

30 October 2020

## Covid-19 legal updates for Employment law: the conversion into law of the August Decree and the “*Ristori*” Decree

By resolution adopted on October 7, 2020, the state of emergency has been extended until January 31, 2021. During the month of October, in parallel with the second wave of the Covid-19 contagion, a number of new pieces of emergency legislation has been issued, including:

- some decrees issued by the Prime Minister (“DPCM”), out of which the latest, issued on October 24, 2020, will remain in force until November 24, 2020; such DPCM introduced a number of restrictions affecting certain productive and commercial sectors for the purpose of reducing the contagion;
- the Law Decree no. 104 issued on August 14, 2020 (the “August Decree”) has been converted into law with amendments by Law no. 126 of October 13, 2020;
- the Law Decree no. 137 issued on October 28, 2020 (the so-called “*Ristori Decree*”); it came into force on October 29, 2020.

The **August Decree** and the ***Ristori Decree*** followed the so-called ***Cura Italia Decree*** (DL 18/2020, converted into law with amendments by Law no. 27/2020) and the ***Rilancio Decree*** (DL 34/2020, converted into law with amendments by Law no. 77/2020).

Below are some relevant measures regarding private employment relationships introduced by the conversion law of the August Decree and by the *Ristori* Decree.

### 1. COVID-19 SOCIAL SHOCK ABSORBERS - NEW MEASURES

<b>CIGO, Ordinary Check (FIS/Solidarity Funds) and CIGD (Exceptional CIG scheme)<sup>1</sup></b>	<ul style="list-style-type: none"><li>▪ Introduction of additional <u>6 weeks</u> of Covid-19 social shock absorbers, i.e. CIGO, Ordinary Check or CIGD (depending on the scheme applicable to the employer) pursuant to the <i>Cura Italia Decree</i> as subsequently amended.</li><li>▪ The above 6 weeks are linked to the period of time <u>November 16, 2020 – January 31, 2021</u>; if the employer availed itself of social schemes already authorized pursuant to the August Decree, the use of such schemes after November 15, 2020 shall be computed for the purpose of the 6 weeks of the <i>Ristori Decree</i>.</li><li>▪ The 6 weeks are granted to:<ul style="list-style-type: none"><li>- employers that have been fully authorized to use the 9-weeks Second Set of the August Decree;</li><li>- employers affected by the restrictions introduced by the DPCM issued on October 24, 2020.</li></ul></li><li>▪ The 6-weeks aid is subject to the payment of a <u>contribution</u> equal to a percentage of the total compensation that would have been due to the employees for the suspended /reduced working hours; the amount of the</li></ul>
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<sup>1</sup> Article 12, *Ristori* Decree.

	<p>contribution depends on the reduction of the company's turnover in the 2020 first half, if compared to the 2019 first half turnover:</p> <ul style="list-style-type: none"> <li>- 18%, if the employer suffered no reduction of the turnover;</li> <li>- 9%, if the employer suffered a reduction of the turnover lower than 20%;</li> <li>- 0%, if (x) the employer suffered a reduction of the turnover equal to, or exceeding, 20%; or (y) if the employer started running its business after January 1, 2019; (z) if the employer belongs to sectors affected by the restrictions introduced by the DPCM issued on October 24, 2020.</li> </ul> <ul style="list-style-type: none"> <li>▪ As regards the information and consultation Union requirements, the <i>Ristori</i> Decree does not introduce new rules, therefore it is reasonable to sustain that the information and consultation rules and requirements set forth by the <i>Cura Italia</i> Decree currently in force will continue to apply.</li> <li>▪ The application must be filed with INPS: (1) as a general rule, by the end of the month following that of the reduction/suspension of the working activity; <i>but</i> (2) as a rule immediately applicable in the first phase, by the end of November 2020.</li> </ul>
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## 2. BAN ON DISMISSAL

