivations, pursuant to Article 3, Law 604/1966 (and ongoing procedures referred to in Article 7 of the same Law) are also suspended, regardless of the number of employees.

The ban on dismissals **is not extended** for categories of employers other than those specifically indicated by the law (for example, employers who have already fully benefited from the special supplements or exemptions or those employers who were never entitled to special measures).

#### EXCEPTIONS

Article 14 of the August Decree expressly outlines some specific exceptions to the ban on dismissals:

1. Cases in which the previously employed individual affected by the withdrawal of a contract is re-employed following a takeover by a new contractor, by virtue of the law or a clause in the contract;
2. In cases of the definitive cessation of business activity, resulting from the permanent liquidation, even if only partial, of the business;
3. In cases in which dismissals take place through the execution of a collective agreement within the organisation - stipulated by the most representative trade unions at national level - which provides for an incentive to terminate employment; in these cases, employees who adhere to collective company redundancy incentive agreements will still be eligible the NASpl unemployment benefit;
4. In cases where dismissals are announced following bankruptcy, in the absence of the provisional operation of the company.

### INITIAL INDICATIONS ON CONTRIBUTION EXEMPTIONS AS ALTERNATIVE TO SALARY SUPPLEMENTS

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Through circular no. 105/2020, INPS provided initial indications for the management of social security measures relating to the **exemption from the payment of social security contributions for companies that do not apply for salary supplement payments** as introduced by the August Decree. The provision is intended to incentivize employers to not resort to further salary supplements and, therefore, should the employer decide to apply for the exemption in question, they will no longer be able to make use of any further salary supplements relating to the COVID-19 emergency.

Article 3, Legislative Decree 104/2020, provides a particular exemption in favour of employers in the private sector, with the exception of the agricultural sector, from the payment of those social security contributions for which they are responsible, **up to 31<sup>st</sup> December 2020** and provided that the same employers do not apply for the new salary supplement measures provided for within the same Decree. More specifically, exemption may be legitimately obtained for those companies (INPS-registered) for whom, during the months of May and June 2020, specific salary supplement measures, i.e. Ordinary Earnings Guarantee Funds, Ordinary Integration Funds or Exceptional Earnings Guarantee Funds were applied.

Access to the specific exemption - and benefits from salary supplements pursuant to Legislative Decree 18/2020 – will be available for those employers who had applied for these measures prior to 15<sup>th</sup> August 2020 or, alternatively, after 14<sup>th</sup> August 2020, provided that the relative effective date is prior to 13<sup>th</sup> July. The aforementioned possibility is also valid in the event that the same measures took effect, albeit partial, in periods following 12<sup>th</sup> July 2020.

Finally, application of the benefit is subject to authorization by the European Commission.

#### FRAMEWORK AND MEASURES

The amount of the exemption is equal to, without affecting calculation rates for pension benefits, the unpaid contributions payable by the employer in relation to double the hours of salary supplement received in the months of May and June 2020, with the exclusion of any premiums or contributions due to INAIL.

The amount of the exemption determined therefore constitutes the maximum amount recognizable for the purposes of the incentive and can be utilized up to 31<sup>st</sup> December 2020, for a maximum period of 4 months and remeasurements and application must take place on a monthly basis.

The amount of exemption is independent from the number of workers for whom the salary supplement benefits have been applied and the monthly exemption quota that can be used cannot exceed the contribution theoretically due. Therefore, the actual amount of the exemption will be equal to the lower amount resulting from the contribution theoretically due for lost remuneration by virtue of doubling the hours of salary supplement applied in the months of May and June 2020 and employer contributions due in the individual months in which the measure is to be applied

The hours of salary supplement applied includes both those applied by means of an adjustment and those applied through direct payment.

Finally, it should be noted that the incentive which may be applied must be within the limits of the resources specifically allocated.

### CONDITIONS OF ENTITLEMENT

Exemption, resulting as a contributory benefit, is subject to the following conditions:

- Regularity in terms of the social security contribution obligations, in accordance with DURC legislation;
- Absence of violations of the fundamental rules for the protection of working conditions and compliance with other legal obligations;
- Compliance with national collective agreements and contracts, as well as with regional, territorial or company agreements, signed by the most representative employee trade union organizations at a national level.

With specific reference to the conditions set out by the August Decree, the employer must comply with the ban on collective and individual dismissals, under penalty of revocation of the benefit and the impossibility of applying for a salary supplement. Therefore, for the purposes of the legitimate application of the exemption, the employer must comply with regulations governing the ban on dismissals for the entire period of application of the exemption.

### COORDINATION WITH OTHER MEASURES

Exemption may be combined with other exemptions or reductions in terms of financing rates provided for by current legislation within the limits of the social security contributions due, provided that it takes the form of a total exemption from the payment of the employer contributions, with accumulation only applied where there is a residual contribution that can be theoretically deductible and within the limits of the contribution due.

In the case in which the law requires the employer to choose between the exemption in question and new salary supplement tools and assuming the employer is the same, this choice must be made for each resource. However, regulatory provisions do not preclude the possibility of applying, concurrently or simultaneously with the request for contribution concessions or ordinary social safety nets, other than those motivated by COVID-19 or the specific legislation of the Legislative Decree 18/2020.

## NEW PROVISIONS FOR FIXED TERM CONTRACTS

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In the recent *August Decree* (104/2020) the Legislator finally proposed a concrete derogation from the stringent legislation regarding fixed-term contracts. The rules set out in Legislative Decree 81/2015, as reformed by the *Dignity Decree*, are therefore waived in relation to the need for flexibility of businesses linked to the ongoing health emergency.

