FAQ: Covid-19 Supply chain continuity. Smart-work. Health and safety. Employment issues at emergency times.

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On March 22, 2020, the Presidency of the Council adopted a new Decree introducing further measures on the containment and management of the Covid-19 emergency, applicable throughout the entire national territory.
Below are some FAQs on the new measures adopted by the Government.

HEALTH AND SAFETY AT WORK

- ***Which are the main updates about the lockdown of the productive activities, prescribed by the Decree dated March 22, 2020, operative on the whole national territory?***

The last adopted Decree provides for the closure of all the industrial and commercial activities not included in the sectors listed in Annex 1[1].

The Decree leaves unchanged the closure of commercial establishments, already set by both the Decree, dated March 11, 2020 and the Ministry of Health's Order, dated March 20, 2020.

The recently adopted Decree allows expressly the maintenance of production, transport, marketing and delivery activities concerning drugs, healthcare technology, medical surgical devices and food products.

- ***Is it necessary to suspend the activity whereas the concerned activity is included among those for which the closure is provided, but, the same activity is functional to one or more activities that are maintained in service?***

According to the Decree dated March 22, 2020, the activities that are functional to ensure the continuity of the supply chains of the activities listed in the beforementioned Annex 1 and for the essential services may be continued.

The **continuation of activity must be preceded by a specific notice to the Prefect of the District where the productive activity is located.** The notice shall specify the business and the administrations beneficiaries of the products and services relating to the allowed activities.

Nonetheless, the **Prefect could suspend the activity** if deems the abovementioned conditions non-existent.

- ***Regarding companies for which the productive activity is suspended, is it necessary to immediately interrupt all the activities?***

No, it is not. The recently adopted Decree allows to the concerned companies to complete the activities that are in progress and necessary to the business, within March 25, 2020.

Within the same date, companies will have to stock their goods and after the same date, the activity will have to be completely suspended.

- ***Certain Regions are issuing provisions concerning the mandatory closure of productive activities located within their territories. Which provisions shall prevail in case of conflict between dispositions set by the Decree and those issued by regional orders?***

[1] Available at the following link: https://www.gazzettaufficiale.it/eli/id/2020/03/22/20A01807/sg

The conflict should be resolved with the prevalence of the Decree rules. Nonetheless, with regard to the protection of public health, if the regional rule is more restrictive than the disposition set by the Decree, the former must prevail.

- ***Whereas the company is included in the list of businesses allowed to continue the production, is it necessary to adopt specific precautions?***

In the event that the continuation of activity is allowed, employers should follow the provisions about safety and health set by the Protocol dated March 14, 2020 concerning the safety distance between employees, the delivery and use of proper personal protective equipment, the closure of not strictly necessary business units, etc.

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PERSONNEL MANAGEMENT

- ***Whereas an employee did not accrue annual leave or paid permits, how could his/her absence be managed?***

In this case, the absence must be managed by granting paid leave.

The absence from work, indeed, is imposed by the State authority requiring to the employee to remain at home.

Consequently, since the absence does not depend on the employee's will, the employee is entitled to the daily salary.

- ***Is it possible for employers that already benefit from the Extraordinary Wages Guarantee Fund to cease it in order to accede to the Redundancy Fund specifically set for the Covid-19 Emergency?***

Yes, it is. Furthermore, the abovementioned Decree-Law 18/2020 provides that the new application for the granting of the Redundancy Fund specifically set for the Covid-19 Emergency substitutes the ongoing Extraordinary Redundancy Fund.

- ***If the business activity is suspended with the request of the intervention of Redundancy Fund, what is it possible to provide for the executive personnel?***

The current legislation about wages integration tools expressly excludes executives from the possible beneficiaries of the Redundancy Fund.

Whereas, in relation to the business closure, the company is not intentioned to benefit from the performance of their executives, paid leave must be granted since the Ordinary Wages Guarantee Fund cannot be applied.

- ***Can employers already benefiting from the Ordinary Redundancy Fund /ordinary allowance, suspend it in order to accede to the Redundancy Fund specifically set for the Covid-19 Emergency?***

The National Social Security Institute, with communications n. 1287, March 20, 2020 and n. 1321, March 23, 2020, clarified that employers already benefiting from the Ordinary Redundancy Fund or ordinary allowance, or employers who have submitted the application for the Ordinary Redundancy Fund/ordinary allowance not already authorized, may, if they meet the necessary requirements, resubmit the application for the Redundancy Fund specifically set for the Covid-19 Emergency.