<b>Rules introduced by the <i>Ristori</i> Decree in combination with the rules introduced by the August Decree<sup>2</sup></b>	<ul style="list-style-type: none"> <li>▪ The August Decree kept in place the ban on dismissal by virtue of a set of rules that gave rise to a strong debate amongst scholars and interpretation issues. According to the August Decree the ban on dismissals continued to apply to employers that <u>have not fully used</u> (x) the Covid-19 social shock absorbers pursuant to Article 1 of the August Decree, or (y) the social security exemption pursuant to Article 3 of the August Decree.</li> <li>▪ While the dismissal ban governed by the August Decree is still in force, the <i>Ristori</i> Decree extended it <u>until January 31, 2021</u>.</li> <li>▪ The ban regards collective and individual dismissals for business-related reasons. It provides also for the suspension of (x) collective dismissal procedures commenced after February 23, 2020; and (y) procedures for individual dismissals pursuant to article 7, law 604/66.</li> <li>▪ <b>Exceptions</b> to the ban: <ol style="list-style-type: none"> <li>1. "changes in a service contract", where the employees of the former contractor are dismissed to be re-hired by the new contractor;</li> <li>2. winding-up following the liquidation of the company (provided that meanwhile no transactions qualifying as a transfer of business pursuant to article 2112 of the Italian Civil Code are implemented);</li> <li>3. company-level collective agreement (entered into with trade unions) incentivizing the exit of employees; in this peculiar and exception case, the employees who accept to terminate the employment will have</li> </ol> </li> </ul>
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<sup>2</sup> Article 12, *Ristori* Decree.

	<p>access to the unemployment allowance (NASPI);</p> <p>4. bankruptcy with no temporary business continuation.</p>
<b>3. OTHER PROVISIONS OF RELEVANCE FOR EMPLOYERS</b>	
<b>Social security exemption for employers that will not apply for social schemes<sup>3</sup></b>	<ul style="list-style-type: none"> <li>▪ <u>Beneficiaries</u>: employers that will not apply for the Covid-19 social shock absorbers pursuant to the <i>Ristori</i> Decree.</li> <li>▪ <u>Exemption</u>: social security contributions (excluding INAIL insurance premium) for the maximum term of <u>4 weeks</u> in an amount not exceeding the subsidized working hours in June 2020.</li> <li>▪ <u>Term</u>: January 31, 2021.</li> <li>▪ The exemption at issue is structured as an extension of the same exemption provided by Article 3 of the August Decree (for the maximum period of 4 months, to be used by December 31, 2020).</li> <li>▪ This exemption remains subject to the authorization of the European Commission.</li> </ul>
<b>“Smart Working”</b>	<ul style="list-style-type: none"> <li>▪ Where compatible with the content of the employment duties, employees parent of kids under 14 who are quarantined as a result of school contacts can work under “smart working” scheme (i.e. from home/with flexibility as to the place of work)<sup>4</sup>.</li> <li>▪ Employees parents of children affected by serious disabilities have the right to smart working until June 30, 2021<sup>5</sup>.</li> <li>▪ Until December 31, 2020, “fragile” employees will work, as ordinary rule, under smart working scheme<sup>6</sup>.</li> </ul>
<b>Social security discount in Southern Regions<sup>7</sup></b>	<ul style="list-style-type: none"> <li>▪ On October 6, 2020, the exemption at issue was authorized by the European Commission. INPS issued the Circular Letter 122/2020 and introduced some guidelines for its application.</li> <li>▪ <u>Beneficiaries</u>: employers with employees whose working place is located in the following Regions: <i>Abruzzo, Basilicata, Calabria, Campania, Molise, Puglia, Sardegna e Sicilia</i>.</li> <li>▪ <u>Discounted rate</u>: 30% social security discount (excluding INAIL insurance premium).</li> <li>▪ <u>Term</u>: from October 1, 2020 until December 31, 2020.</li> </ul>

<sup>3</sup> Article 12, *Ristori* Decree.

<sup>4</sup> Article 21-bis, August Decree, as amended.

<sup>5</sup> Article 21-ter, August Decree, as amended. This provision is to be read in combination with Article 39 of the *Cura Italia* Decree, that had already introduced the right to smart working for employees affected by disabilities or having disable family members.

<sup>6</sup> Article 26, paragraph 2-bis, *Cura Italia* Decree, as amended by the August Decree.

<sup>7</sup> Article 27, August Decree.

Gianni, Origoni, Grippo, Cappelli & Partners has set up an in-house **Task Force** to constantly monitor the evolution of legislation in the regions affected by the Coronavirus and is at your entire disposal to support you in defining, drafting and implementing the most advisable strategies to limit the impact of the spread of the Coronavirus on the operations of your business and the management of your existing commercial relations.

For any questions, please send a mail to: [coronavirus@gop.it](mailto:coronavirus@gop.it)



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