It is envisaged that, up to 31<sup>st</sup> December 2020, without affecting the **maximum overall duration of employment relationships of 24 months**, it will be possible to renew or extend this type of contract for a maximum period of 12 months, **once only**, without the need for clarifying motives as required by the regulations when fully operational.

This derogation may be applied to any existing fixed-term contract by means of an extension, as well as to renewals of previous contracts currently expired.

The exemption must necessarily take place by 31<sup>st</sup> December 2020.

The derogation allows, in practice, for the extension of the duration of an existing fixed-term contract, in acausal form, for a maximum period of a further 12 months, provided that this takes place by the end of 2020. It also allows, through renewal, for the stipulation of a new fixed term acausal contract, up to a maximum of 12 months, between the same parties, again by the end of 2020; indeed, it should be noted that in the event of renewal, clarifying motives are ordinarily required. This situation is also valid if the maximum limit of 12 months has already been reached through the sum of previous contracts of the same category.

### RESUMPTION OF SUSPENDED CONTRIBUTION PAYMENTS DUE TO COVID-19

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Authorities have outlined, albeit with different timelines, rules for the resumption of payments suspended during the months between March and May 2020 due to the health emergency.

The recent *August Decree* (104/2020) proposed a new formula based on instalments in order to help fulfil fiscal obligations (tax, social security and insurance), thus regulating that previously outlined, namely;

- An expiry date of 16<sup>th</sup> September 2020 for single instalments or the first of 4 equal instalments of the total debt;
- An expiry date of 16<sup>th</sup> September 2020 for single instalments or the first of 4 equal instalments for 50% of the total debt. The remaining 50% may be paid in monthly instalments, up to a maximum of 24 equal instalments, with payment of the first instalment by 18<sup>th</sup> January 2021.

#### SOCIAL SECURITY PAYMENTS

INPS has, at present, issued three messages which, in addition to explaining payment methods, has requested that debtors inform the Institute, by means of communication to be made through the institutional website, of their will to carry out the payment of instalments and their chosen method as well as indicating the deadline for such communications, now set at **30<sup>th</sup> September 2020**.

#### TAX LIABILITIES

In the fiscal field, the Revenue Collection Agency has proposed a set of guidelines including the principal ideas outlined by the new August Decree.

The deadline for the suspension of payment of tax and non-tax revenues deriving from payment notices, debit notices and assessment notices entrusted to collection agents is postponed until **15<sup>th</sup> October 2020**. In general, payments due between 8<sup>th</sup> March and 15<sup>th</sup> October 2020 are suspended and must be made within the month following the expiry of the suspension period and, therefore, by **30<sup>th</sup> November 2020**.

In relation to deferral plans, in place from 8<sup>th</sup> March 2020, and for measures for accepting requests submitted up to 15<sup>th</sup> October 2020, the penalty of the debtor in terms of the instalments agreed is determined in 10 instalments in the event of non-payment, including non-consecutively, rather than the standard 5 instalments.

The deadline for the suspension of notifications of new debt notices or other collection deeds is postponed to 15<sup>th</sup> October 2020. The same applies to obligations deriving from third party foreclosures carried out before 19<sup>th</sup> May 2020, the date of entry into force of the so-called *Relaunch Decree*, and applies to salaries, wages, other allowances relating to employment or employment relationships as well as pensions and similar mechanisms up to October 15, 2020. The amounts subject to foreclosure must not be subject to any restriction and the foreclosure third party must make them available to the debtor.



## NEWSLETTER

Finally, on the subject of so-called “full settlements”, subject to regulatory amendment through Legislative Decree 34/2020 (the *Relaunch Decree*), the deadline by which those taxpayers with a clean record in terms of the payment of instalments during 2019 may make payments of those instalments due in 2020 without losing the benefit of facilitation measures remains confirmed. This deadline is set for 10<sup>th</sup> December 2020 (Please note: the 5-day tolerance period referred to in Article 3, paragraph 14-bis, Legislative Decree 119/2018 is not provided).



## CONCESSIONS FOR EMPLOYEES WITH CHILDREN IN QUARANTINE

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Official Gazette no. 223/2020 introduced Legislative Decree 111/2020 outlining urgent provisions regarding critical financial support requirements for the start of the school year, connected to the COVID-19 epidemiological emergency, in force since 9<sup>th</sup> September.

Of particular interest is Article 5 of the aforementioned Decree entitled “Agile work and extraordinary leave for parents during the compulsory quarantine period of a cohabiting child due to contact at school”, intended to allow the management of **children up to at age 14 subjected to possible COVID quarantine** following the resumption of school activities.

According to this provision, by 31<sup>st</sup> December, an employee parent will be able to carry out their work according to agile working methods for all or part of the period corresponding to the duration of the quarantine of the cohabiting child under the age of 14, as ordered by the Prevention Department of the Local Health Authority which has territorial jurisdiction following contact within the school.

If working performance cannot be carried out according to agile methods and, in any case, as an alternative to agile work, one of the parents, alternately to the other, may abstain from work for all or part of the period corresponding to the duration of the quarantine, taking advantage of leave which is recognized with an indemnity equal to 50% of salary (calculated according to the provisions of article 23, Legislative Decree 151/2001, with the exception of paragraph 2 of the same article) and coverage with notional contributions, yet within the limits of expected expenditure, beyond which INPS will not be able to admit further applications.

For the days in which a parent benefits from such concessions, or for other reasons is involved in agile working or does not carry out their working activity, the other parent cannot request benefits according to any of the aforementioned measures.

HRIT remains available for any further clarifications.

With best regards,

HRIT

*October 9<sup>th</sup> 2020*