In case of granting, the Institute will automatically cancel the previous authorizations, or the previous submissions related to overlapping periods.

- ***How can an employer check that employees going to work are not infected by Covid-19?***

The infected employees or those that might have potentially contracted the virus should have informed the competent health authorities and be subjected to quarantine or hospitalization measures. Employees who deem to be potentially infected are invited by public authorities to immediately implement a voluntary self-quarantine.

- ***Is it possible to prevent the access to the company premises to certain employees because considered more at risk?***

No, the employer cannot replace the competent authorities regarding the assessment of the degree of danger of the infection. Within the company, only the competent doctor could consider appropriate to conduct extraordinary medical examinations.

- ***Is it possible to check the body temperature of employees at the entrance of the business premises?***

The Italian Privacy Authority has recently reminded that employers should desist from processing the health data of their employees and that the screening of their physical condition is entrusted to the competent authorities and to Civil Protection. **Employers, indeed, cannot perform or carry out examinations on the body temperature of the workforce granting the access to company premises**.

- ***In order to protect employees' health, is it possible to offer them a medical check outside the business premises?***

If the submission to check is voluntary and is not carried out by the employer, the medical check/service is admissible. In this case, the employer, indeed, will not collect any medical data regarding the employee.

- ***Is it possible to check the body temperature of visitors or suppliers at the entrance of company premises?***

This data processing would be contrary to the instructions given by the Italian Privacy Authority. These checks would be allowed if realized on a voluntary basis.

However, should the competent medical consultant establish that the entry of certain suppliers at the company premises could imply a sensible increase of the infection risk, the employer could legitimately prevent such suppliers from entering.

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COMMUTING

- ***Is the movement of cross-border employees restricted?***

Cross-border employees are not subjected to restrictions when moving from and to the workplace, unless they are subjected to quarantine or are positive to Covid-19.

In the event of any control by police officers, the concerned employee shall prove the legitimate reasons of the movement trough a self-declaration form.

- ***Are Italian Regions implementing controls or other quarantine measure towards individual coming from Lombardy and the other Districts listed in the Prime Minister's Decree of March 8th, 2020?***

It is allowed to travel within the restricted zone outlined by Decree dated March 8, 2020, then extended to the whole national territory by the Decree dated March 10, 2020, whereas there is a *"proven urgent work reason"*.

Nevertheless, even if the transit is not prohibited by public authorities, the employee travelling for business purposes to other Italian Regions, could be subjected to regional measures of containment.

Many regions, after the extension of the restricted zone to all national territory, are proceeding to issue specific orders that allow travels for proven reasons of work.

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DISMISSALS

- ***Article 46, Decree-Law n. 18/2020, in addition to the suspension of collective dismissals procedures and preventing the start of new ones, provides for the prohibition of dismissal based on Justified Objective Reason for a period of 60 days starting by the date of entry into force of the abovementioned Decree. How this provision impacts on the possibility of dismissing employees?***

The article involves the impossibility for employers to proceed to implement any redundancy with effect from the date of entry into force of the Decree-Law n. 18/2020. This impossibility will last for the further period of 60 days following the date of entry into force of the prohibition.

This prohibition **does not impact** on the different cases of dismissals served for **disciplinary reason**.

- ***Given the prohibition to carry out redundancies, as envisaged by Decree-Law n. 18/2020, what happens to the individual dismissal procedures , set forth by Article 7, Law n. 604/1966, started before the entry into force of Decree- Law n. 18/2020 and still pending?***

As clarified by the National Labor Inspectorate with note n. 2117/2020, later integrated with note n. 2211/2020, as a result of the provision stated by Article 103, Decree-Law n. 18/2020, the 7 days term in order to summon the parties with regard to the procedure, as envisaged by Article 7, Law n. 604/1966, is suspended from February 23, to April 15.

However, the settlement procedures shall not be deemed suspended and the related requests could still be carried on.

Nonetheless, the summons for the necessary settlement meeting will not be scheduled prior to May 17th, 2020.